

**CITIES AND TOWNS** - A city may create a “tax-supported public library” after the creation of a county free library and then invoke the provisions of Mont. Code Ann. § 22-1-313 to exempt property within the city limits from the county library tax levy;

**COUNTIES** - A city may create a “tax-supported public library” after the creation of a county free library and then invoke the provisions of Mont. Code Ann. § 22-1-313 to exempt property within the city limits from the county library tax levy;

**LIBRARIES** - A city may create a “tax-supported public library” after the creation of a county free library and then invoke the provisions of Mont. Code Ann. § 22-1-313 to exempt property within the city limits from the county library tax levy;

**LOCAL GOVERNMENT** - The powers of local governments are to be liberally construed;

**STATUTORY CONSTRUCTION** - In interpreting a statute, I look first to its plain language. Language that is clear and unambiguous requires no further interpretation;

**TAXATION AND REVENUE** - A city may create a “tax-supported public library” after the creation of a county free library and then invoke the provisions of Mont. Code Ann. § 22-1-313 to exempt property within the city limits from the county library tax levy;

**MONTANA CODE ANNOTATED** - Sections 22-1-303, -313, 33-1-301(3);

**MONTANA CONSTITUTION OF 1972** - Article XI, sections 4(2), 6;

**OPINIONS OF THE ATTORNEY GENERAL** - 47 Op. Att’y Gen. No. 6 (1997).

- HELD:**
1. Taxable property within an incorporated city may become exempt from a county library levy under Mont. Code Ann. § 22-1-313 only when (1) the city has “an existing tax-supported public library,” as the term “public library” is defined in Mont. Code Ann. § 33-1-301(3), actually in existence and (2) the city governing body notifies the county of its desire not to be part of the county library system.
  2. Where the city and county have entered an interlocal agreement in which the city provides a building and other services for a branch of the county library but has not created an independent city library, withdrawal from the interlocal agreement, by itself, does not allow the city to act under Mont. Code Ann. § 22-1-313 to exempt city property from the county library tax levy.

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3. A city may create a “tax-supported public library” after the creation of a county free library and then invoke the provisions of Mont. Code Ann. § 22-1-313 to exempt property within the city limits from the county library tax levy.

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Ms. Mary VanBuskirk  
Whitefish City Attorney  
P.O. Box 158  
Whitefish, MT 59937-0158

Dear Ms. VanBuskirk:

**[P1]** Your predecessor requested my opinion as to the following rephrased questions:

1. If the City of Whitefish withdraws from the Interlocal Agreement with the Flathead County Library, and thereby takes back the library building located in Whitefish, will real property within the City be exempt from the County’s mill levy for library services pursuant to Mont. Code Ann. § 22-1-313?
2. May the City of Whitefish create “an existing tax-supported public library” after withdrawing from the Interlocal Agreement, and thereby satisfy the requirements of Mont. Code Ann. § 22-1-313?

**[P2]** There is currently a branch of the Flathead County Library (“County Library”) in the City of Whitefish (“Whitefish”). The property owners of Whitefish, like all property owners within the county, are assessed property taxes via a county mill levy for support of the library system. The Whitefish branch is housed in a building that is owned by Whitefish, and Whitefish allows the County Library to use the building as a branch of the county library system pursuant to an Interlocal Agreement (“Agreement”). Whitefish is now considering a request from the community seeking to end the Agreement and run Whitefish’s own independent city library. As part of the proposal, Whitefish would seek to exempt the property in the city from the County’s library mill levy pursuant to Mont. Code Ann. § 22-1-313, which provides:

After the establishment of a county free library as provided in this part, the governing body of any city which has an existing tax-supported public

library may notify the board of county commissioners that such city does not desire to be a part of the county library system. Such notification shall exempt the property in such city from liability for taxes for county library purposes.

[P3] In interpreting a statute, I look first to its plain language. Language that is clear and unambiguous requires no further interpretation. Gannett Satellite Info. Network v. State, 2009 MT 5, ¶ 20, 348 Mont. 333, 201 P.3d 132.

[P4] The language of Mont. Code Ann. § 22-1-313 is clear and unambiguous. If, after the establishment of a county library, a city desires to exempt the property in the city from the county library mill levy, it must: (1) have “an existing tax-supported public library;” and (2) notify the county that the city does not desire to be a part of the county library system.

[P5] The only “existing tax-supported public library” in Whitefish at this time is a branch of the county library. If the city terminates the Agreement, that library will cease to function, but no “existing tax-supported” city library will thereby spring into existence. In other words, the city must have an independent library that it has created pursuant to statute before it can seek to exempt the property within city limits from the county tax levy. The building housing the Whitefish branch is owned by the city. However, it is considered by all parties to currently be a branch of the county library, and therefore cannot be considered “an existing tax-supported public library” of the city.

[P6] This holding does not conflict with former Attorney General Mazurek’s opinion in 47 Op. Att’y Gen. No. 6 (1997). The question presented in that opinion was whether a city and a county could both levy taxes on property within the city to operate a joint city-county library. While answering that question, Attorney General Mazurek noted that “Montana Code Annotated § 22-1-313 expressly allows a city to become exempt from the county levy upon notification that the city no longer wishes to maintain the county library.” Id. However, he later more fully explained that “the city has the option to run its own library under § 22-1-313 and be exempt from any county levy.” Id. (emphasis added). Before being entitled to the exemption, then, the city must “run its own library.”

[P7] Once Whitefish has withdrawn from the Agreement and taken back the building, it can create a public library pursuant to Mont. Code Ann. § 22-1-303, provide funding to the library through the city’s tax revenues, and operate a public library out of the existing building. Once the city library is up and running on city tax funds, the city would have “an existing tax-supported public library.” Upon notification to the county, property

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within the city limits would be exempt from the county library mill levy pursuant to Mont. Code Ann. § 22-1-313.

[P8] The Flathead County Attorney has suggested that Mont. Code Ann. § 22-1-313 only allows a city to exempt its property from the county library tax levy if the city has a tax-supported library in existence when the county library is formed. I disagree. The powers of local governments are to be liberally construed. Mont. Const. art. XI, §§ 4(2), 6. Montana Code Annotated § 22-1-313 does not clearly require that the city library predate the county library and, given the directive of the Montana Constitution, I decline to insert such a requirement in the statute.

THEREFORE, IT IS MY OPINION:

1. Taxable property within an incorporated city may become exempt from a county library levy under Mont. Code Ann. § 22-1-313 only when (1) the city has “an existing tax-supported public library,” as the term “public library” is defined in Mont. Code Ann. § 33-1-301(3), actually in existence and (2) the city governing body notifies the county of its desire not to be part of the county library system.
2. Where the city and county have entered an interlocal agreement in which the city provides a building and other services for a branch of the county library but has not created an independent city library, withdrawal from the interlocal agreement, by itself, does not allow the city to act under Mont. Code Ann. § 22-1-313 to exempt city property from the county library tax levy.
3. A city may create a “tax-supported public library” after the creation of a county free library and then invoke the provisions of Mont. Code Ann. § 22-1-313 to exempt property within the city limits from the county library tax levy.

Sincerely,

STEVE BULLOCK  
Attorney General

sb/jss/jym