

46 Op. Att'y Gen. No. 23

CITIES AND TOWNS - Authority of cities and counties to form multijurisdictional service districts for library services and lawful purposes of such districts;

COUNTIES - Authority of cities and counties to form multijurisdictional service districts for library services and lawful purposes of such districts;

INTERGOVERNMENTAL COOPERATION - Authority of cities and counties to form multijurisdictional service districts for library services and lawful purposes of such districts;

LIBRARIES - Authority of cities and counties to form multijurisdictional service districts for library services and lawful purposes of such districts;

LOCAL GOVERNMENT - Authority of cities and counties to form multijurisdictional service districts for library services and lawful purposes of such districts;

MONTANA CODE ANNOTATED - Sections 7-11-1101 to -1112, 15-10-401 to -412, 22-1-304 to -317;

OPINIONS OF THE ATTORNEY GENERAL - 46 Op. Att'y Gen. No. 19 (1996), 46 Op. Att'y Gen. No. 17 (1996), 44 Op. Att'y Gen. No. 11 (1991).

HELD:

1. A city and a county may form a multijurisdictional library service district if they meet all statutory requirements, including that: (1) any existing contract for library services involving residents of one or more of the participating jurisdictions has lawfully expired; (2) any and all requirements of Mont. Code Ann. §§ 7-11-1101 to -1112 are met; and (3) any applicable requirements of Mont. Code Ann. §§ 15-10-401 to -412 are met.
2. A multijurisdictional service district may not be formed for the sole purpose of equalizing the tax burden among those currently using the service, but as long as the district provides services in the manner required by Mont. Code Ann. § 7-11-1101, it may also use a multijurisdictional service district to equalize the tax burden among those who use the service.

August 16, 1996

Mr. Paul Luwe
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Dear Mr. Luwe:

You have requested my opinion on the following question:

May a city and a county establish a multijurisdictional library service district upon the expiration of their interlocal agreement concerning library services, in order to equalize the tax burden among those who are currently using the library?

Your letter of inquiry indicates that currently Gallatin County has an annual contract with the Bozeman City Library (as well as contracts with four other city libraries within the county) which provides that the city library will furnish library services to rural residents of the county. Recently, the trustees of the Bozeman City Library have noted what they consider a severe funding inequity between the taxpayers of the City of Bozeman and the taxpayers of Gallatin County with respect to the library. You also cite statistics showing that use of the library by county residents has recently increased relative to that of city residents. This situation is of great concern to the board of trustees of the Bozeman City Library. One suggested solution is the establishment of a multijurisdictional district for library services. I am also informed that the voters of Gallatin County have passed a ballot issue authorizing the county commissioners to increase the library levy from 1.5 to 5 mills, so this may ameliorate the situation.

In light of these circumstances, your question raises two primary concerns: (1) the mechanics of a possible transition from the current situation where the city library has assumed county library functions

(Mont. Code Ann. § 22-1-315), to a multijurisdictional library service district ("MLSD") (Mont. Code Ann. §§ 7-11-1101 to -1112); and (2) the means available under law, if any, for "equalizing the tax burden among those who will be using the service."

As you know, my predecessor addressed a somewhat similar situation in Lake County in 44 Op. Att'y Gen. No. 11 (1991). Several significant differences exist between the situation you present and the situation discussed in that opinion. For reasons I discuss below, those differences limit the applicability of the previous opinion to the situation you present.

Municipalities and counties may form multijurisdictional service districts to provide either "(1) a higher level of service than is available through the local governments forming such a district, or (2) services that are not available through the governments forming such a district." Mont. Code Ann. § 7-11-1101. Library services are specifically listed as services that such districts may provide. Mont. Code Ann. § 7-11-1102(2)(c).

There are several statutory restrictions on multijurisdictional library service districts: (1) the establishment of an MLSD may not supersede or void an existing agreement for the same service in the area (Mont. Code Ann. § 7-11-1111(3)); (2) the administration of an MLSD must be conducted pursuant to Mont. Code Ann. §§ 22-1-305 to -317 (Mont. Code Ann. § 7-11-1111(4)); (3) property taxes levied for an MLSD must be added to the taxes levied under Mont. Code Ann. § 22-1-304 (Mont. Code Ann. § 7-11-1112(1)); (4) property taxes levied to support an MLSD are subject to the tax limitations of I-105 (Mont. Code Ann. §§ 15-10-401 to -412). 46 Op. Att'y Gen. No. 19 (1996). In addition, the current arrangement whereby the Bozeman City Library has assumed the functions of the Gallatin County Library may not be terminated without six months' notice by either party. Mont. Code Ann. § 22-1-315(3).

As you can see, several budgetary and library-related statutes affect the formation of an MLSD, and all must be harmonized if possible. Mercury Marine v. Monty's Enters., 270 Mont. 413, 417, 892 P.2d 568, 571 (1995). I see no inherent conflict in any of these statutes, but care must be taken to ensure that they are all observed. It is clear that a city and a county may form a multijurisdictional library service district if they meet all statutory requirements, including that: (1) any existing contract for library services involving residents of one or more of the participating jurisdictions is lawfully terminated, (2) any and all applicable requirements of the multijurisdictional service district law (Mont. Code Ann. §§ 7-11-1101 to -1112) are met, and (3) any and all applicable requirements of I-105 (Mont. Code Ann. §§ 15-10-401 to -412) are met.

The second issue concerns formation of an MLSD with the purpose of equalizing the tax burden among those who will be using the service. You argue at length in your letter that equalizing the tax burden among those currently using the service constitutes a "higher level of service," in the words of Mont. Code Ann. § 7-11-1101. However, my reading of the statute suggests that equalizing the tax burden, standing alone, does not satisfy this criterion. The statute states:

Municipalities and counties may form multijurisdictional service districts to provide:

(1) a higher level of service than is available through the local governments forming such a district; or

(2) services that are not available through the governments forming such a district.

Mont. Code Ann. § 7-11-1101. I agree with you that the legislature clearly contemplated tax equity as one important reason for the passage of this law, but the plain words of the statute control prior to any invocation of legislative intent. Gulbrandson v. Carey, 272 Mont. 494, 500, 901 P.2d 573, 577 (1995); 46 Op. Att'y Gen. No. 17 at 3-4 (1996).

The statute speaks plainly of forming a multijurisdictional service district to provide either a higher level of services or services that are not available. "Services," when used in the context of governmental functions, connotes meeting some perceived need of the community--such as a need for library services, park or recreational services, road maintenance services, or other services listed in Mont. Code Ann. § 7-11-1102. Equalizing the tax burden necessary to support a service is more in the nature of carrying out a

policy than it is of providing a service. But, these two actions are not mutually exclusive. The statute does not require that providing increased services be the **only** function of a service district, only that providing increased services must be **at least one** function of a proper multijurisdictional service district. State v. Berger, 259 Mont. 364, 367, 856 P.2d 552, 554 (1992) (statutory interpretation must give effect to all words used).

In sum, the legislature directed that a multijurisdictional service district must provide services in one of the two manners specified in Mont. Code Ann. § 7-11-1101. If the district also provided for an equalized tax burden among those currently using a service, that would surely be in keeping with the legislature's intent in passing the law and would be lawful. Since your question is premised on the assumption that the current contract for library services will expire, at that point it could certainly be argued that a newly-formed MLSD would meet the increased service criteria of Mont. Code Ann. § 7-11-1101, since following the expiration of the contract county library services would not be provided at all.

Under the circumstances you present 44 Op. Att'y Gen. No. 11 (1991) is not controlling. The holding of that opinion was premised on two assumptions important here: (1) that the new multijurisdictional service district would be formed within an existing service district, resulting in an increased mill levy for providing the same service; and (2) that the (apparently sole) purpose of establishing the new service district would be to raise the mill levy. The situation that gives rise to your question is quite different. You assume: (1) that the city-county library contract will have expired, so there will not be two districts providing the service, and (2) that the new MLSD will make available to out-of-city residents of the Bozeman area services that will not be available when the contract expires. Thus, the holding in 44 Op. Att'y Gen. No. 11 does not apply to the situation you describe.

THEREFORE, IT IS MY OPINION:

1. A city and a county may form a multijurisdictional library service district if they meet all statutory requirements, including that: (1) any existing contract for library services involving residents of one or more of the participating jurisdictions has lawfully expired; (2) any and all requirements of Mont. Code Ann. §§ 7-11-1101 to -1112 are met; and (3) any applicable requirements of Mont. Code Ann. §§ 15-10-401 to -412 are met.
2. A multijurisdictional service district may not be formed for the sole purpose of equalizing the tax burden among those currently using the service, but as long as the district provides services in the manner required by Mont. Code Ann. § 7-11-1101, it may also use a multijurisdictional service district to equalize the tax burden among those who use the service.

Sincerely,

JOSEPH P. MAZUREK
Attorney General

jpm/rfs/lrb