

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 98

CITIES AND TOWNS - Authority to overrule decision of city library board of trustees;
LIBRARIES - Authority of library board of trustees;
URBAN RENEWAL - Authority of city commission to overrule library board decision in order to promote redevelopment in urban renewal area;
MONTANA CODE ANNOTATED - Section 22-1-309(4);
OPINIONS OF THE ATTORNEY GENERAL - 41 Op. Att'y Gen. No. 91 (1986).

HELD: A city commission does not have the authority to overrule a decision by the city library board of 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.

18 July 1988

David Gliko
Great Falls City Attorney
P.O. Box 5021
Great Falls MT 59403-5021

Dear Mr. Gliko:

OPINIONS OF THE ATTORNEY GENERAL

You have requested my opinion on the following question:

May the city commission overrule a decision by the city library board of trustees not to sell or lease a parking lot held in the name of the city and purchased to service the library's parking needs?

In 1965 the Board of Trustees of the Great Falls City Library asked the city to issue general obligation bonds in order to finance the construction of a new library. The bond issue was placed on the ballot and approved by the Great Falls voters. The general obligation bonds were issued in the name of the city, and the new library was constructed. Some of the bond money was used to purchase a parking lot for the library. Title to the parking lot was conveyed by the sellers to the city. Since 1965 the library board has leased out parking spaces in the lot to the public and has received the income from the leases.

Recently a developer who is interested in refurbishing an apartment building adjacent to the library parking lot offered to purchase or lease the lot in order to meet the parking requirements of the city's urban renewal plan. After two public hearings the library board declined to sell or lease the parking lot to the developer. The city commission has asked whether it has the legal authority to override the library board's decision and transfer the property to the developer in an effort to promote redevelopment in the urban renewal area.

The powers and duties of the library board of trustees are set forth in section 22-1-309, MCA, which provides in part:

The library board of trustees shall have exclusive control of the expenditure of the public library fund, of construction or lease of library buildings, and of the operation and care of the library. The library board of trustees of every public library shall:

....

(4) have the power to acquire, by purchase, devise, lease or otherwise, and to own and hold real and personal property in the name of the city or county or both, as the case may be, for the use and purposes of the library and to sell, exchange or otherwise dispose of property real or personal, when no longer

OPINIONS OF THE ATTORNEY GENERAL

required by the library and to insure the real and personal property of the library[.]

The board acquired the parking lot by purchase and has owned and held it in the name of the city for the use and purposes of the library. Section 22-1-309(4), MCA, gives the board the express power to sell, exchange, or otherwise dispose of the parking lot whenever it is no longer required by the library.

I have found no similar statutory authority granting the city commission the right to override the library board's decision concerning disposition of real property which is owned and held by the board and used for library purposes. The fact the title to the parking lot is held in the name of the city merely shows compliance with section 22-1-309(4), MCA, and does not provide a basis for the city to transfer an interest in the property without the approval and request of the library board.

In 41 Op. Att'y Gen. No. 91 (1986) I considered whether a board of county commissioners could override a decision by the county library board of trustees concerning pay increases for library personnel. I noted in the opinion that library trustees are granted direct responsibility for administering the library in a manner largely independent of city or county control. The reasoning of that opinion applies as well to your question. 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. I conclude that the city commission may not overrule the decision by the library board of trustees not to sell or lease the library's parking lot.

As in my previous opinion, I do not find the Montana Supreme Court's decision in Municipal Employees Local 2390 v. City of Billings, 171 Mont. 20, 555 P.2d 507 (1976), to be authority for the proposition that the library trustees are subject to the control of the city commission in matters expressly given to the trustees by statute. While the Court referred to the library board as an "adjunct of the local government" for the purpose of determining which entity is to be viewed as the "public employer" of library personnel, the Court also acknowledged that the library board is given independent powers to manage and operate the library.

I do not address, nor do I intend in this opinion to limit in any way, the authority of the city under the

OPINIONS OF THE ATTORNEY GENERAL

Urban Renewal Law as set forth in Title 7, chapter 15, part 42, MCA. See, e.g., § 7-15-4259, MCA.

THEREFORE, IT IS MY OPINION:

A city commission does not have the authority to overrule a decision by the city library board of 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.

Very truly yours,

MIKE GREELY
Attorney General