

From: [Cook, Tracy](#)
To: [Mitch Grady](#)
Cc: [Stapp, Jennie](#); [Reymer, Suzanne](#)
Subject: RE: Update on new AG Opinion regarding board authority
Date: Friday, October 19, 2018 3:52:00 PM
Attachments: [City-County Compact for Library as of 03132015.pdf](#)

Yes, that is relevant. I have to give you my standard warning that I'm not a lawyer, so this should not be construed as legal advice. It's always good to seek the advice of a lawyer in these situations. Having said that here is my non-lawyer interpretation of your situation.

I'm also adding Jennie and Suzanne on this, because it's a tough question. Both of them might have some words of wisdom for us. They are out of the office today, but might have time early next week to weigh in on the topic.

My first observation might seem irrelevant, but I think this agreement has expired. Do you have a new one yet? I say that, because on page 4 of the pdf it says the duration is 5 years, and that a chapter will not automatically renew unless such renewal is specifically set forth in the chapter. Under Chapter 4 – Library (page 9) it says the duration coincides with the terms of the compact. Since this agreement was signed in 2012, it appears to be expired.

The interlocal agreement clearly gives your board the authority that the Attorney General's opinion references. It can be found on page 9 under "Powers of the board of trustees" It refers to Title 22, Chapter 1, part 3 which is the very part the Attorney General referenced when he concluded that boards have the authority to remove members through their bylaws and rules.

Here's what makes this tricky. Your library was created under MCA 22-1-316. It says under that piece of code – "(1) A county and any city or cities within the county, by action of their respective governing bodies, may join in establishing and maintaining a joint city-county library under the terms of a contract agreed upon by all parties."

My interpretation of that is your library was created by this contract between the city and the county. In essence, your board and library didn't exist until the contract was created. The board technically couldn't have weighed in on the initial contract. I believe that the board can weigh in once the contract creates the library, because the interlocal agreement confers upon the board the powers and authority of MCA 22-1-309 which includes contract negotiation among other things. This is where it gets fuzzy. The interlocal agreement has given your board the powers that would allow them to remove a board member, BUT the interlocal agreement is how your library is legally established and it clearly gives that authority to the local governing bodies.

So when two laws or opinions conflict, which one takes precedence? I am uncertain in this case – given the fact that the most pertinent laws are in the exact same chapter, title, and part of the Montana Code Annotated. I suspect that MCA 22-1-316 would take precedence, because it is the piece of code that was used to create your library. In which case, I would say the removal of board members as spelled out by the interlocal agreement would prevail. If your board members are not concerned about that, they could choose to adopt bylaws and rules for the removal of board members that references the interlocal agreement thereby clarifying the connection between the

two guiding documents – the interlocal agreements and the board’s bylaws.

If they are bothered by it, they could choose to ask for the interlocal agreement to be rewritten. That piece could then be removed, and the board could handle removal of board members within its own bylaws. I’m not sure that I would advise that unless the board is extremely concerned. Practically speaking, I am aware that interlocal agreements can be tricky to negotiate. Sometimes we need to pick our battles wisely.

This is pretty complicated. If you have any questions, please let me know.

-Tracy

From: Mitch Grady <mgrady@mtlib.org>
Sent: Friday, October 19, 2018 3:07 PM
To: Cook, Tracy <TCook2@mt.gov>
Subject: Re: Update on new AG Opinion regarding board authority

It's probably relevant that, to my knowledge, this interlocal agreement was constructed entirely without library board input or approval.

mjg.
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On Fri, Oct 19, 2018 at 2:52 PM Cook, Tracy <TCook2@mt.gov> wrote:

So I almost added a sentence that said that might vary by library, BUT I didn’t because it applies to the majority of libraries. Let me study your interlocal agreement and look at how you were created. An interlocal agreement is a contract and is legal. Depending upon what part of the code was used to create your library, your board might need/want to change their bylaws to refer to the interlocal agreement for the removal of trustees.

Don’t hold me to that – just yet. I need to read your agreement and do some legal research.

From: Mitch Grady <mgrady@mtlib.org>
Sent: Friday, October 19, 2018 2:39 PM
To: Cook, Tracy <TCook2@mt.gov>
Subject: Re: Update on new AG Opinion regarding board authority

And by that I meant, what if an *existing* interlocal agreement states otherwise? I understand Twin Bridges was putting together an ILA when this came up. But I assume a library board can, with explicit language in an ILA or similar instrument, cede this authority to the city or county or both. Or not?

Mitch.
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[Redacted signature]

On Fri, Oct 19, 2018 at 12:17 PM Mitch Grady <mgrady@mtlib.org> wrote:

So, what if an interlocal agreement states otherwise? See the attached, page 14 (internal numbering; PDF pg 9), Board Membership->Vacancies and Salary of Board.

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[Redacted signature]

On Fri, Oct 19, 2018 at 12:05 PM Cook, Tracy <TCook2@mt.gov> wrote:

Hello,

The Attorney General's Office has recently released an opinion on the local governing body's ability to remove appointed trustees from the library board. The opinion holds that "the authority for removal of a trustee appointed to the board of a free public library is a matter to be adopted and implemented by the board of trustees under its statutory duty to adopt bylaws and rules for the transaction of business and governance of the library." The opinion goes on to explain that the Attorney General found nothing in statute that gives a local governing body the authority to remove an appointed trustee. The Montana Code Annotated gives them the authority to appoint trustees but not the authority to remove trustees. The Attorney General then goes on to explain how a review of Montana Code Annotated 22-1-309 gives the board the authority to "adopt bylaws for its own transaction of business..." From this the Attorney General has concluded that it is the board of trustees that has the authority to adopt bylaws and rules for the removal of a library board member.

The opinion has a lot of good information in it and can be found at <https://media.dojmt.gov/wp-content/uploads/57-003.pdf>. Please let us know if you have any questions.

-Take care,
Tracy

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