

48 Op. Att'y Gen. No. 3

COUNTIES - Authority of board of library trustees to adopt county library budget and determine library staff compensation;

COUNTY COMMISSIONERS - Authority of county commissioners to modify library budget and determine library staff compensation;

LIBRARIES - Authority of board of library trustees;

TAXATION AND REVENUE - Obligation of county commissioners to fund county library;

MONTANA CODE ANNOTATED - Title 22, chapter 1, part 3; sections 7-6-2348(1), -2501, 22-1-304(1), (2), -308 to -310;

OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 98 (1988), 41 Op. Att'y Gen. No. 91 (1986).

HELD:

1. A board of county commissioners does not have the authority to modify the annual library budget submitted by the library trustees even if the library is funded by a general fund levy, except that the board of county commissioners may limit the amount of general fund tax revenue requested in the budget by the library trustees to that amount generated by a tax levy of five mills.

2. A board of county commissioners does not have the authority to modify the library trustees' decisions regarding library staff compensation even if the library is funded by a general fund levy.

May 4, 1999

Ms. Christine A. Cooke
Big Horn County Attorney
P.O. Box 908
Hardin, MT 59034-0908

Dear Ms. Cooke:

You have requested my opinion concerning the following questions:

Where a county library is funded by a general fund levy under Mont. Code Ann. § 7-6-2501 and not under Mont. Code Ann. § 22-1-304(1), does the board of county commissioners have the authority to:

1. modify the annual budget submitted by the county library trustees?
2. modify the determination by the library trustees as to the amount of pay increases to library personnel?

Resolution of these issues requires a review of the statutes creating the Big Horn County Library (library) and the extent of statutory authority given to the board of library trustees in its governing of the library.

The library is a free public library established under Mont. Code Ann. title 22, chapter 1, part 3. As such, it is governed by a board of five appointed trustees. Mont. Code Ann. § 22-1-308; 41 Op. Att'y Gen. No. 91 (1986). The library trustees have a broad range of powers and duties. Mont. Code Ann. §§ 22-1-309, -310; 41 Op. Att'y Gen. No. 91 (1986); see also Municipal Employees Local 2390 v. City of Billings, 171 Mont. 20, 24, 555 P.2d 507, 509 (1976). The trustees are given exclusive control of the expenditures of the public library fund, the construction or lease of library buildings, and the operation and care of the library. Mont. Code Ann. § 22-1-309. The trustees also have the duty to appoint and set the compensation for the chief librarian and, with the recommendation of the chief librarian, "shall employ and discharge such other persons as may be necessary in the administration of the affairs of the library, fix and pay their salaries and compensation, and prescribe their duties." Mont. Code Ann. § 22-1-310. Furthermore, § 22-1-309(9) provides that the library trustees shall "exercise such other powers, not inconsistent with law, necessary for the effective use and management of the library."

In addition, library trustees have exclusive control of a library's budget. 41 Op. Att'y Gen. No. 91 at 394-95; see also Mont. Code Ann. § 7-6-2348(1) (the proposed budget and the number of mills to be assessed by any appointed board, commission, or other government entity are subject to approval by the local governing body, except a board of trustees of a public library and an airport authority). Specifically, Mont. Code Ann. § 22-1-309(6) mandates that library trustees "prepare an annual budget, indicating what support and maintenance of the public library will be required from public funds." The trustees must submit the budget to the county commissioners, § 22-1-309(6), and the county commissioners "may impose a property tax levy not to exceed five mills for the purpose of raising the funds required to maintain the library." 41 Op. Att'y Gen. No. 91 at 394, citing Mont. Code Ann. § 22-1-304(1). If the library is funded through the statutory special tax levy under § 22-1-304, the maximum five-mill levy amount may be exceeded only upon a majority vote of the qualified electors at the general election. See Mont. Code Ann. § 22-1-304(2)(a)-(d). When a county chooses to fund its library through the general fund levy a public vote is not necessary for the county to provide the library with funding in excess of five mills.

Previous Attorney General's Opinions have acknowledged the broad statutory powers and duties vested in a board of library trustees and the autonomy given to the trustees in governing the library. 42 Op. Att'y Gen. No. 98 (1988); 41 Op. Att'y Gen. No. 91(1986). In 41 Op. Att'y Gen. No. 91, Attorney General Greely considered whether a board of county commissioners could: (1) override a decision by library trustees to grant pay increases to library personnel; (2) modify the annual budget submitted by the library trustees even though it did not exceed the five-mill limit; and (3) refuse to levy any millage for the funding of the library. Attorney General Greely rejected the proposition that a board of county commissioners could override the decision of library trustees regarding pay increases. Relying on the broad statutory powers and duties given library trustees under § 22-1-310, Attorney General Greely concluded that the trustees' express authority to fix compensation for library employees prohibits a board of county commissioners from establishing a different wage level. 41 Op. Att'y Gen. No. 91 at 395.

Attorney General Greely also concluded that a board of county commissioners has no authority to modify the budget submitted by library trustees, explaining:

The trustees' power under section 22-1-309(6), MCA, to adopt an annual budget forecloses the board of county commissioners from effecting changes in such budget. The obvious purpose of the trustees' authority in library budget matters is to allow application of their informed judgment to fiscal issues. Such authority is, moreover, an integral aspect of the trustees' independence without which many of their other express powers would be rendered meaningless. The board of county commissioners' only role in library budget matters is to assign a property tax levy amount, which presently cannot exceed five mills, sufficient to satisfy the budgetary needs. The commissioners' function is thus purely ministerial with respect to the imposition of the levy.

Id. Finally, Attorney General Greely concluded that a board of county commissioners did not have the authority within the statutory five-mill limit to refuse to levy some or all of the property taxes necessary to satisfy the library budget prepared by the trustees. Id. at 395-96.

The broad powers and duties of library trustees were also discussed in 42 Op. Att'y Gen. No. 98 (1988), which held that a city commission did not have authority to overrule a decision by city library trustees not to sell or lease a parking lot held in the name of the city and purchased to serve the library's parking needs. Relying on 41 Op. Att'y Gen. No. 91, Attorney General Greely stated, "Insofar as the library trustees have been given explicit authority under the Library Systems Act, their determinations may not be subjected to plenary review and possible modification by the city commission." 42 Op. Att'y Gen. No. 98 at 381.

You have stated that the library is not financed through the five-mill levy under § 22-1-304(1), but rather through the county general fund which is funded by the mill levy under Mont. Code Ann. § 7-6-2501. Last year, the county commissioners provided the library with approximately nine mills for its budget. You believe that because the library is funded through the general fund rather than § 22-1-304, the final authority to decide the library's budget and possible pay increases for library staff no longer rests with the library trustees but with the county commissioners. I conclude otherwise.

Big Horn County's funding of the library through the general fund does not allow county commissioners to usurp the library trustees' statutory authority in setting the library's budget and compensation for the library staff. In enacting the statutes regarding free public libraries, the legislature clearly intended that library trustees be given independent power to manage and operate libraries without the threat of being censored by a city or county government. See Mont. Code Ann. §§ 22-1-309, -310; 41 Op. Atty Gen. No. 91 at 394-95. To hold that a board of county commissioners could usurp the library trustees' express statutory authority by simply funding the library's budget through the general fund would defeat the very purpose of free public libraries and render meaningless §§ 22-1-301 to -317. Accordingly, if the county commissioners fund the library's budget through the general fund, the power to decide the budget and library staff compensation still rests with the library trustees as set forth in Mont. Code Ann. §§ 22-1-309 and -310.

Although the county commissioners cannot modify specific parts of the budget adopted by library trustees if the library's budget is funded through the general fund, the commissioners may limit the overall funding of the budget to five mills as if it were being funded pursuant to tax levy under Mont. Code Ann. § 22-1-304. To find otherwise would allow library trustees to adopt a budget that could assume the entire general fund levy. Moreover, in enacting § 22-1-304, the legislature only intended, absent a vote pursuant to § 22-1-304(2), that a county governing body be responsible for funding a library at a five-mill levy amount. To disregard that five-mill limit simply because the library is funded through the general fund would ignore the clear intent of the legislature. Many counties, such as Big Horn County, currently fund their libraries at an amount greater than five mills, and this opinion should in no way be construed to prohibit or discourage that worthy practice.

THEREFORE, IT IS MY OPINION:

1. A board of county commissioners does not have the authority to modify the annual library budget submitted by the library trustees even if the library is funded by a general fund levy, except that the board of county commissioners may limit the amount of general fund tax revenue requested in the budget by the library trustees to that amount generated by a tax levy of five mills.
2. A board of county commissioners does not have the authority to modify the library trustees' decisions regarding library staff compensation even if the library is funded by a general fund levy.

Sincerely,

JOSEPH P. MAZUREK
Attorney General

jpm/msw/mlr