

Is a Library A Taxing Unit?

Initial questions - Is a public library a "taxing unit"? – See *December 9, 1994 memo from Jim Scheier to Richard Miller*. New question – is a public library district a "taxing unit"?

Response from Jim Scheier – August 5, 2011

In my December 9, 1994 memo to Richard Miller, I stated my opinion that a public library created under title 22, MCA is sufficiently similar to a rural fire district to be classified as a "taxing unit." I cited 42 Op. Att'y Gen. No. 80 (1988), where the Attorney General expressed his opinion that because a rural fire district prepares an annual budget and requests levies therefore (which is then collected by the county), it fits within the meaning of the term "taxing unit" in 15-1-101(2), MCA. My opinion was based on the fact that the statutory provisions for financial support of a public library are similar, and that in a past opinion (41 Op. Att'y Gen. No. 91) the Attorney General had stated that the county's only role in library budget matters is to assign a property tax levy amount sufficient to satisfy the budget needs of the library, indicating that the county's role was purely ministerial with respect to imposition of the levy.

Two years after I rendered my opinion to Richard Miller, the Attorney General issued another opinion that directly addressed the question whether a public library is a taxing unit. In 46 Op. Att'y Gen. No. 19 (June 25, 1996), the Attorney General expressed the following opinion:

Although public library boards of trustees do have certain powers that are granted by statute . . . they are not authorized by law to establish tax levies. Accordingly, I find that county library boards must be distinguished from rural fire districts, and that library boards are not "taxing units" under the reasoning of 42 Op. Att'y Gen. No. 80 (1988).

Thus, the most recent opinion of the Attorney General is that a public library is not a "taxing unit" based on the fact that the library does not really "establish" tax levies.

However, the same reasoning would not apply to library districts. Like public library boards of trustees, a library district board of trustees prepares an annual budget and presents it to the governing body of each county within the district territory. 22-1-708(1), MCA. However, unlike public library boards, the board of trustees of a library district does have the specific statutory authority to "establish a property tax mill levy for the operation of the district as provided in 22-1-708." 22-1-707(2)(e), MCA. Section 22-1-708(2), MCA then requires the county governing body to "fix and levy a tax on all taxable property within the public library district sufficient to raise the amount certified by the board of trustees . . ." So in the case of library districts, the district board actually establishes the levy and presents it to the county, which levies the tax.

So, to summarize:

Based on the Attorney General's opinion referenced above, that was issued after I rendered my opinion to Richard Miller, a public library is NOT a "taxing unit."

However, based on the analysis above, a library district IS a "taxing unit."