

AG Opinion 54 Number 7 – Cash Reserves vs. Library Depreciation Fund

Original question– With regard to the recent AG opinion about library funding, can you clarify whether the opinion is referring to Cash Reserves, the Library Depreciation Fund or both when it says that the “Library Board alone has the discretion to determine how to use unspent funds in the library reserve.” In this case I think Livingston was specifically referring to the reserve funds but the statute cited used the language “public library fund.”

Response from Jim Scheier, July 17, 2012:

I re-read the opinion, and I find it to be not very clear on this point. The first question discussed in the opinion was phrased as follows:

Where unspent appropriations are available, can these funds be used to reduce the tax levy, i.e., can a local governing body appropriate unspent monies (reserves) from the prior fiscal year to partially fund the Livingston/Park County library’s budget request for a future fiscal year?

The opinion first concludes that a local governing body has the authority to determine whether and to what extent to levy taxes, but holds that they “cannot exercise control of the library reserve funds.” The opinion cites Mont. Code Ann. §§ 22-1-304 and 22-1-309 for the proposition that the library board of trustees has exclusive control over expenditures from the “public library fund,” and therefore seems to assume that leftover funds from the prior year’s appropriation remain in that fund and continue to be subject to the exclusive control of the board of trustees.

The opinion does not cite Mont. Code Ann. §§ 22-1-305 or 22-1-306. Mont. Code Ann. § 22-1-305 authorizes the local governing body to establish a library depreciation reserve fund to be used for the replacement and acquisition of property, capital improvements, or equipment for maintenance and improvement of library services. Mont. Code Ann. § 22-1-306 provides:

Moneys for library depreciation reserve fund. Moneys for the library depreciation reserve fund are those funds which have been allocated to the library in any year but which have not been expended by the end of the year. Such moneys include but are not limited to city or county or city-county appropriations, federal revenue sharing funds, and public and private grants.

There is no indication that the City of Livingston has established a depreciation reserve fund, and there is nothing in the opinion suggesting that the City's question was directed to use of moneys in a depreciation reserve fund. Interestingly, the statutes providing for establishment and use of a depreciation reserve fund do not specifically authorize the use of those funds for general operation of the library – the permissible uses are listed in Mont. Code Ann. § 22-1-305.

In light of the above discussion, I have to assume that the opinion's reference to reserves means cash reserves, which presumably would be money that remains in the "public library fund" at the end of the year. I'm not an expert in local government finance and budget matters, so I don't know what typically happens when a local government agency has unspent funds at the end of the fiscal year. But we now have an AG opinion that holds that the expenditure of reserves, which it describes as unspent appropriations from the prior year, are within the exclusive control of the library board of trustees. I don't think the opinion can be interpreted to refer to money in a library depreciation reserve fund.