

STATE OF MONTANA
DEPARTMENT OF JUSTICE
AGENCY LEGAL SERVICES BUREAU
1712 NINTH AVENUE, P.O. BOX 201440, HELENA, MONTANA 59620-1440

Mike McGrath
Attorney General

Telephone: (406) 444-2026
FAX: (406) 444-4303

MEMORANDUM

CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGED

TO: KAREN STREGE
Montana State Librarian

DARLENE STAFFELDT
Statewide Library Resources

FROM: JIM SCHEIER
Assistant Attorney General

RE: Joliet Library

DATE: July 28, 2003

Your recent memo posed several questions regarding the Joliet Library in Carbon County. According to your memo, Carbon County established a county library, and the county commissioners appointed five members to the library board of trustees. Presumably this was all accomplished pursuant to the procedure for the creation of a public library, in Montana Code Annotated § 22-1-301 through 22-1-317.

Carbon County imposes a library levy to support three libraries in the county -- the Bridger, Red Lodge, and Joliet libraries. The Bridger and Red Lodge libraries were each established by the cities (presumably as legally-constituted public libraries), and each is governed by a city board of library trustees appointed by the city commissioners. The Joliet Library was established pursuant to an interlocal agreement between the City of Joliet and the local school district, and it is housed in the Joliet School. Carbon County offers no library services other than those provided by the three libraries described above. Your memo states that the interlocal agreement between the City of Joliet and the local school district was recently nullified, and the Joliet Library is no longer housed in the school.

There is no documentation that would support a conclusion that Carbon County operates a library under the provisions of Montana Code Annotated § 22-1-315, and there are no contracts for the establishment of a joint city-county library to be operated pursuant to the provisions of Montana Code Annotated § 22-1-316.

The City of Joliet has not yet established a public library by resolution or vote. And, Carbon County does not consider the library in Joliet to be a county library.

Your first question is whether the State Library can distribute state aid assistance to the Joliet Library. Montana Code Annotated § 22-1-326(2) requires the State Library Commission to administer state aid to public libraries pursuant to Montana Code Annotated §§ 22-1-325 through 22-1-329. Subsection (1) of the statute provides:

As used in 22-1-326 through 22-1-331, “public library” means a library created under Title 7 or under 22-1-301 through 22-1-317.

Thus, if the interlocal agreement between the City of Joliet and the local school district was still in effect, the State Library would be authorized to distribute state aid assistance to the Joliet Library. Libraries created pursuant to interlocal agreements (Montana Code Annotated §§ 7-11-101 through 7-11-108) are libraries created “under Title 7,” and are therefore eligible for the aid. Since your memo states that the interlocal agreement has been nullified, and the Joliet Library was not established as a “public library” under Montana Code Annotated § 22-1-301 through 22-1-317, the library is no longer eligible for state aid.

Your second question is whether the library board of trustees for the county library can distribute county library funds to the Joliet Library. Under the facts as you have described them, the answer is no. Library boards of trustees are required to prepare an annual budget indicating what support and maintenance of the public library will be required from public funds, and the budget request must be submitted to the local governing body. Montana Code Annotated § 22-1-309(6). The local governing body (in this case the county commissioners) has the power to levy taxes for the support of the library. The proceeds of the tax constitute a separate fund known as the public library fund, and money from that fund may not be used for any purpose other than those of the public library. Montana Code Annotated §§ 22-1-304(1) and (4). The library board of trustees has exclusive control of the expenditure of the public library fund. Montana Code Annotated § 22-1-309(1).

All of these statutes contemplate that the library board of trustees shall use the funds in the public library fund only for the provision of library services through *public libraries*. Since the Joliet Library is not a legally-established public library, it is not eligible for funding from the public library fund administered by the library board of trustees.

Montana Code Annotated § 22-1-309(3) authorizes the library board of trustees to enter into contracts with regions, counties, cities, school districts, etc., to give and receive library service and to pay out or receive funds for library services pursuant to those contracts. However, since no contract exists between the City of Joliet and the library board of trustees, this subsection of the statute does not apply. Under the existing circumstances, in my opinion the library board of trustees is not authorized to distribute county library funds to the Joliet Library. See Choteau Library Board of Trustees v. Teton County Board of Commissioners, 283 Mont. 87, 938 P.2d 1357 (1997).

Your memo also states that the City of Joliet is willing to establish a city public library pursuant to the provisions of Montana Code Annotated § 22-1-303, but the city does not want to levy taxes for library services. Your final question is whether Montana Code Annotated § 22-1-304(1) would authorize the city to decline to exercise its power to levy taxes for library services.

The answer to this question can be found by reviewing 41 Op. Att'y Gen. No. 91 (1986), where the Attorney General concluded that a local governing body does not have the authority to refuse to levy taxes to support library services (within statutory millage limits) if the library board of trustees submits a budget that requires a specific amount of monetary support for the library. Thus, if the City of Joliet chooses to establish a public library, it will also have to appoint a board of library trustees pursuant to Montana Code Annotated § 22-1-308. As you know, it is the library board of trustees, not the local governing body, that has the ultimate authority to determine what support and maintenance of the public library will be required from public funds. The Joliet city commission would not have the authority to refuse to levy taxes for support of the library if the library board submitted a budget request and the only way for the city to provide that funding was through a tax levy for library services. While the city could provide the funding to meet the budget request of the library board of trustees through its general fund (assuming the money is available in the general fund), it has to come up with the money (either through the general fund or through the tax levy). See 48 Op. Att'y Gen. No. 3 (1999).

jms