

Richard Miller
Sanders County

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

MEMORANDUM

CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGED

TO: DARLENE STAFFELDT, Director
Statewide Library Resources
Montana State Library

FROM: JIM SCHEIER JS
Assistant Attorney General

RE: Questions in Your 10-14-94 Memo

DATE: October 20, 1994

Your recent memo poses numerous questions pertaining to the "county free library" in Sanders County. As you will see, my response to question no. 1 makes the other questions moot.

1. Bookmobile as a Public Library

Your first question is whether a bookmobile can be the "county free library". From the materials you provided with your memo, it appears that the Sanders County bookmobile library was purportedly created in 1966 pursuant to former section 44-201, R.C.M. 1947. That statute provided, in pertinent part:

Proceedings to establish county library. By petitions signed by not less than ten per centum (10%) of the resident taxpayers whose names appear upon the last completed assessment roll of the county, at least half of whom shall reside outside of the county seat, being filed with the board of county commissioners, requesting establishment of a county free library, the county commissioners of such county shall appoint a meeting for a public hearing, and may in their discretion, by resolution, establish at the county seat a county free library, as provided in this act. [Emphasis added].

The former statutes dealing with creation of libraries do not specifically provide for the use of a bookmobile as the county free library. As noted, however, section 44-201, R.C.M. 1947, requires the county free library to be "established" at the county seat. Moreover, an individual statutory provision may not be read in a vacuum. A statute must be construed in such a manner "as to insure coordination with the other sections of an act". Peretti v. State of Montana, 238 Mont. 239, 244, 777 P.2d 329, 332-33 (1989),

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quoting Hostetter v. Inland Development Corporation of Montana, 172 Mont. 167, 171, 561 P.2d 1323, 1326 (1977). See also Barney v. Board of Railroad Commissioners, 93 Mont. 115, 129, 17 P.2d 82, 85 (1932) (Statutes relating to a particular subject matter must be read and considered in their entirety).

Section 44-205, R.C.M. 1947, stated that "[t]he library building" shall be under the supervision and care of the librarian. And, 44-206, R.C.M. 1947, authorized the issuance of bonds for the erection of "county free library buildings". Reading these statutes together with section 44-201, R.C.M. 1947, which authorized establishment of the county free library "at the county seat", it is my opinion that a bookmobile by itself could not have been established as a "county free library" under former section 44-201, R.C.M. 1947. The statutes clearly contemplated creation of a library that would be headquartered in a building at the county seat.

I note that the current statutes, particularly Mont. Code Ann. § 22-1-301(3), specifically authorize the provision of public library services through bookmobiles:

"Public library" means a library created under 22-1-303 through 22-1-317, that provides library services to the public by means of central facilities, branch facilities, or bookmobiles. [Emphasis added].

Even the current law, however, requires a library board to "establish and locate a central public library". [Emphasis added]. Mont. Code Ann. § 22-1-309(2). This suggests that a central library facility must be established at a specific, fixed location, i.e., in a building. While a public library may in addition provide library services by means of a bookmobile, I don't believe a bookmobile alone can serve as the sole component of a public library, because it would not comply with Mont. Code Ann. § 22-1-309(2).

Mont. Code Ann. § 22-1-314 (enacted in 1967) provides that "[a]ll public libraries heretofore established shall continue in existence, subject to the changes in administration provided herein". Thus, the Sanders County library, had it been legally created prior to the enactment of Mont. Code Ann. § 22-1-314, would have continued in existence thereafter as a "public library" under current Montana law (subject to the changes in administration described in the current law). Because it was never legally created under the former law, it was never "grandfathered" into existence under the subsequently enacted statutes.

The conclusion that the "county free library" in Sanders County was not legally created under the former law, and therefore does not

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exist under the current law, renders it unnecessary to respond to your other questions.

As you know, this is my legal opinion as the attorney for the State Library Commission. Sanders County may seek an opinion from its county attorney, and the county attorney may in turn decide to request an Attorney General's opinion on these issues.

jms/ah
c: Richard Miller