

Staffeldt, Darlene

From: Cooper, Bob
Sent: Friday, March 02, 2001 3:23 PM
To: Brett Allen (E-mail)
Cc: Strege, Karen; Staffeldt, Darlene
Subject: Can a Library Board Sign an Interlocal Agreement?

Brett:

You asked whether the Board of Trustees of the St. Ignatius Public Library may sign an Interlocal agreement establishing the legal operating basis for the St. Ignatius School-Community Library? The answer is no. According to Jim Scheier of the State of Montana Office of the Attorney General, a library board does not fit within the definition of the phrase "public agency" in Montana Code Annotated section 7-11-103, thus it is not authorized to enter into interlocal agreements.

Mr. Scheier also tells us that the school district could, of course, enter into an interlocal agreement with the city of St. Ignatius. However, you have indicated there is some hesitancy on the city's part to do so.

However, pursuant to 22-1-309(3), a library board may enter into a simple contract with a school district "to give and receive library service." While the contract would not, under the law, constitute an interlocal agreement, it would nevertheless be a legally enforceable agreement between the parties. This is consistent with 22-1-312, which authorizes library boards and local political subdivisions to "cooperate, merge, or combine in providing library service."

I hope this provides you with the guidance you were seeking. If I can be of further assistance please contact me.

Bob

Bob Cooper
Statewide Technology Librarian
Montana State Library
PO BOX 201800 (1515 East 6th Avenue)
HELENA MT 59620-1800
Voice: 406-444-5431 or 1-800-338-5087 (in Montana)
Fax: 406-444-5612
E-mail: bocooper@state.mt.us
MSL Website: <http://msl.state.mt.us>

Staffeldt, Darlene

From: Scheier, James
Sent: Monday, February 26, 2001 4:17 PM
To: Cooper, Bob
Cc: Staffeldt, Darlene; Strege, Karen
Subject: RE: Interlocal Agreement Question

Bob - I reviewed the memo, and conducted some research to determine whether there have been any statutory or case law changes since the date of the memo that would change the opinion. Based on my research, nothing has changed. In my opinion, a library board does not fit within the definition of the phrase "public agency" in Montana Code Annotated section 7-11-103, thus it is not authorized to enter into interlocal agreements. The school district could, of course, enter into an interlocal agreement with the city of St. Ignatius, but you have indicated there is some hesitancy on the city's part to do so.

However, pursuant to 22-1-309(3), a library board may enter into a simple contract with a school district "to give and receive library service." While the contract would not, under the law, constitute an interlocal agreement, it would nevertheless be a legally enforceable agreement between the parties. This is consistent with 22-1-312, which authorizes library boards and local political subdivisions to "cooperate, merge, or combine in providing library service."

Jim

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

From: Cooper, Bob
Sent: Monday, February 26, 2001 3:07 PM
To: Scheier, James
Cc: Staffeldt, Darlene; Strege, Karen
Subject: Interlocal Agreement Question

Hi Jim.

I am currently researching a question from the St. Ignatius Public Library as to whether the Public Library Board can enter into an Interlocal Agreement with the St. Ignatius School District to form the legal basis for a school-community library. (There appears to be some hesitancy on the part of the St. Ignatius City Council to sign the Interlocal Agreement recommended by the Library Board.) I have encountered a memo from you to Shelia Cates dated December 3, 1990 re: Interlocal Agreements and Public Library Service. The memo concerns whether the Joliet Community Library can enter into an Interlocal Agreement with Joliet School District #7. My understanding at this point, is that a library board can sign simple contracts to provide library service but is not considered a government agency authorized by law to sign an Interlocal Agreement. Is this a correct interpretation of your memo and is this information still accurate given the legislative and court activity of the past decade? I await your sage guidance.

Bob

Bob Cooper
Statewide Technology Librarian
Montana State Library
PO BOX 201800 (1515 East 6th Avenue)
HELENA MT 59620-1800
Voice: 406-444-5431 or 1-800-338-5087 (in Montana)
Fax: 406-444-5612
E-mail: bocoooper@state.mt.us
MSL Website: <http://msl.state.mt.us>

Staffeldt, Darlene

To: Cooper, Bob
Cc: Strege, Karen
Subject: RE: Library Boards and Interlocal Agreements

I have read the 1990 memo from Jim to Sheila Cates regarding the interlocal agreement question and I agree with Bob's assessment. I would recommend the following action at this time.

1. Send Jim Scheier a email asking if he still agrees with his presentation on interlocal agreements as give in 1990. I recommend this because of the other Library Board powers issues and opinions that have happen since 1990.
2. If Jim Scheier agrees, then we should provide St. Ignatius with our paperwork and explain their two options (interlocal agreement between city council and school district or simple contract between Library Board and school district) as we see them. I don't think we have to push one option over the other. Do we?

Thanks, Darlene

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

From: Cooper, Bob
Sent: Wednesday, February 21, 2001 8:37 AM
To: Staffeldt, Darlene
Cc: Strege, Karen
Subject: Library Boards and Interlocal Agreements

Darlene:

I am following up on our discussion about the question from Brett Allen in St. Ignatius regarding which entities may sign an Interlocal Agreement. As we discussed, they are still trying to finalize an Interlocal Agreement that would be the "official" basis of the St. Ignatius School-Community Library. They have been operating for almost a year now without benefit of a signed agreement. The City Attorney is leaning toward having the Library Board sign the Interlocal with the School instead of the City Council. He feels that the terms spelled out in the contract involve the execution of the powers given by law to the library board more than the powers of the city council. According to Brett, the City Attorney is uncomfortable having the City sign because he sees this as a three party agreement where the City has minimal responsibility, while the library board and school board have the main responsibilities and are both mentioned frequently throughout the proposed Interlocal Agreement language. Brett has asked on behalf of his board if it is legal for the board chair to sign an Interlocal Agreement.

I have just finished reviewing a December 3, 1990 memorandum from Jim Scheier of the State Attorney General's office responding to a very similar question involving the Joliet Community Library Board. What I understand from my reading of the pertinent sections of MCA and Jim's memo is that library boards cannot sign Interlocal Agreements; this must be done by school districts, county commissions, and city councils. However, if a library board does sign an Interlocal Agreement it can be viewed not as an Interlocal Agreement, but as a simple contract and be a legal document in that context. I suggest someone else review this memo and see if they reach the same conclusion I did.

The questions as I now see them are: Do we simply share our documents with the St. Ignatius folk and let them reach their own conclusions? Do we recommend to St. Ignatius school and public library board members that they push forward and get the city and school to sign a legal Interlocal Agreement? Or do we encourage them to not use an Interlocal Agreement but instead form a contract between the library board and the school to operate under? Or do we answer another question like how many penguins live on Penguin Island and hope nobody notices that we dodged the issue?

Bob

Bob Cooper
Statewide Technology Librarian

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

Joliet
interlocal
agreement

model
interlocal
agreement

MEMORANDUM

TO: SHEILA CATES
Coordinator of Library Development
Montana State Library

FROM: JIM SCHEIER JS
Assistant Attorney General

RE: Interlocal Agreements and Public Library Service

DATE: December 3, 1990

You asked me to look into two questions concerning the provision of public library service through interlocal agreements.

Joliet Interlocal Agreement

The first question you had is whether the purported interlocal agreement between Joliet School District # 7 (District) and the Joliet Community Library Committee (Committee) is valid. Specifically, you inquired whether the Committee, which is actually functioning as the board of library trustees, is one of the entities authorized by statute to enter into interlocal agreements.

Section 7-11-104, MCA, provides, in pertinent part:

Any one or more public agencies may contract with any one or more other public agencies to perform any administrative service, activity, or undertaking which any of said public agencies entering into the contract is authorized by law to perform.

Section 7-11-103, MCA, provides:

For the purposes of this part, the term "public agency" shall mean any political subdivision, including municipalities, counties, school districts, and any agency or department of the state of Montana.

The question is whether a board of trustees of a public library is a "political subdivision", and thus a "public agency" that is

authorized by section 7-11-104, MCA, to enter into interlocal agreements.

In 39 Op. Att'y Gen. No. 37 at 150-151 (1981), the Attorney General ruled that a municipal housing authority is a public agency that may enter into interlocal agreements, making the following observations:

The statutory provisions pertaining to interlocal agreements do not include a definition of "political subdivision." However, since the purpose of the interlocal agreement is to allow "political subdivisions" to provide services more efficiently, to the ultimate benefit of the taxpayers and citizens of Montana, a broad definition of the term is clearly appropriate.

Id. at 151. The Attorney General then reasoned that since housing authorities are, by statutory definition, "public corporations", and public corporations are included in at least two statutory definitions of the phrase "political subdivision" in the Montana Code Annotated, then a municipal housing authority is a public agency that may enter into interlocal agreements.

The Attorney General has also, in a more recent opinion, held that a rural fire district is a political subdivision which is authorized to enter into interlocal agreements. In 43 Op. Att'y Gen. No. 56 (1990), the Attorney General noted:

[A] fire district has been held to be a political subdivision. [Citations omitted]. It has also been held that fire districts operated by trustees are political subdivisions distinct from counties, and are thus governmental entities within the meaning of the Montana Tort Claims Act. [Citation omitted]. Rural fire districts operated by a board of trustees possess all the characteristics of a public agency as that term is used in the Interlocal Cooperation Act. Fire district trustees govern and manage the affairs of the fire district; have the authority to provide firefighting apparatus, equipment, housing, and facilities for the protection of the district; appoint and form fire companies; and prepare annual budgets. [Citations omitted]. Each district has political boundaries, and trustees are elected by electors within the fire district. [Citation omitted]. Based upon the delegation of powers and accountability to a local electorate, it is my opinion that rural fire districts . . . , are political subdivisions within the meaning of the Interlocal Cooperation Act.

Id. at 6.

I cannot find a similar basis to conclude that public library boards of trustees are public agencies, as defined in section 7-11-103, MCA. While the Montana Supreme Court has referred to a library board as an "adjunct of the local government", the Attorney General has, in a subsequent opinion, noted that a library board possesses "substantial autonomy from the governing body of the local governmental unit within which the library has been established." Municipal Employees Local 2390 v. City of Billings, 171 Mont. 20, 24, 555 P.2d 507, 509 (1976); 41 Op. Att'y Gen. No. 91 at 394 (1986). Although I agree that library boards are substantially autonomous entities when it comes to operating the library, I don't believe a library board of trustees is a "public agency" that is authorized to enter into interlocal agreements.

I cannot find a statutory definition nexus, similar to that found by the Attorney General in 39 Op. Att'y Gen. No. 37 (1981), which would support a similar conclusion that a library board is a "political subdivision". Further, in my opinion, a library board of trustees does not possess a separate political identity similar to that found by the Attorney General to exist in rural fire districts in 43 Op. Att'y Gen. No. 56 (1990). Unlike a rural fire district, a public library does not really have distinct political boundaries, nor are library trustees accountable to the local electorate.

A library board of trustees may, however, contract with other entities, including school districts, to give and receive library service. § 22-1-309(3), MCA. The purported interlocal agreement between the District and the Committee in this case was entered into to "provide proper accountability of allocated tax funds" for the provision of library services to the community. In my opinion, the interlocal agreement is valid as a simple contract with the school district for the management by the District of the fiscal details connected with the provision of library service. (Assuming that the library is a validly-created public library under the laws of Montana).

Model Interlocal Agreement

Your second request was that I review the model interlocal agreement that you prepared. Presumably, interlocal agreements may be entered between counties and school districts for the purpose of providing library services. See § 7-11-104, MCA ("any one or more public agencies [including counties and school districts] may contract . . . to perform any . . . service. . . which any of said public agencies entering the contract is authorized by law to perform). See also § 22-1-312, MCA, which provides that "boards of . . . educational institutions . . . , and local political subdivisions are . . . empowered to cooperate, merge, or combine in providing library service." However, when an interlocal agreement is entered between governmental units with general powers, the statutes dealing with administration of public

libraries apply, as you have anticipated in drafting the form interlocal agreement which you submitted to me.

Concerning the appointment and service of the board of trustees of the library so created, section 22-1-308 MCA, provides the framework for that procedure. In addition, the powers and duties of the board as set forth in the agreement should be consistent with section 22-1-309, MCA.

I have reviewed the draft interlocal agreement you provided, and based on that review I can find nothing that is patently inconsistent with the provisions of those statutes. If you have specific questions or concerns about any of the provisions of the draft agreement, give me a call and we can discuss them.