

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 09-0024

BOARD OF TRUSTEES, BUTTE-SILVER BOW
PUBLIC LIBRARY,

Plaintiff and Appellee,

v.

BUTTE-SILVER BOW COUNTY,

Defendant and Appellant.

Filed
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BRIEF OF AMICUS CURIAE MONTANA STATE LIBRARY COMMISSION

On Appeal from the Montana Second Judicial District Court, Silver Bow County,
The Honorable Kurt Krueger, Presiding

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STATEMENT OF AMICUS' INTEREST

Amicus Montana State Library Commission (Commission) is established pursuant to Mont. Code Ann. § 22-1-101. The power of the Commission includes the authority to “give assistance and advice to all tax-supported libraries in the state and to all counties, cities, towns, or regions in the state that propose to establish libraries, as to the best means of establishing and improving those libraries.” Mont. Code Ann. § 22-1-103(1). The Commission, through the Montana State Library, has traditionally played an active role in providing support, advice, and assistance to local public libraries throughout Montana, often on questions similar to the ones at issue in this appeal. The Commission believes that this appeal involves fundamental issues of statewide importance regarding the historical authority and responsibilities of local public library boards of trustees, as reflected in the applicable statutes and the interpretation of those statutes in opinions of the Attorney General.

STATEMENT OF ISSUE

Whether the district court correctly granted summary judgment for Appellee, the Butte-Silver Bow Public Library Board of Trustees (Board of Trustees), determining that the Board of Trustees has the authority to set the wages and salaries of the chief librarian and library employees.

STATEMENT OF THE CASE

In 2007 Appellant Butte-Silver Bow County (BSB) commissioned a study to examine pay issues in the county. In 2008 BSB sought to set the salary of the chief librarian of the Butte-Silver Bow Public Library (the Library). On June 19, 2008, the Board of Trustees filed a complaint seeking a declaratory judgment that BSB has no authority to determine the classification and pay structure of employees of the Library. In an Order issued on December 23, 2008, the district court granted summary judgment for the Board of Trustees, ruling that BSB “does not have the authority to manipulate library staff wages and salaries and that the setting of wages and salaries is within the powers of the Library Board of Trustees.” A Judgment was filed on January 9, 2009. From this Judgment BSB has appealed.

STATEMENT OF FACTS

The city of Butte established a city library prior to 1900. The library has continued in existence since its establishment, and is currently known as the Butte-Silver Bow Public Library. When the Library was created the city of Butte and Silver Bow County were separate governmental entities. In 1978 the City of Butte and Silver Bow County formed a consolidated government known as Butte-Silver Bow County.

Ordinance No. 69 was passed and approved following consolidation of the city and county governments. (BSB’s Br. – App. 2). The ordinance created the Butte-Silver Bow Public Library Board. The purpose of the ordinance was to “provide for an appointed Board of citizens of Butte-Silver Bow to supervise the affairs and management of the Butte-Silver Bow Public Library.” (Ordinance 69, Sec. 1). The ordinance gave the Board of Trustees “the authority to enter into agreements for the operation and care of the Butte-Silver Bow Public Library and to supervise the management and affairs” of the Library. (Ordinance 69, Sec. 2). The ordinance authorized the Board of Trustees to “appoint and set the compensation of a Chief Librarian who shall serve as the secretary of the Board and shall serve at the pleasure of the Board.” (Ordinance 69, Sec. 6). Ordinance 69 is now codified at sections 2.44.010 to 2.44.070 of the Butte-Silver Bow Municipal Code.

BSB has taken the position that it has the authority to set the salaries of library personnel, including the chief librarian.

SUMMARY OF ARGUMENT

The district court correctly determined that the Board of Trustees has the authority to set the wages and salaries of the chief librarian and the staff of the Library, and that BSB does not have the authority to change the salaries set by the Board of Trustees.

The Library was created prior to 1900 pursuant to the provisions of laws that specifically authorized a city council to establish and maintain a free public library. Many of the principles embodied in those laws were carried forward over the years, culminating in the Free Public Libraries Act (the Act) enacted by the Montana Legislature in 1967 (currently codified at Mont. Code Ann. tit. 22, ch. 1, pt. 3). Pursuant to Mont. Code Ann. § 22-1-314 of the Act, as a public library that was previously established under Montana law the Library continued in existence, subject to the changes in administration provided in the Act.

The Act grants the board of trustees of a public library authority to manage and operate the library with substantial independence from city or county control. In particular, the Act authorizes a board of trustees to appoint and set the compensation of a chief librarian, as well as other library staff.

ARGUMENT

Montana Code Annotated § 22-1-302 expresses the purpose of the Act:

It is the purpose of this part to encourage the establishment, adequate financing, and effective administration of free public libraries in this state to give the people of Montana the fullest opportunity to enrich and inform themselves through reading.

Consistent with Montana's long tradition of encouraging the establishment and support of public libraries, the Montana State Library Strategic Plan for 2006-2011 sets forth statements of values, including:

- Quality information leads to quality decisions.
- Knowledge is a critical resource for the future economic development of Montana and Montanans.
-
- Citizens must be able to privately seek information without fear of scrutiny.
-
- Libraries play a vital role in providing Montana with access to knowledge and new information.
- Libraries are critical for the just, efficient, and effective collection, management, and distribution of quality information in a digital age, and vital in a democracy founded on the principle of an educated and inquisitive citizenry.

The full plan may be viewed at <http://msl.mt.gov/admin/StrategicPlan0611.pdf>.

The values set forth in the strategic plan, and in particular the provisions of the Act reflect the historical recognition in Montana, and elsewhere in the United States, that local politics should not be permitted to influence library collection content and library services available to citizens.

The historical model for public libraries in the United States is the Boston Public Library, created in 1852 under the authority of a statute passed several years earlier by the Legislature of the Commonwealth of Massachusetts. The creation of the library is described in Ladenson, Alex, *Library Law and Legislation in the United States* (1982). According to Ladenson, once the Boston city council decided to create

the library, the question of its administration was entrusted to a joint special committee of the city council. The joint committee ultimately recommended establishment of a board form of government to administer and manage the library. Accepting the recommendation, the city council passed an ordinance providing that the library would be administered by a board of directors consisting of an alderman, a member of the common council, and five citizens appointed by the city council. The board was given control over the expenditure of all library funds, was authorized to adopt rules and regulations for the use of the library, and had the power to appoint subordinate officers of the library and fix their salaries. Ladenson describes the first library board, which he notes was made up of some “distinguished” trustees, including a future Massachusetts governor and senator:

These men were zealous in defending the interests of the library, and they fought to make it independent and free from the control of the city council. This desire to divorce the public library from politics originated here and has continued for over a century to be a guiding policy of library statesmanship.

Id. at 9. Consistent with this historical model, under current Montana law public libraries have been given a large measure of autonomy from local governing

bodies to ensure that they are managed and operated based on the best interests of the citizens they serve.¹

On appeal BSB argues that the Library established more than a century ago in Butte is not a “public” library, because it was not created under Mont. Code Ann. §§ 22-1-303 through -317. BSB argues that because the Library does not qualify as a public library, none of the provisions of the Act pertaining to the administration of public libraries applies. Citing former Montana statutes enacted as early as 1915 that authorized the establishment of county libraries, BSB seems to imply that there were no similar statutes authorizing the establishment of public libraries by cities and towns. BSB is mistaken.

Public libraries in Montana have a historical basis going back to territorial days. In the Thirteenth regular session of the Montana Legislative Assembly in 1883, an act authorizing the establishment of free public libraries was passed, providing:

Section 1. The municipal authorities of any town or city, which is now or may hereafter be incorporated under the laws of this Territory, shall have power to establish and maintain one free public library for the use of the citizens of such town or city, and to that end, and for that purpose, may provide by ordinance for the levy and collection of a tax of not exceeding one mill on the dollar on all taxable property

¹ Former Montana law gave a board of county commissioners general supervisory authority over county free libraries, including authority to appoint and set the salary of a county librarian. Rev. Codes Mont. 1947 §§ 44-203 to -205. These statutes were repealed when the Montana Free Public Libraries Act was passed in 1967.

within the corporate limits of such town or city. The city treasurer shall preserve the tax so collected in a fund by itself, to be known as the "Library Fund," and the same shall only be expended for the purchase of books, equipments, and support and maintenance of such public library.

1883 Mont. Sess. Laws, p. 110. This law, with minor changes, was reenacted in 1895 as Montana Code Annotated § 5039 (Political Code). In addition, § 5040 and § 5041 of the same 1895 Code provided that before any such ordinance could be passed by the city or town council, the question of whether a public library should be established had to be submitted to the qualified electors for a vote. If a public library was created, § 4743 of the 1895 Code provided that trustees of the library had to be appointed by the mayor, with the advice and consent of the city or town council, with the number of such trustees to be provided by ordinance.

The laws providing for establishment of free public libraries by cities and towns were reenacted and somewhat refined over the following years, including 1907 and 1915. See, e.g., §§ 3219, 3488, 3489, and 3490, Rev. Codes Mont. 1907; 1915 Supplement to Rev. Codes Mont. 1907. In the 1915 Supplement to Rev. Codes Mont. 1907, § 3219 (formerly numbered § 4743) providing for the creation of a library board of trustees, stated in part:

[T]he "Library Fund" provided in section 3488 of this code shall be invested by the city treasurer under the direction of the trustees of the library; and no money shall be paid out of said fund by him except on an order or warrant from said trustees, who shall have exclusive power to make contracts and expenditures for the support and

maintenance of the library, and the purchase of books and other things for a library.

Rev. Codes Mont. 1907 § 3219 (1915 Supplement) (emphasis added).

This brief legislative history reflecting the genesis of laws authorizing public libraries establishes that when the Library was first created in Butte (some time prior to 1900 according to BSB's brief), there were laws that specifically authorized cities like Butte to establish a free public library. Moreover, as shown below, those laws enacted many years ago are in many respects similar to the existing laws regarding creation and administration of public libraries.

As BSB has noted in its brief, in 1967 the Montana Legislature enacted the Act. One of those statutes, significant for this case, currently codified as Mont. Code Ann. § 22-1-314, provides:

Continued existence of all public libraries. All public libraries heretofore established shall continue in existence, subject to the changes in administration provided herein.

The Library in Butte is clearly subject to this statute, since it was "heretofore established" at the time the Act became law in 1967. It therefore continued in existence as a public library, subject to the "changes in administration" provided in the Act.

The rest of the Act provides for the administration of public libraries by a board of trustees, similar to the statutes enacted early in Montana's history. A board of trustees has the power to contract for library services and to acquire and

own real and personal property for the purposes of the library; and has exclusive control of the expenditure 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. Library trustees also may “exercise such other powers, not inconsistent with law, necessary for the effective use and management of the library.” Mont. Code Ann. § 22-1-309(9). Consistent with the clear intent of the Act, BSB passed Ordinance 69 in 1978 following consolidation of the city and county governments. Ordinance 69 created the Board of Trustees to “supervise the management and affairs” of the Library.

Montana Code Annotated § 22-1-310 gives the Board of Trustees explicit authority to hire and set the salaries of a chief librarian and other library staff, and to prescribe their duties:

Chief librarian--personnel--compensation. The board of trustees of each library shall appoint and set the compensation of the chief librarian who shall serve as the secretary of the board and shall serve at the pleasure of the board. With the recommendation of the chief librarian, the board 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.

The district court relied on these statutes as well as several opinions of the Montana Attorney General in concluding that the Board of Trustees, rather than BSB, has the authority to set the salaries and compensation of the chief librarian and other library staff. (BSB’s Br., App. 1 – Order Grant. Mot. Summ. J.).

In 41 Op. Att’y Gen. No. 91 (1986), the Jefferson County Attorney asked the Attorney General several questions concerning the authority of the board of county commissioners in matters related to the Jefferson County Library, including whether the county commissioners could override the library board of trustees’ decision to grant pay increases to library staff. In determining the county had no authority to modify the exercise of discretion by the trustees regarding wage and salary amounts for library staff, the Attorney General reviewed the statutory authority given to a board of library trustees:

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. . . . 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 that their determinations are subject to plenary review and possible modification by, in this instance, a board of county commissioners.

Citing Mont. Code Ann. § 22-1-310, the Attorney General observed that the trustees’ authority “expressly extends to fixing and paying library employees’ salaries and compensation.” 41 Op. Att’y Gen. No. 91 (1986).

In its appeal brief BSB appears to argue that because the Library is funded through the general fund, including the payment of salaries for library personnel, if the Board of Trustees claims authority under Mont. Code Ann. § 22-1-310 to fix and pay salaries, then it must “of its own accord” come up with the funds to pay

those salaries. (BSB's Br. at 3-4). In 48 Op. Att'y Gen. No. 3 (1999), the Attorney General considered questions regarding funding and operation of a public library financed through a general fund. The Big Horn County Attorney asked the Attorney General two questions: Where a county library is funded by a general fund levy under Mont. Code Ann. § 7-6-2501, does the board of county commissioners have the authority to 1) modify the annual budget submitted by the library board, or 2) modify the library board's determination regarding the amount of pay increases for library personnel.

After discussing prior Attorney General's Opinions in 41 Op. Att'y Gen. No. 91 (1986) and 42 Op. Att'y Gen. No. 98 (1988), the Attorney General noted that, while the Big Horn County Library was funded through the general fund rather than through the library tax levy authorized by Mont. Code Ann. § 22-1-304, this "does not allow county commissioners to usurp the library trustees' statutory authority in setting the library's budget and compensation for the library staff." The Attorney General observed that in enacting the statutes regarding the formation and operation of 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." The Attorney General also reaffirmed the express statutory authority of library boards:

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.

48 Op. Att'y Gen. No. 3 (1999).

The foregoing discussion shows beyond dispute that the Library was legally created by the city of Butte more than a century ago pursuant to statutes that specifically authorized cities and towns to establish free public libraries. As a public library that was legally established prior to enactment of the Act in 1967, the law provides that the Library "continue[s] in existence, subject to the changes in administration" provided in the Act. Mont. Code Ann. § 22-1-314. Thus, the Library is entitled to all the benefits of the laws governing the creation and administration of public libraries in Montana, including the authority of the Board of Trustees to manage and operate the Library with "substantial autonomy" from the local governing body, in this case BSB. Under Mont. Code Ann. § 22-1-310, an important component of the Board of Trustees' authority includes the power to determine wage and salary amounts for library staff, including the chief librarian.

CONCLUSION

Amicus Montana State Library Commission urges this Court to affirm the district court's decision recognizing the authority of the Board of Trustees to set the wages and salaries of the Library's chief librarian and other staff.

Respectfully submitted this 1ST day of July, 2009.

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing Brief of Amicus Curiae Montana State Library Commission to be mailed to:

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is not more than 10,000 words, excluding certificate of service and certificate of compliance.



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