

**STATE OF MONTANA**  
**DEPARTMENT OF JUSTICE**  
**AGENCY LEGAL SERVICES BUREAU**

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**MEMORANDUM**

**CONFIDENTIAL**  
**ATTORNEY-CLIENT PRIVILEGED**  
**ATTORNEY WORK PRODUCT**

TO: Jennie Stapp – Montana State Librarian  
Tracy Cook

FROM: Jeffrey Doud  
Assistant Attorney General

RE: Legal Analysis on Distribution of Per Capita Funds

DATE: January 11, 2021

**MEMORANDUM**

You have asked for my opinion as to what options the Library has in light of information you received regarding the potential inaccuracies in the 2020 Census.

**APPLICABLE STATUTES AND RULES**

The applicable rules setting forth the distribution of Library funds on a per capita basis to various governmental entities for their libraries is set forth in ARM 10.102.4003. This rule prescribes the manner in which the direct state aid is to be distributed to the various libraries throughout the state on a per capita basis. Of important note is the definition prescribed to the term population, which is used in the per capital distribution portion of the rule. Therein, the term population is defined as “those official, final figures from the most recent decennial census of population produced by the U.S. Bureau of the Census.”

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### **OPINION**

I am of the opinion that the Library must commence rulemaking to amend the rules of per capita distribution of state aid if it does not wish to strictly adhere to the distribution scheme set forth in the rule by disregarding the official, final figures from the most recent decennial census and using other underlying data that might be more accurate.

The ARM states that the per capita portion of the direct state aid must be determined using a formula based upon the “population.” As the term population is defined, the Library is obligated to use the official, final figures from the most recent decennial census. Given the plain language of the definition of population, this generally means that only the official figures from the 2020 census could be used to distribute the per capita aid.

Though you have mentioned that you could obtain more accurate information using underlying data, I do not believe that the rule, as currently written, allows for this. The rule only allows for the use of official, final census information to be used when calculating the per capita aid. As such, I believe that using any data, that shows a different figure than the official tally (though it may be more accurate), would run afoul of the rule.

Therefore, I am of the opinion that the only way that the Library can use information other than the official census count, even though that information may be inaccurate, is to amend the rules to allow for the use of other data when the Library determines that the official census count is inaccurate.

Further, I have not found any authority that would allow for the Library to suspend or disregard the rule on an emergency basis. Such a move would also not be practical since the Library must rely on this data for the next ten years.

If you would like to discuss my analysis in more detail, please do not hesitate to contact me and please let me know if I can be of any further assistance.

jmd/lmj