

Cooper, Bob

To: jhart@mtlib.org
Subject: Clarification on Library Board budget authority

Hi Judy. As promised, here is some follow-up information on the authority of the Library Board to set the budget for the library. I hope this addresses some of your concerns. Let me know what else would be helpful. Bob

Our research indicates that the most recent and relevant Attorney General Opinion on issues concerning authority regarding library funding can be found in , 49 Opinion Attorney General No. 16 (January 18, 2002), issued by current Attorney General McGrath. 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." Despite this finding, the question still arises on occasion whether 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."

It is important to note here that the budget that the library board submits 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.

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