

46 Op. Att'y Gen. No. 19

CITIES AND TOWNS - Authority of county that has established free public library to contract with city library board of trustees to assume all county library functions;
COUNTIES - Authority of county that has established free public library to contract with city library board of trustees to assume all county library functions;
COUNTIES - Creation by county that offered library services prior to 1986 of new taxing unit to provide library services and avoid statutory tax limitations;
INTERGOVERNMENTAL COOPERATION - Authority of county that has established free public library to contract with city library board of trustees to assume all county library functions;
LIBRARIES - Authority of county that has established free public library to contract with city library board of trustees to assume all county library functions;
LIBRARIES - Creation by county that offered library services prior to 1986 of new taxing unit to provide library services and avoid statutory tax limitations;
LOCAL GOVERNMENT - Authority of county that has established free public library to contract with city library board of trustees to assume all county library functions;
LOCAL GOVERNMENT - Creation by county that offered library services prior to 1986 of new taxing unit to provide library services and avoid statutory tax limitations;
TAXATION AND REVENUE - Creation by county that offered library services prior to 1986 of new taxing unit to provide library services and avoid statutory tax limitations;
MONTANA CODE ANNOTATED - Sections 7-11-1101 to -1112, 7-33-2105(3), -2109(2), 15-1-101, 15-10-401 to -412, 22-1-301, -303, -304, -309, -312, -315, -316, -401 to -413, 22-15-316;
OPINIONS OF THE ATTORNEY GENERAL - 43 Op. Att'y Gen. No. 74 (1990), 42 Op. Att'y Gen. No. 113 (1988), 42 Op. Att'y Gen. No. 98 (1988), 42 Op. Att'y Gen. No. 80 (1988), 41 Op. Att'y Gen. No. 91 (1986).

HELD:

1. A county in Montana that offered library services prior to 1986 cannot form a new taxing unit and avoid the tax limitations of I-105 by establishing a public library pursuant to Mont. Code Ann. § 22-1-303, or by forming a multijurisdictional service district to provide library services pursuant to Mont. Code Ann. § 7-11-1105.
2. A county that has established a county free library pursuant to Mont. Code Ann. § 22-1-303 is authorized to contract directly with the board of trustees of the free public library of any incorporated city to assume all county library functions and to pay the sum agreed upon out of the county free library fund.

June 25, 1996

Mr. Russell R. Andrews
Teton County Attorney
P.O. Box 899
Choteau, MT 59422

Dear Mr. Andrews:

You have requested my opinion on several questions which I have phrased as follows:

1. Do county public library services that have evolved over time (as opposed to being established pursuant to Mont. Code Ann. § 22-1-303), have the taxing powers enumerated in Mont. Code Ann. § 22-1-304, and are they subject to the tax limitations of Mont. Code Ann. §§ 15-10-401 to -412?
2. For the future, may a county that has offered library services prior to 1986, establish library services pursuant to statute so as to avoid the tax limitations of Mont. Code Ann. §§ 15-10-401 to -412?

3. May a county establish a county public library pursuant to Mont. Code Ann. § 22-1-303, then contract with city public libraries to provide all governance and services, and fund the contract with the public library fund authorized by Mont. Code Ann. § 22-1-304?

You state that Teton County has recently discovered that it did not follow statutory procedures for the creation of a free county library, even though it has levied taxes and contracted for library services for county residents with the libraries in Great Falls, Choteau, Fairfield, and Dutton. Your first question seeks a ruling as to the legal status of the entity providing the library services.

A city or county "public library," as that term is defined in Mont. Code Ann. § 22-1-301, is a species of public corporation whose authority and relationships to general city or county governments are defined by state law. See Kerr v. Enoch Pratt Free Library, 149 F.2d 212 (4th Cir. 1945); Local 2390 v. City of Billings, 171 Mont. 20, 555 P.2d 507 (1976); 42 Op. Att'y Gen. No. 98 (1988); 41 Op. Att'y Gen. No. 91 (1986); McQuillin Municipal Corporations § 2.03a (3d ed. 1990).

The case of Henderson v. School District No. 44, 75 Mont. 154, 160-62, 242 P. 979, 980 (1926), made several important distinctions regarding the organization of public corporations, and the case is still recognized as good law. Mancoronal v. Northern Mont. Jt. Refuse Disposal Dist., No. 95-DV-001 (Mont. 9th Jud. Dist. Ct. Feb. 9, 1996) (order granting defendant's motion for summary judgment). Henderson held that public corporations are either de jure (organized in compliance with existing law), de facto (organized in certain unsuccessful attempts to comply with existing law), or void (organized without attempting to comply with an existing law). The legality of the organization of a de jure corporation "is impregnable to assault in the courts from any source." The legality of the organization of a de facto corporation "can be questioned only by the state in a direct proceeding." See Mont. Code Ann. § 27-28-101(3). In the case of a void corporation, "the attempted exercise of corporate powers may be attacked, by a private individual who will be affected thereby, in an appropriate proceeding." Henderson, 75 Mont. at 161-62; see also McQuillin Municipal Corporations §§ 12.102 to .107 (3d ed. 1990).

It appears that Teton County public library services are either a de facto corporation or a void corporation, since the county, according to the facts as you state them, failed to comply with the procedural steps required to create the corporate entity. The legal consequences of a determination that an entity is one or the other are significant and far-ranging. I am unable to answer your first question without a factual determination that past public library services in Teton County amount to either a de facto corporation or a void corporation. It is not within the legitimate scope of an Attorney General's Opinion to determine a factual question, so I cannot answer your questions about the past actions of the county regarding library services, nor can I give my opinion whether the city libraries of Choteau, Dutton, and Fairfield were lawfully established.

Regarding the options open to Teton County for providing library services in the future, there are several ways in which the county can proceed. The county may establish a public library pursuant to Mont. Code Ann. § 22-1-303; then, pursuant to Mont. Code Ann. § 22-1-312, -315, or -316, the county library may merge or combine with another library. Also, the county may join a library federation under Mont. Code Ann. §§ 22-1-401 to -413. Finally, the county may enter into interlocal agreements with one or more municipalities to form a multijurisdictional library service district under Mont. Code Ann. §§ 7-11-1101 to -1112. The Teton County Commissioners would prefer to establish either a free county library or a multijurisdictional service district.

A primary focus of your second question regarding the county's provision of library services in the future is the selection of a method of providing those services that avoids the tax limitations of Mont. Code Ann. §§ 15-10-401 to -412 (popularly known as I-105). In understanding these tax limitations, we must start with the operative words of the statute: "[T]he actual tax liability for an individual property is capped at the dollar amount due in each taxing unit for the 1986 tax year." Mont. Code Ann. § 15-10-412(2). As you can see, to answer your question I must determine what is the "taxing unit" with regard to the county's provision of library services. The term is described precisely in statute:

The phrase . . . "taxing unit" includes a county, city, incorporated town, township, school district, irrigation district, or drainage district or a person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

Mont. Code Ann. § 15-1-101(2). Teton County is clearly a "taxing unit." 43 Op. Att'y Gen. No. 74, at 286-87 (1990); 42 Op. Att'y Gen. No. 80 at 314-15 (1988). To answer your question, I must also determine if a smaller governmental unit, the public corporation that directly offers the library services, is a taxing unit.

The respective budgetary powers of public library boards of trustees and local government governing bodies are set forth in statute:

The governing body of any city or county which has established a public library may levy in the same manner and at the same time as other taxes are levied a special tax in the amount necessary to maintain adequate public library service

Mont. Code Ann. § 22-1-304.

The library board of trustees shall have exclusive control of the expenditure of the public library fund, of construction or lease of library buildings, and of the operation and care of the library. The library board of trustees of every public library shall:

. . . .

(6) prepare an annual budget, indicating what support and maintenance of the public library will be required from public funds, for submission to the appropriate agency of the governing body.

Mont. Code Ann. § 22-1-309.

A comparison with rural fire districts, discussed as taxing units in 42 Op. Att'y Gen. No. 80 (1988), is instructive. That opinion concluded that

a fire district operated by the county and not by a board of trustees is not a "taxing unit." A rural fire district operated by a board of trustees, however, is a "taxing unit" within the meaning of section 15-10-412, MCA.

42 Op. Att'y Gen. No. 80 at 315 (1988). Attorney General Greely determined the difference to be that when the board of county commissioners operated the district, the commissioners established the tax levy. When the commissioners appointed a board of trustees to operate the fire district, the statutes gave the trustees the authority to establish tax levies. Mont. Code Ann. §§ 7-33-2105(3) and -2109(2).

Although public library boards of trustees do have certain powers that are granted by statute, 42 Op. Att'y Gen. No. 98 (1988), 41 Op. Att'y Gen. No. 91 (1986), 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).

It has been argued that the holding in a previous Attorney General's Opinion implies the contrary position. The previous opinion held as follows:

A board of county commissioners does not have the authority to refuse, within statutory millage limits, to levy some or all of the property taxes necessary to satisfy an annual budget adopted by county library trustees.

41 Op. Att'y Gen. No. 91 at 396 (1986). In the situation you present, it might be argued that this holding authorizes library trustees in Teton County in effect to set the mill levy within the statutory millage limits. For several reasons, I do not believe that the holding in 41 Op. Att'y Gen. No. 91 currently has that effect.

Initially, a distinction must be made between a board of county commissioners' authority relative to a board of county library trustees and its authority relative to a board of city library trustees. It should be noted that the holding in 41 Op. Att'y Gen. No. 91 dealt with two county-level entities. A county library

board of trustees is formed pursuant to Mont. Code Ann. § 22-1-308, and has the powers and duties enumerated in Mont. Code Ann. § 22-1-309. A city library board of trustees may be formed and operate pursuant to these same statutes; in addition, a city library board may assume the functions of a county library pursuant to Mont. Code Ann. § 22-1-315, and the trustees may contract directly with the board of county commissioners. If the city library trustees do so contract, the county is obligated to pay only "such sum as may be agreed upon," Mont. Code Ann. § 22-1-315(2), and thus the city library board would be further constrained in their adoption of a budget. In sum, the holding in 41 Op. Att'y Gen. No. 91 does not apply directly to all library funding situations.

In any event, it should be remembered also that 41 Op. Att'y Gen. No. 91 discussed the relative authority of county library trustees and county commissioners under the legal regime that existed prior to the passage of I-105. We now must harmonize Mont. Code Ann. §§ 22-1-304, 22-1-309 **and** 15-10-412. Schuman v. Bestrom, 214 Mont. 410, 415, 693 P.2d 536, 538 (1985). A key phrase in the holding in 41 Op. Att'y Gen. No. 91 was "within statutory millage limits." Thus, the opinion recognizes that whatever power exists in the library board of trustees relative to taxation, that power is subject to statutory limits on the power of the county to tax. The I-105 limits were not in existence when the prior opinion was written, but it is clear that the reference to "statutory millage limits" in the prior opinion expresses a concept broad enough to encompass the I-105 limits.

Thus, it is my conclusion that the holding in 41 Op. Att'y Gen. No. 91 does not support the proposition that library trustees in Teton County could in effect set mill levies at will as long as the levies were within the millage limits established in Mont. Code Ann. § 22-1-304.

I also conclude that multijurisdictional service districts for libraries are not taxing units under I-105. Multijurisdictional service districts are established by interlocal agreement between municipalities and/or counties. Mont. Code Ann. §§ 7-11-1101 and -1105. They have no independent governing body or any budgetary powers independent of the governing bodies of the local governments organizing the districts. Mont. Code Ann. § 7-11-1112. See also Mont. Code Ann. § 7-11-1111(4). Multijurisdictional service districts do not fit the statutory definition of taxing units.

In answer to your second question, then, I conclude that Teton County cannot form a new taxing unit and avoid the tax limitations of I-105 by establishing a public library pursuant to Mont. Code Ann. § 22-1-303, or by forming a multijurisdictional service district to provide library services pursuant to Mont. Code Ann. § 7-11-1105.

Your final question has to do with the power of the county to contract with municipal libraries in order to discharge the duty which the county has assumed to provide library services to county residents. Specifically, you ask whether the board of county commissioners may contract directly with the boards of trustees of the municipal libraries of the county, whether the municipal libraries may assume all county library functions, and whether the funds for these contracts may come directly from the county library fund. The operative statute states:

(1) Instead of establishing a separate county free library, the board of county commissioners may enter into a contract with the board of library trustees or other authority in charge of the free public library of any incorporated city, and the board of library trustees or other authority in charge of such free public library is hereby authorized to make such a contract.

(2) Such contract may provide that the free public library of such incorporated city shall assume the functions of a county free library within the county with which such contract is made, and the board of county commissioners may agree to pay out of the county free library fund into the library fund of such incorporated city such sum as may be agreed upon.

(3) Either party to such contract may terminate the same by giving 6 months' notice of intention to do so.

Mont. Code Ann. § 22-1-315.

The plain words of Mont. Code Ann. § 22-1-315(1) answer your first query in the affirmative. When that is the case, we should go no farther in construing a statute. Gulbrandson v. Carey, 272 Mont. 494, 500, 901 P.2d 573, 577 (1995). In answering your second query, we must examine the phrase "the free public library of such incorporated city shall assume the functions of a county free library." Mont. Code Ann. § 22-1-315(2). Does this mean "all functions" or merely "some functions"? The phrase should be construed in the context of the rest of the act, City of Billings v. Smith, 158 Mont. 197, 212, 490 P.2d 221, 230 (1971). I believe that a reasonable construction of this phrase would authorize the city library to assume "all functions" of the county library, because the board of county commissioners may contract directly with the board of trustees of a city library, thus leaving no county board of library trustees to administer any remaining functions of the county library. Mont. Code Ann. § 22-1-315(1). Your third query is also answered in the affirmative by the plain words of Mont. Code Ann. § 22-1-315(2), which authorizes payment for services "out of the county free library fund."

THEREFORE, IT IS MY OPINION:

1. A county in Montana that offered library services prior to 1986 cannot form a new taxing unit and avoid the tax limitations of I-105 by establishing a public library pursuant to Mont. Code Ann. § 22-1-303, or by forming a multijurisdictional service district to provide library services pursuant to Mont. Code Ann. § 7-11-1105.
2. A county that has established a county free library pursuant to Mont. Code Ann. § 22-1-303 is authorized to contract directly with the board of trustees of the free public library of any incorporated city to assume all county library functions and to pay the sum agreed upon out of the county free library fund.

Sincerely,

JOSEPH P. MAZUREK
Attorney General

jpm/rfs/bjh