

COUNTIES - Authority of county library trustees;
COUNTY COMMISSIONERS - Authority over county library matters;
LIBRARIES - Authority of library trustees;
TAXATION AND REVENUE - Obligation of county commissioners to levy property taxes for county library expenses;
MONTANA CODE ANNOTATED - Sections 22-1-304, 22-1-309(6), 22-1-310, 39-31-103(1), 39-31-208;
OPINIONS OF THE ATTORNEY GENERAL - 35 Op. Att'y Gen. No. 71 (1974), 39 Op. Att'y Gen. No. 5 (1981), 39 Op. Att'y Gen. No. 38 (1981), 41 Op. Att'y Gen. No. 45 (1986).

HELD: 1. A board of county commissioners does not have the authority to modify the decision of county library trustees concerning wage and salary amounts for library employees.

2. A board of county commissioners does not have the authority to modify an annual library budget adopted by county library trustees.
3. 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.

13 November 1986

John P. Connor Jr.
Jefferson County Attorney
Jefferson County Courthouse
Boulder MT 59632

Dear Mr. Connor:

You have requested my opinion concerning the following questions:

1. Does the Jefferson Board of County Commissioners have the authority to override a determination by the trustees of the Jefferson County Library to grant pay increases to library personnel?
2. Does the Jefferson Board of County Commissioners have the authority to modify the annual budget submitted by the trustees of the Jefferson County Library even though the amount of property taxes necessary to satisfy such budget falls within the statutory limit of five mills under section 22-1-304(1), MCA?
3. Does the Jefferson Board of County Commissioners have the discretion to levy no millage for funding of the Jefferson County Library?

I conclude that each of these questions must be answered negatively.

The Jefferson County Library was established under sections 22-1-301 to 317, MCA. In summary those

provisions authorize the formation of a city, county, or consolidated city-county free public library. Once created the library is governed by a board of trustees with broad powers and duties, including the obligation to prepare an annual budget "indicating what support and maintenance of the public library will be required from public funds" and to employ a chief librarian and such other employees as are deemed necessary to administer the library. §§ 22-1-309(6), 22-1-310, MCA. The latter responsibility further expressly extends to fixing and paying library employees' salaries and compensation. § 22-1-310, MCA. The annual budget must be submitted by the trustees to the governing body of the city or county which, in turn, may impose a property tax levy not to exceed five mills for the purpose of raising the funds required to maintain the library. § 22-1-304(1), MCA. All monies deriving from such levy must be placed into the public library fund, may not be used for any purpose other than operation of the library, and cannot be distributed from the fund without order or warrant of the trustees. § 22-1-304(4) and (5), MCA.

This brief description of the library trustees' powers and duties reflects substantial autonomy from the governing body of the local governmental unit within which the library has been established. See Municipal Employees Local 2390 v. City of Billings, 171 Mont. 20, 24, 555 P.2d 507, 509 (1976) ("[u]nder the Library Systems Act, as a whole, the board of trustees is given independent powers to manage and operate the library"). The trustees are thus quite clearly granted direct responsibility for administering the library in a manner largely independent of city or county control. That the fiscal operation of the library is heavily interrelated with that of the local government does not, at least insofar as the trustees have been accorded explicit authority, mean their determinations are subject to plenary review and possible modification by, in this instance, a board of county commissioners. Any different conclusion would eviscerate the trustees' authority and render them little more than the county's agents--a conclusion which is simply unsupported by a fair reading of the involved statute.

I recognize that library employees may well be considered city or county employees for certain purposes. See Municipal Employees Local 2390 v. City of Billings, *supra*; see 39 Op. Att'y Gen. No. 38 (1981) (soil conservation district and district court employees

considered county employees); 35 Op. Att'y Gen. No. 71 (1974) (fire district employees considered county employees). However, such status does not subordinate the trustees' express grant of authority to fix compensation levels to county commissioner control. Cf. 41 Op. Att'y Gen. No. 45 (1986) (mayoral appointment of administrative assistant not subject to city council approval). Municipal Employees Local 2390, in particular, does not militate against the trustees' authority in such matters as to library employees; there the Court merely concluded that a library employee, who had participated in union representation election under section 39-31-208, MCA, and became part of a diverse city employee bargaining unit, was subject to the terms and conditions of the collective bargaining agreement covering such unit and to which the City of Billings was signatory. Under those circumstances the city was held to be the employee's "public employer" as that term is defined in section 39-31-103(1), MCA, and used throughout the public employee collective bargaining law. The unique facts and statutory considerations underlying Municipal Employees Local 2390 clearly do not stand for the proposition that the trustees here are subject to the control of the county commissioners concerning questions of library employee compensation. The trustees' express authority under section 22-7-310, MCA, to fix such employees' compensation accordingly prohibits the commissioners from establishing a different wage level.

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.

Finally, use of the permissive "may" in section 22-1-304(1), MCA, does not, in view of the trustees' independent budgetary authority, grant the county

commissioners discretion not to levy any millage, since the existence of such discretion would effectively supersede the trustees' express powers. Section 22-1-304(1), MCA, must instead be read together with the trustees' broad control over library operations and, if so construed, does not permit an interpretation which leaves within the county commissioners' determination whether some or none of the millage necessary to meet library budget demands should be assessed. See 39 Op. Att'y Gen. No. 5 (1981).

THEREFORE, IT IS MY OPINION:

1. A board of county commissioners does not have the authority to modify the decision of county library trustees concerning wage and salary amounts for library employees.
2. A board of county commissioners does not have the authority to modify an annual library budget adopted by county library trustees.
3. 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.

Very truly yours,

MIKE GREELY
Attorney General