

MEMORANDUM

TO: Jim Scheier  
FROM: Richard Miller  
RE: Commission Authority Over Federations  
DATE: July 28, 1994

A question is emerging out of a current issue which has occupied several Commission meetings. This issue concerns the authority the Commission has to deny funding for the operation of a federation. At the last meeting of the Commission, one of the Commissioners questioned certain policies of one of the federations citing the fact that federation returns a smaller portion of the base grants to libraries when compared with the other federations, indicating that there are members who are not in agreement with how the federation is operating, and saying that the federation used too much of the members' monies for activities such as interlibrary loan backup. After much discussion, the Commission agreed to "provisionally approve" that federation's Plan of Service (POS), which is submitted for approval each year by each federation. The approval of these POS's is usually pro forma, but not this year.

Materials which you may wish to review include: 15-35-108 (f), 22-1-103 (9), 22-1-401 -- 413 MCA; ARM 10.102.3604, 10-102-5102 -- 5104; and a June 1984 Commission motion concerning expenditure of Coal Severance Tax monies by the federations (copy of the latter enclosed).

Following are the questions we have come up with. (Note: They seem somewhat repetitious as I look at them now.)

1. Does the Commission have the authority to deny funding to a federation, specifically the CST and base grant funding?
2. If we have asked the federation to submit certain information in their annual POS, and it has complied, is there any basis to deny funding? Note: the staff has recommended funding of the federation, and will make the same recommendation the next Commission meeting as well. I have concurred.

3. How far does the Commission's authority go as it considers each federation's POS?
4. The law seems to indicate that the Commission has the authority to establish borders and name the headquarters of each federation; also to receive monies (at least CST monies) for the federations. Does this give the Commission "life and death" power over the federations -- i.e., are the federations "creatures" of the Commission or not?
5. The POS is submitted to the membership of each federation annually for its approval. This membership is "advisory," the governance of the federation being finally vested in the library board of the headquarters library. After approval of the POS, it is submitted to the State Library for examination and recommendation to the Commission. How far does the authority of the Commission extend once the POS is approved by the membership at a legally constituted meeting. Looking back at old minutes, the Commission apparently would approve a portion of funding (e.g., 2/12ths) pending the submittal of additional information, etc. More recently, as mentioned above, the approval has been more pro forma.
6. If the Commission has the authority to deny funding for a federation, must this be based on some prior notice, or some criteria for determination of denial, etc.? We ask this question because we have not mandated such things as, all federation members must be satisfied with their federation's services. What we have required is a POS, which was submitted by the federation. Is there a "due process" question somewhere in here?
7. If the authority of the Commission is limited such that it cannot deny funding, is it necessary for us to present the annual POS's to the Commission, and to have the federations report at each Commission meeting?

We have several complications regarding a response to these questions. You are out of town this week, through next Wednesday. I am out of town all next week, and Darlene is out beginning on Wednesday. Here is what Darlene and I are proposing: that you prepare the response to these questions, and that you call Darlene's telephone number if you have any questions and leave a voice-mail message. Then on Monday, August 8 at 8:30 a.m. (or thereabouts; we both have all-day meetings beginning at 10 a.m.) we meet to discuss these issues. Will all of the above work into your schedule? Please advise.

Thank you, ahead of time. I hope this can be worked out. I suspect we are going to have an argument during the next Commission meeting (August 9th), and I'd like to have some preparation.

cc Darlene Staffeldt

STATE OF MONTANA  
DEPARTMENT OF JUSTICE  
AGENCY LEGAL SERVICES BUREAU  
444-2026

**MEMORANDUM**

CONFIDENTIAL  
ATTORNEY-CLIENT PRIVILEGED

TO: RICHARD MILLER  
Montana State Librarian

FROM: JIM SCHEIER JS  
Assistant Attorney General

RE: Commission Authority Over Library Federations

DATE: August 5, 1994

Your July 28, 1994 memo posed a series of questions concerning the authority of the Montana State Library Commission (Commission) over library federations. Prior to responding to your specific questions, it may be helpful to set forth some of the basic principles relating to state funding of library federations. In preparing the following discussion I have borrowed freely from a January 13, 1987 memo from Opal Winebrenner to former State Librarian Sara Parker.

Mont. Code Ann. § 22-1-413 provides:

The [Commission] shall receive and administer the appropriation for state funding to public library federations. The commission shall allocate such appropriation among such types of grant programs and shall allocate funds among federations according to such formulas for distribution as it shall establish from time to time by rules adopted pursuant to 22-1-103. . . .  
[Emphasis added].

That statute in effect provides that all of the legislative appropriation that may be made for the state funding of public library federations is to be allocated to the federations by the Commission through either grant programs or distribution formulas.

The rules adopted by the Commission are consistent with this requirement. Under the rules, all funds received for library federations up to \$500,000 are simply distributed to the federations according to the formula specified in Mont. Admin. R. 10.102.5102. Funds in excess of \$500,000 received by the Commission are distributed through grant programs. Mont. Admin. R. 10.102.5103. Funds not allocated by the Commission to grant

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proposals are distributed according to the formula in Mont. Admin. R. 10.102.5102(1)(b). See Mont. Admin. R. 10.102.5103(1)(f).

Mont. Code Ann. § 22-1-103(5) empowers the Commission to "serve as the agency of the state to accept and administer any state . . . funds . . . appropriated for or granted to it for library service or foster libraries in the state and establish regulations under which funds shall be disbursed." Consistent with this statute, Mont. Code Ann. §§ 22-1-412 and 22-1-413 provide that the Legislature may appropriate state funds to the Commission to provide library services through library federations, and that the Commission shall administer and allocate such appropriations to the federations according to grants and distribution formulas established by the Commission.

Mont. Code Ann. § 15-35-108(3)(f) mandates that a percentage of the coal severance tax collected is to be allocated to the Commission "for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking." [Emphasis added]. Thus, coal severance tax funds that are appropriated by the Legislature pursuant to Mont. Code Ann. §§ 22-1-412 and 22-1-413 are funds that are to be used by the federations to provide basic library services. The Commission implements this legislative purpose and statutory mandate by requiring federations to submit an annual plan outlining how the particular federation will provide basic library services with the funds distributed or granted by the Commission.

These statutes clearly indicate that the Commission is required to allocate all funds appropriated to it for federation purposes to the federations, either by awarding grants or by following the distribution formula set forth in the Commission's rules. With this background discussion, I will now attempt to respond to your questions.

- 1. Does the Commission have the authority to deny funding to a federation, specifically the coal severance tax and base grant funding?**

Under the appropriate circumstances, yes. In my opinion the Commission is not authorized to deny funding to a specific federation when allocating funds pursuant to the distribution formula set forth in Mont. Admin. R. 10.102.5102 (i.e., the first \$500,000 appropriated, and any remaining funds not allocated to grant proposals, as specified in Mont. Admin. R. 10.102.5103(1)(f)). The express language of the Commission's rule does not permit it to deny funding of any of that portion of the appropriation to any federation (funds subject to allocation utilizing the distribution formula specified in the rule).

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However, funds in excess of \$500,000 that are available for grants may be denied to a federation if its grant application does not achieve a high enough prioritization according to the criteria set forth in Mont. Admin. R. 10.102.5104.

2. If the Commission has asked a federation to submit certain information in its annual Plan of Service (POS), and it has complied, is there any basis for the Commission to deny funding to that federation?

Not unless the funding is denied as a grant on the basis that the application is not sufficiently prioritized according to Mont. Admin. R. 10.102.5104. As indicated in response to question no. 1, in my opinion that is the only circumstance under which the Commission may deny funding.

3. How far does the Commission's authority go as it considers each federation's POS?

The last sentence in Mont. Code Ann. § 22-1-413 states:

Federations receiving state funds from the commission shall report semiannually to the commission concerning the progress of the various projects for which state funding was received, which reports shall contain an accounting for all state funds received.

While this statute apparently requires a federation that is a recipient of funding to report to the Commission regarding the "progress" of the project or projects for which the funding was received, it does not give the Commission the concomitant authority to demand repayment of funds allocated or to deny future funding to that federation based on the content of the report.

Moreover, I don't see any statutory authority for the Commission to demand changes in a federation's POS. The statutes, and the Commission's rules, do authorize the Commission to resolve disputes concerning how funding is to be apportioned within a federation after it has been distributed to the federation. Mont. Code Ann. § 22-1-405(3); Mont. Admin. R. 10.102.3604. However, I don't think this gives the Commission any additional authority to involve itself into the process of formulating the POS.

4. The law seems to indicate that the Commission has the authority to establish borders and name the headquarters of each federation; also to receive funds for the federations. Does this give the Commission "life and death" power over the federations--i.e., are the federations "creatures" of the Commission?

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No, the federations are creatures of the specific contract by which they are created. The Commission's authority is limited to 1) establishing the federation areas (Mont. Code Ann. § 22-1-402(1)(a)), 2) designating the headquarters library of the federation (Mont. Code Ann. § 22-1-402(1)(b)), and 3) receiving and disbursing state funding for the federations (Mont. Code Ann. §§ 22-1-412 and 22-1-413). The Commission has only the powers specifically set forth in the statutes.

5. **The POS is submitted to the membership of each federation annually for its approval. This membership is "advisory", the governance of the federation being finally vested in the library board of the headquarters library. After approval of the POS, it is submitted to the State Library for examination and recommendation to the Commission. How far does the authority of the Commission extend once the POS is approved by the membership at a legally constituted meeting?**

I think this is basically the same as question no. 3. As I said, it seems that the law requires the federations to give progress reports to the Commission, but it does not empower the Commission to take any action if it fails to approve a POS.

6. **If the Commission has the authority to deny funding for a federation, must this be based on some prior notice, or some criteria for determination of denial, etc.?**

My conclusion, as noted, is that the Commission may only deny funding of a grant application, according to the criteria listed in Mont. Admin. R. 10.102.5104. The approval or disapproval of such grant applications is done pursuant to Mont. Admin. R. 10.102.5103, which provides for sufficient notice and opportunity to be heard to comply with due process standards.

7. **If the authority of the Commission is limited such that it cannot deny funding, is it necessary for us to present the annual POSes to the Commission, and to have the federations report at each Commission meeting?**

Yes, because that is what the law seems to require. See Mont. Code Ann. § 22-1-413.

jms/ah  
c: Darlene Staffeldt