

COUNTIES - Authority of board of library trustees to adopt county library budget;
COUNTIES - Effect of repeal of numerical mill levy caps on commissioners' authority with respect to county library budget;
COUNTY COMMISSIONERS - Effect of repeal of numerical mill levy caps on commissioners' authority with respect to county library budget;
INTERLOCAL AGREEMENTS - Agreement between county and school district for operation of county library may include provision binding commissioners to fund budget at specified level;
LIBRARIES - Authority of board of library trustees to adopt county library budget;
MONTANA CODE ANNOTATED - Title 7, chapter 11, part 1; sections 22-1-304, -309(1), 15-10-420;
MONTANA LAWS OF 2001 - Chapter 574;
OPINIONS OF THE ATTORNEY GENERAL - 49 Op. Att'y Gen. No. 5 (2001), 48 Op. Att'y Gen. No. 3 (1999), 41 Op. Att'y Gen. No. 91 (1986).

- HELD: 1. The county commissioners are generally obligated to fund the library budget submitted by the library board within the limits set by Mont. Code Ann. § 15-10-420.
2. The county has the power to enter an interlocal agreement under which it could bind itself to fund the library budget as submitted by the library board under Mont. Code Ann. § 22-1-309(1).

January 18, 2002

Mr. John T. Flynn
Broadwater County Attorney
P.O. Box 96
Townsend, MT 59644-0096

Dear Mr. Flynn:

You have requested my opinion on the following question:

Does the library board have the power to require the county commissioners to levy five mills in support of the county library?

Prior to the 2001 legislative session, this question was answered by 48 Op. Att'y Gen. No. 3 (1999), in which Attorney General Mazurek held that the county commissioners were obligated to fund the library budget at the amount set by the library board, up to

the amount that would be raised by a property tax of five mills. However, in 2001 the legislature made significant changes in the laws relating to local government budget and taxation, and these changes require a reexamination of the prior opinions in this area.

In 1986 the Montana voters adopted Initiative Measure 105, which capped the property taxes that could be assessed against real property at the amounts assessed in 1986. I-105 proved difficult to administer, and as the years passed its provisions were amended several times, culminating in the adoption by the 2001 legislature of chapter 574 of the 2001 Montana Laws.

In 49 Op. Att’y Gen. No. 5 (2001), the Attorney General discussed the statutory changes adopted by the 2001 legislature in the area of local government taxation. Chapter 574 made substantial changes that are described in detail in the opinion. In brief, those changes eliminated most of the numeric mill levy limitations for specific government purposes that existed previously. With reference to your request, the legislature amended Mont. Code Ann. § 22-1-304 to delete the former reference to a five-mill levy. As amended, the statute simply authorizes the county to levy mills for support of the library.

In place of the numeric mill levies, Mont. Code Ann. § 15-10-420, as amended by 2001 Mont. Laws, ch. 574, allows the county to levy sufficient mills to raise the amount of property tax raised in the previous year, subject to certain adjustments not pertinent here. Since the five-mill library levy has been eliminated, there is no longer a statutory basis to argue that the library board has the authority to require the commissioners to levy five mills for support of the library budget.

However, in 41 Op. Att’y Gen. No. 91 (1986), Attorney General Greely held that Mont. Code Ann. § 22-1-309(1) authorizes the library board to determine the budgetary needs of the library, and that the county commissioners lacked the power to modify the budget presented by the library board. In 48 Op. Att’y Gen. No. 3 (1999), Attorney General Mazurek reaffirmed Attorney General Greely’s holding, but modified it to hold that the library board could not compel the commissioners to expend more than the amount raised by five mills.

In my opinion, the 2001 statutory changes adopted in 2001 Mont. Laws, ch. 574, did not delete the library board’s authority to determine the amount of financial support required by the library, nor did they confer on the county commissioners the authority to modify the library budget submitted by the library board. The prior opinions cited above found that the library board was granted budget authority by statute under Mont. Code Ann. § 22-1-309(1), and the deletion of the five-mill levy does not alter the library board’s budget authority.

While these statutes are not ambiguous in light of the prior interpretations of this office, I also note that the legislative history of the 2001 act suggests that the legislature did not intend to alter the relationship between the library board, and similar boards with budget authority, and the county commissioners with respect to budget matters. See Mins., Sen. Comm. on Local Gov't, Jan. 16, 2001, at 8 (testimony of Harold Blattie) (“The bill does not remove the authority of the local trustees of the water control district, cemetery district, etc. to determine what their mill levies are as long as they are compliant with 15-10-420.”); Mins., Local Gov't Funding Select Comm., Feb. 6, 2001 (“Rep. Story mentioned that library and airport board budgets were eliminated from HB 124. Gordon Morris said they wanted to operate under present law.”)

It is therefore my opinion that chapter 574 of the Laws of Montana, 2001, did not give the board of county commissioners the authority to modify the budget submitted by the library board pursuant to Mont. Code Ann. § 22-1-309(1), provided that budget fits within the provisions of Mont. Code Ann. § 15-10-420. As discussed above, that statute, as amended in 2001, limits the county to the number of mills required to raise the amount of money raised in the previous fiscal year, subject to statutory adjustments. Under the reasoning of 48 Op. Att’y Gen. No. 3 (1999), the budget which the library board may require the commissioners to adopt is limited to the amount budgeted in the prior year as adjusted pursuant to section 15-10-420.

While the above discussion describes the governing law, your situation may be affected by the interlocal agreement between Broadwater County and the Townsend School District. Broadwater County and the Townsend School District have entered an agreement under which they share fiscal responsibility for the county library. The School District has agreed to house the library and “provide funds for the general operation of the library.” Interlocal Agreement, Part III.B.2. The County agreed to “provide the approved level of funding for the general operation of the library as well as for a materials budget to meet the non-school needs of the population,” and to “[l]evy the maximum number of mills allowed by law for support of the public library.”

The Interlocal Cooperation Act, Mont. Code Ann. tit. 7, ch. 11, pt. 1, specifically allows a county to appropriate funds for the purpose of supporting an interlocal agreement. In this case, Broadwater County has agreed to “provide the approved level of funding” for the library, and to “[l]evy the maximum number of mills allowed by law for support of the public library.” Interlocal Agreement, Part III.C.1., 2. Nothing in the 2001 tax and budget amendments would prevent Broadwater County from voluntarily entering an interlocal agreement providing that it would accept the library board’s budget proposal and levy the necessary mills to fund it.

I am unable to issue an opinion as to whether the interlocal agreement between Broadwater County and the Townsend School District binds the county to fund the

entire amount of the budget submitted by the library board. The language in the agreement is not entirely clear, and issues of fact may exist as to the prior interpretation of the agreement by the parties and their intention in entering the contract. An opinion from this office is not an appropriate vehicle for resolving such factual questions. I would suggest that in light of the statutory changes outlined above, the parties to the agreement should renegotiate its provisions and agree to changes that better fit the statutes as amended.

THEREFORE, IT IS MY OPINION:

1. The county commissioners are generally obligated to fund the library budget submitted by the library board within the limits set by Mont. Code Ann. § 15-10-420.
2. The county has the power to enter an interlocal agreement under which it could bind itself to fund the library budget as submitted by the library board under Mont. Code Ann. § 22-1-309(1).

Very truly yours,

MIKE McGRATH
Attorney General

mm/cdt/dm