

**RE: [EXTERNAL] Conflict between MCA 22-1-1103 and MCA 40-6-701**

Stapp, Jennie &lt;JStapp2@mt.gov&gt;

Tue 3/12/2024 10:29 AM

To: Susie McIntyre &lt;smcintyre@greatfallslibrary.org&gt;; Cook, Tracy &lt;TCook2@mt.gov&gt;

Susie and Tracy,

My non-legal opinion on this matter is that the library is on stable legal footing when it comes to enforcing confidentiality laws for minors.

The Montana Constitution provides that, “[t]he rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this Article unless specifically precluded by laws which enhance the protection of such persons.” Mont. Const., Art. II § 15.

In accordance with the Constitution, the Government’s interest is to uphold the rights of minors under Article II. Case law has upheld this right. Statute does not trump the Constitution. Title 40 appears to be unconstitutional on its face but has not yet been challenged in the courts.

Specific for Montana libraries, because Montana law, including Title 40, does not explicitly restrict a minor’s use of a library, minors have the right to use a library just as an adult would, including the right of confidentiality.

It is possible that a library may be sued under Title 40 (or for not enforcing an adverse AG’s opinion should one be drafted) however it is likely that the library would prevail based on the Constitution and existing case law.

Does this information help?

Jennie

**Jennie Stapp, State Librarian**



[jstapp2@mt.gov](mailto:jstapp2@mt.gov)



406.444.3116



[msl.mt.gov](http://msl.mt.gov)



---

**From:** Susie McIntyre <smcintyre@greatfallslibrary.org>

**Sent:** Friday, March 8, 2024 4:47 PM

**To:** Cook, Tracy <TCook2@mt.gov>; Stapp, Jennie <JStapp2@mt.gov>

**Subject:** [EXTERNAL] Conflict between MCA 22-1-1103 and MCA 40-6-701

Tracy and Jennie--

I hope that you are well.

I've talked to Tracy a bit about our efforts to update our Library Board of Trustee Job Description.

I created an updated job description to present to the Board at their February meeting. One of the Board members made a motion to postpone because she objected to specific wording. She reached out to the City Attorney (without cc'ing or consulting me) about what she felt was problematic language. The City Attorney did not reply before the meeting.

The Board decided to create a subcommittee to work on the job description. The Board Member who had the objections (Noelle), Jessica (2nd Board member) and myself were on the committee.

The subcommittee met today at 11:30 am. Last night Noelle sent a message to all of the City Commissioners (without cc'ing or notifying the Board Chair or me) to complain about the job description and make them aware of what she sees as problems with the Library Board. I didn't see the complaint email until after the meeting so I was unable to talk to Noelle about her email.

I would like your assistance on a specific complaint.

She claims "Also, the Confidentiality of Patron Records is used to "block" parents at Great Falls Public Library from seeing the records of what their child has checked out. It seems that based on MCA 22-1-1103 and MCA 40-6-701 do allow a parent to see their child's records.."

I think that she is claiming that MCA 40-6-701 supersedes MCA 22-1-1103 and requires libraries to provide parents with information from their Library record.

MCA 40-6-701 "A government entity may not interfere with the fundamental right of parents to direct the upbringing, education, health care, and mental health of their children"

[https://leg.mt.gov/bills/mca/title\\_0400/chapter\\_0060/part\\_0070/section\\_0010/0400-0060-0070-0010.html](https://leg.mt.gov/bills/mca/title_0400/chapter_0060/part_0070/section_0010/0400-0060-0070-0010.html)

Have you heard that argument? Are you aware of any rulings to support or refute that position?

I'm grateful that the Montana State Library helps me (and all public libraries) in dealing with controversies like this.

Yours,  
Susie

--

*"There are still stories to tell." Hoid*

Susie McIntyre, Director (she/her)  
Great Falls Public Library  
301 2nd Avenue North  
Great Falls, MT 59401  
PHONE: 406-453-0349  
FAX: 406-453-0181  
[smcintyre@greatfallslibrary.org](mailto:smcintyre@greatfallslibrary.org)