

Staffeldt, Darlene

From: Cooper, Bob
Sent: Friday, January 27, 2006 6:51 PM
To: Staffeldt, Darlene
Subject: FW: Stillwater County Library Board Authority Challenge

FYI. Hopefully we can discuss this on Tuesday and get something out to the affected libraries. Bob

From: Scheier, James
Sent: Thursday, January 26, 2006 1:30 PM
To: Cooper, Bob
Subject: RE: Stillwater County Library Board Authority Challenge

Bob,

I have had a chance to review the legal opinion written by Patrick Begley, a private attorney apparently hired by the Stillwater County Commissioners. I note that the opinion does not cite or discuss what I believe is the most recent and relevant Attorney General Opinion on the issue, 49 Op. Att'y Gen. No. 16 (January 18, 2002), issued by current Attorney General McGrath. You also found the opinion, and included a copy with the materials you provided to me. Although I obviously don't know for sure, I assume that Mr. Begley was not aware of and did not consider this AG opinion when he prepared his legal opinion

Attorney General McGrath considered the specific question whether a library board can require a county commission to levy five mills in support of the county library. Noting the 2001 amendments enacted by HB 124, the opinion notes that MCA 22-1-304 was amended to delete the former reference to a five-mill levy. The effect of the amendment is that 22-1-304 now "simply authorizes the county to levy mills for support of the library," without reference to the number of mills.

In place of the numeric levies that were formerly found in 22-1-304, as well as in other statutes, MCA 15-10-420, as amended, allows a county to levy sufficient mills to raise the amount of property tax raised in the previous year, with an upward adjustment to account for inflation. AG McGrath's opinion notes that since the five-mill library levy has been eliminated, there is no longer a statutory basis to argue that the library board can require county commissioners to levy five mills for support of the library budget.

However, AG McGrath's 2002 opinion also recognizes that the previous AG opinions dealing with the authority of library boards are still important. The 2002 opinion states: "In my opinion, the 2001 statutory changes . . . did not delete the library board's authority to determine the amount of financial support required by the library, nor did they confer on the county commissioners the authority to modify the library budget submitted by the library board." Attorney Begley's legal opinion, in the Conclusion, seems to recognize these two important legal principles, yet he still concludes that county commissioners, exercising "broad discretionary authority" may reduce the distribution of revenue to a library board's budget "if the revenue is not available."

As AG McGrath concluded in 49 Op. Att'y Gen. No. 16:

"[The 2001 legislature's amendments] did not give the board of county commissioners the authority to modify the budget submitted by the library board pursuant to Mont. Code Ann. 22-1-309(1), provided that budget fits within the provisions of Mont. Code Ann. 15-10-420. As discussed above, that statute limits the county to the number of mills required to raise the amount of money raised in the previous fiscal year, subject to the statutory adjustments. Under the reasoning of 48 Op. Att'y Gen. No. 3

(1999), the budget which the library board may require the commissioners to adopt is limited to the amount budgeted in the prior year as adjusted pursuant to section 15-10-420."

This also calls into question attorney Begley's conclusions, on page one of his opinion, that the county library board has "limited budget authority," and that the 1986 and 1999 Attorney General opinions "are no longer applicable." I disagree with those conclusions, based on the discussion in 49 Op. Att'y Gen. No. 16, at least as they are presented in Mr. Begley's legal opinion.

We obviously do not have all the necessary county budget information to make a determination whether the budget that the library board submitted to the commission is within the limitations imposed by MCA 15-10-420. 49 Att'y Gen. Op. No. 16 also cites an earlier opinion, 49 Op. Att'y Gen. No. 5 (August 7, 2001). In that opinion the AG also considered the 2001 amendments to the local government taxation statutes (HB 124). The opinion notes that the combined effect of the elimination of the specific mill levy limits and the mill levy cap found in MCA 15-10-420 "is to free a local government to dedicate as much of its annual mill levy as it chooses to any lawful government purposes, as long as the total millage covered by the cap does not exceed the cap measured by the prior year's property tax assessments." In other words, the mill levy cap provided in MCA 15-10-420, as amended by HB 124, is calculated with reference to the total property tax assessed in the previous year, and not by reference to the amount levied for any particular purpose in any prior year.

In any event, it does not appear to me that attorney Begley's opinion takes into account the analysis and conclusions made by AG McGrath in his 2002 opinion, which specifically considered the effect of the 2001 amendments to the statutes applying to local government taxation.

My recommendation would be to suggest that a representative of the Stillwater County Library Board approach the county commission with a copy of or citation to 49 Op. Att'y Gen. No. 16, and request that the county commission contact Mr. Begley and inquire 1) whether his opinion took into account the 2002 AG opinion, and 2) if not, whether the holding and discussion of the 2002 AG opinion would change Mr. Begley's opinion in any way.

Contact me if you would like to meet to discuss this in more detail.

Jim

-----Original Message-----

From: Cooper, Bob
Sent: Wednesday, January 25, 2006 12:07 PM
To: Scheier, James
Cc: Staffeldt, Darlene; Suzanne Reymmer (sreymmer@mtlib.org); Meredith, Maggie
Subject: Stillwater County Library Board Authority Challenge

Hi Jim.

MSL has received similar requests for assistance from three different libraries in the past month. The issues of concern all deal with the level of authority some county commissioners insist they now have over the library's budget after the elimination from MCA of the specific mill levy figures for library support. The most prominent situation we have been asked to assist with comes from the Stillwater County Library Board (SCLB). The SCLB's budget was slashed by \$3,000 recently by the Stillwater County Commissioners. The SCLB wrote a letter to the County Commission indicating that this action was not in accord with the law, requesting that the \$3,000 be reinstated, and offering to meet to discuss the matter. At that meeting, the SCLB was presented with an eight page legal opinion from an attorney hired by the County Commission which concludes that the Commission's action was supported by law. I do not have an electronic copy of this document so I will hand-carry to your office the information faxed to us by the SCLB. Would you please review this opinion and advise us as to the accuracy of its conclusions? We feel some of the assumptions and statements contained therein may have significant statewide impact for public libraries if they prove to be correct.

Thanks. Bob