

# FAQ for 54 Op. Att’y Gen. No. 7 (2012) that may impact library budgets

## Introduction:

The Attorney General’s office has released an opinion that impacts MSL’s understanding of public library board powers when it comes to the library’s budget. In the past the library board has been seen as the final authority when it comes to the library’s budget, but this opinion states that MCA 7-6-4035 overrides that authority and gives the local governing body final authority over the approval of the library budget and mill levies. The opinion does confirm that library boards have sole discretion in the use of reserve funds and is also the final authority on individual line items within the budget.

**Where can I find a copy of this opinion?** <https://dojmt.gov/wp-content/uploads/54-Op-Atty-Gen-No-7-2012-libraries.pdf>

## Why does the Attorney General state that the governing body has the final say?

The Attorney General is looking at the text under MCA 7-6-4035 which gives final budgetary authority to the local governing body. The text of that law is below:

**7-6-4035. Tax levies for boards and commissions -- bond exemption.** (1) The proposed budget and mill levy for each board, commission, or other governing entity are subject to approval by the governing body.

(2) Except for a port authority created under Title 7, chapter 14, part 11, the taxes, revenue, or fees legally pledged for the payment of debt or for the operations of a regional resource authority are not subject to approval by the governing body.

(3) Except for judgment levies under [2-9-316](#) or [7-6-4015](#), all tax levies are subject to [15-10-420](#).

This piece of code appears to take precedent over MCA 22-1-309 (6) Trustees – Powers and Duties:

**22-1-309. Trustees -- powers and duties.** 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:

(6) prepare an annual budget, indicating what support and maintenance of the public library will be required from public funds, for submission to the appropriate agency of the governing body. A separate budget request shall be submitted for new construction or for capital improvement of existing library property.

### **What does this mean for our library?**

The impact of this opinion will probably vary for each library. If you have a good relationship with your city or county and/or if the city or county is financially stable, you might not be negatively impacted by this opinion. If your governing body is facing financial concerns this opinion holds that the city or county has the power to cut your budget. Unfortunately the library board doesn't have much recourse – other than public support for the library.

### **Can you explain the impact for each type of library?**

- City, county, or city-county libraries created by a resolution of their respective city council or county commission – local governing body has the final authority over the budget.
- Independent Public Library Districts formed by Title 22 – the county commission has the final authority over your budget.
- School-community libraries – if you are created by an interlocal agreement as defined in Title 7 you may be protected from this opinion. An interlocal agreement is considered a contract and as such it gives your library some protection since it defines the support level of the county or city.
- Multijurisdictional Service District libraries - if you are created by an interlocal agreement as defined in Title 7 you may be protected from this opinion. An interlocal agreement is considered a contract and as such it gives your library some protection since it defines the support level of the county or city.
- Libraries created by an interlocal agreement as defined in Title 7 - if you are created by an interlocal agreement as defined in Title 7 you may be protected from this opinion. An interlocal agreement is considered a contract and as such it gives your library some protection since it defines the support level of the county or city.

**Does this opinion affect voted library levies?** Yes, this opinion appears to give city councils and county commissioners final authority for all types of levies including ones voted on by the people within a community.

### **What can we do?**

- Don't panic. This may or may not affect your library.
- Start collecting stories, data, and visual images that explain the value of the library and how it benefits the community. You may need this information to convince your local governing body to leave the library budget as is. This is a good idea to do all the time, not just in times of financial hardship.
- Talk to your library board about this opinion and what it means for the library. You need to discuss whether or not you think this opinion will impact the library's budget and if so what strategy you would like to take to minimize the impact.
- If you think the local governing body will take advantage of this opinion to cut the library's budget begin identifying library supporters who will speak up for the library. You will need them to attend the local governing body's budget hearing, work with local government officials, and publicly and privately campaign for continued support of the library.
- Please talk to one of the following MSL staff about how this opinion might impact your library. We will use that information to decide upon the best course of action for libraries in Montana.
  - Tracy Cook, [tcook2@mt.gov](mailto:tcook2@mt.gov) or 866-730-1681
  - Jennie Stapp, [jstapp2@mt.gov](mailto:jstapp2@mt.gov) or 800-338-5087
  - Pam Henley, [phenley2@mt.gov](mailto:phenley2@mt.gov) or 866-730-1681
  - Suzanne Reymer, [sreymer@mtlib.org](mailto:sreymer@mtlib.org) or 888-826-0837

### **What is MSL going to do at this time?**

- Talk to public library directors and/or trustees about how this opinion may impact their library.
- Carefully explore the option of adding public libraries as an exception to MCA 7-6-4035 – most likely working in conjunction with the Montana Library Association. There may be strong opposition to adding libraries as an exception, so it may not be in the best interest of libraries to pursue adding libraries as an exception.
- Talk to the Governor’s Office, the Montana Association of Counties (MACO) and the Leagues of Cities and Towns about any law changes to the local government budget act.
- Assist public libraries who may be negatively impacted by this opinion by researching and helping these libraries build support for the library budget.

### **ANSWERS TO ADDITIONAL QUESTIONS THAT WE HAVE RECEIVED FROM LIBRARIES**

#### **This opinion appears to override the powers and duties of library boards- MCA 22-1-309 and MCA 22-1-707. Why is this?**

- The answer to this question lies in a 2009 Attorney General Opinion about hospital districts. The number of that opinion is 58 Op. Att’y Gen No. 2. In that opinion the Attorney General stated:  
“In light of the budget statutes adopted in 2001, an argument that this language obligates the Granite County Commissioners to fund the district Trustees’ proposed budget without change cannot be accepted.

**[P10]** First, that conclusion produces an absurd result. It would allow the hospital district board to prevent the local governing board from addressing other important governmental responsibilities. Since the county commission is responsible for the provision of numerous public services specified by law, see Mont. Code Ann. § 7-6-2527 (enumerating nonexclusive list of permissible county expenditure of property tax revenue), the legislature cannot have intended to make hospitals a superior priority that could consume so much of the county budget that other needs would go unfunded.”

- The Attorney General went on to explain that it seems unlikely that the legislature would make meaningless legislation, and if hospital district boards were allowed to demand whatever budget they wanted it would make the 2001 law changes meaningless. He states “In my opinion, the best way to provide meaning and effect to all of these statutes is to construe the later-adopted provisions of §§ 7-6-4035 and 7-6-4036 to control the interpretation of § 7-34-2133 and negate an interpretation that would require the county commissioners to rubber-stamp the proposed budgets of hospital districts.”
- This same reasoning appears to apply to library boards. If you would like to review the Attorney General Opinion on hospital districts you can find it at [http://msl.mt.gov/For Librarians/For Public Librarians/Library Law/AG Opinions/53-002.pdf](http://msl.mt.gov/For_Librarians/For_Public_Librarians/Library_Law/AG_Opinions/53-002.pdf).

**Doesn't the Butte Silver Bow Case address the issue of library board powers?**

- As you can see in the Attorney General Opinion the Butte Silver Bow Public Library Supreme Court case addressed the issue of whether or not the Butte Silver Bow Public Library was in fact a public library. It went on to address whether or not the library board had the powers listed in MCA 22-1-310 in terms of hiring and setting the compensation of the chief librarian. The case established these points which do strengthen the argument that library boards have authority over individual line items. It does not change the outcome of MCA 7-6-4035 which gives the local governing body authority over the bottom line of library budgets.

**ATTORNEY GENERAL**  
**STATE OF MONTANA**

Steve Bullock  
Attorney General



Department of Justice  
215 North Sanders  
PO Box 201401  
Helena, MT 59620-1401

VOLUME NO. 54

OPINION NO. 7

LIBRARIES - The Library Board has sole discretion to determine how to use unspent funds in the library reserve;

LOCAL GOVERNMENT - The Library Board does not have the authority to require the local governing body to levy a certain number of mills in support of the library;

LOCAL GOVERNMENT - The local governing body is not required to continue levying a particular number of mills in perpetuity;

MONTANA CODE ANNOTATED - Sections 7-6-2501, -4001, -4431(3), -4035, -4036, (1)(b), (c), 15-10-420, (1)(b), 22-1-301, -304, (1), (3), (4), -308, -309, (6), -310;

MONTANA CODE ANNOTATED (1999) - Section 22-1-304;

OPINIONS OF THE ATTORNEY GENERAL - 53 Op. Att'y Gen. No. 2 (2009), 49 Op. Att'y Gen. No. 16 (2002), 48 Op. Att'y Gen. No. 3 (1999), 41 Op. Att'y Gen. No. 91 (1986).

- HELD:
1. While the City and County have the inherent discretion not to levy mills, Mont. Code Ann. § 22-1-309 clearly provides that the Library Board alone has the discretion to determine how to use unspent funds in the library reserve.
  2. A library board no longer has sole discretion in determining the number of mills that must be levied for support of the library because Mont. Code Ann. § 7-6-4035 clearly provides that the proposed budget and mill levy for each board is subject to approval by the local governing body. Therefore the Library Board cannot require the City or County to levy a certain number of mills in support of the library.
  3. Because the City and County have discretion to determine the number of mills necessary, they do not have to levy a particular number of mills in perpetuity.

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Mr. Bruce Becker

Livingston City Attorney

414 East Callender

Livingston, MT 59047

Dear Mr. Becker:

[P1] You have requested my opinion concerning several questions which I have rephrased as follows:

1. Where unspent appropriations are available, can these funds be used to reduce the tax levy, i.e., can a local governing body appropriate unspent monies (reserves) from the prior fiscal year to partially fund the Livingston/Park County library's budget request for a future fiscal year?
2. Can the Library Board require the City or County to levy an inflationary floating mill?
3. If the City or the County can be required by the Library Board to levy a particular millage, is this not an unconstitutional delegation of the legislative power to tax to the appointed Library Board?
4. Once the City of Livingston has levied a certain number of mills for the library, must the City levy that same number of mills in perpetuity, or does it have the discretion to eliminate mills in excess of those required by the interlocal agreement with Park County?

[P2] Your letter indicates that in 2001 the City of Livingston (City) and Park County (County) entered an interlocal agreement to fund a library. Although in 2001 the legislature eliminated the mill limits found in Mont. Code Ann. § 22-1-304 (1999), the interlocal agreement continued to use limitations found in the previous version of the statute, which were five mills in the county and seven in the city. Thus, in the interlocal agreement the County agreed to levy five mills, with 2.5 of those being voter-approved on all property in the County, including property in the City. The City agreed to levy seven mills. The agreement also provided that both the City and County would levy additional mills for the annual increase provided for in Mont. Code Ann. § 15-10-420. Accordingly, last fiscal year, the City levied 9.23 mills, not including the 2.5 county mills. The County levied 5.7 mills, which included the annual increase provided for in Mont. Code Ann. § 15-10-420. Of the 9.23 City mills, 7.92 represent the original 7 mill

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levy and the annual increases under Mont. Code Ann. § 15-10-420. The remaining 1.31 mills are in excess of the terms of the interlocal agreement.

[P3] Your letter further indicates that the interlocal agreement is currently under review. A proposal to change the agreement calls for the County to assess five mills--7 mills less than currently levied by the County--and the City to assess seven mills--2.3 mills less than assessed in Fiscal Year 2011-2012. Because, as you acknowledge, this would result in less tax revenue, the City is proposing to reappropriate existing unspent funds in the library reserves to meet the library's budget needs.

[P4] The Library Board objects to this proposal because it would cut the library's annual funding by \$50,000, or 12.5 percent, and would eliminate funding to cover the cost of inflation. The Library Board argues that it is the sole duty of the Library Board to establish the library's budget needs, pursuant to Mont. Code Ann. § 22-1-309(6), which provides:

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:

(6) *prepare an annual budget, indicating what support and maintenance of the public library will be required from public funds, for submission to the appropriate agency of the governing body. A separate budget request shall be submitted for new construction or for capital improvement of existing library property.*

(Emphasis added.)

[P5] The Library Board also relies on this office's holding in 41 Op. Att'y Gen. No. 91 (1986), which concluded, "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." The Library Board also notes that opinions from this office in 1999 and 2002 further confirm that it is the exclusive duty of the Library Board to determine the library budget and set the necessary mill levies to meet that budget, provided it falls within the parameters of Mont. Code Ann. § 15-10-420.

[P6] In 48 Op. Att'y Gen. No. 3 (1999), this office considered the authority of a board of county commissioners to alter a library board's proposed budget where the library is funded under a *general* levy, as opposed to the library-specific levy provided for in Mont.

Code Ann. § 22-1-304(1). In noting the expansive authority provided to library board trustees to control library expenditures and set the library budget, this office concluded that the county commission did not have statutory authority to modify the library budget, regardless of the fact that the library was funded through a general levy.

[P7] Similarly, in 49 Op. Att’y Gen. No. 16 (2002), this office considered whether the library board had the authority to require the county commission to levy a specific number of mills to fund the library budget as submitted by the library board. Although noting some changes had been made to the statutory scheme during the 2001 legislative session with the passage of the Local Government Budget Act (see Mont. Code Ann. § 7-6-4001), this office nonetheless concluded that the county commissioners were still “generally obligated” to fund the library board’s budget, subject only to the limitations provided for in Mont. Code Ann. § 15-10-420.

[P8] By 2009, however, in 53 Op. Att’y Gen. No. 2, I examined the changes enacted by the Local Government Budget Act more directly, specifically by considering whether a county governing body was required to adopt the hospital trustees’ proposed budget without changes. There I reached a result that appeared to conflict with the conclusion reached in 49 Op. Att’y Gen. No. 16 (2002). Specifically, I determined that the local governing body was *not* obligated “to fund the budget proposed by the county hospital district trustees without change.” My conclusion was based on the changes made to the statutory scheme by the Local Government Budget Act. It was also based on the acknowledgment that requiring a local governing body to simply adopt a local board’s proposed budget would usurp the governing body’s ability to set funding priorities for *all* government programs and would make the local board’s budget, in effect, a “superior priority” at the expense of other important government functions.

[P9] Furthermore, I noted:

I am aware that other opinions of this office have held that a local governing body is obligated to fund the budget of a public library as proposed by the library trustees without change. 49 Op. Att’y Gen. No. 16 (2001) [The original opinion incorrectly cited this as a 2001 opinion. It is actually from 2002]; 48 Op. Att’y Gen. No. 3 (1999); 41 Op. Att’y Gen. No. 91 (1986). The soundness of the holdings in these opinions is an issue not squarely presented by your request. For that reason, I express no opinion here regarding the effect of the 2001 amendments to the local government budget laws to the funding of a public library, leaving those questions for consideration when this office receives a request that presents those issues for review.

53 Op. Att’y Gen. No. 2, ¶ 16. Your request requires me to consider this previously unanswered question.

I.

[P10] Your first question concerns whether the City and County may reduce the tax levy (and, thereby, the library’s funding) and, instead, require that the library’s budget be funded through previously unspent funds in the library reserves.

[P11] A local governing body clearly has the authority to determine whether to levy taxes. See, e.g., Mont. Code Ann. § 7-6-2501. This is one of the most fundamental powers of government. Necessarily, a governing body also has the authority to determine *not* to tax. For example, as stated in Mont. Code Ann. § 7-6-4431(3): “An election is not required *for a governing body to impose less than the maximum number of mills* or to carry forward authorization to impose the maximum number of mills in a subsequent tax year as provided in 15-10-420(1)(b).” (Emphasis added.)

[P12] However, while the City and County can determine how much to levy in taxes, they cannot exercise control of the library reserve funds. Montana Code Annotated § 22-1-309 clearly provides: “The library board of trustees shall have *exclusive control* of the expenditure of the public library fund . . . .” (emphasis added). Montana Code Annotated §§ 22-1-304(3) and (4) further speak to the exclusive authority of the Library Board and use of funds in the library reserve:

(3) The proceeds of the tax constitute a separate fund called the public library fund and may not be used for any purpose except those of the public library.

(4) Money may not be paid out of the public library fund by the treasurer of the city or county except by order or warrant of the board of library trustees.

[P13] Therefore, while the City and County have the authority to decrease the number of levies for support of the library, they do not have the authority to direct the Library Board in how to use the library reserve fund.

II.

[P14] Your second question directly confronts the authority of local boards to require local governing bodies to fund the budget as requested. Specifically, you ask whether the Library Board, by adopting a budget, can force the City and County to levy the

inflationary floating mill as provided for in Mont. Code Ann. § 15-10-420 in order to meet the Library Board's budget. The Library Board maintains the answer is yes and points to the aforementioned opinions of this office as "clearly and unambiguously" providing that the Library Board has the statutory authority over the library budget.

[P15] It should first be noted that previous opinions of this office have interpreted Mont. Code Ann. § 15-10-420 not merely to be permissive, as you indicate, but also as providing a cap on mill levies for a given year. 53 Op. Att'y Gen. No. 2, ¶ 2. That is, § 15-10-420 provides an *upper limit* on the tax revenue that may be raised in a given year, not a guaranteed minimum. This reading of § 15-10-420 is consistent with other provisions of the Montana Code. See, e.g., Mont. Code Ann. § 7-6-4431 ("The governing body of a municipality may raise money by taxation for the support of municipal government services, facilities, or other capital projects *in excess of the levy allowed by 15-10-420* under the following conditions . . . ." (emphasis added)).

[P16] Local government budget authority was significantly changed under the Local Government Budget Act, as well as other statutory provisions enacted during the 2001 legislative session. Prior to that, funding of public libraries was largely governed by Mont. Code Ann. § 22-1-304, which set specific limits on mill levies:

*Subject to 15-10-420, the governing body of a city or county that has established a public library may levy in the same manner and at the same time as other taxes are levied a special tax in the amount necessary to maintain adequate public library service. The special tax levy that may be levied by the governing body of a county may not exceed 5 mills on the dollar on all property in the county. The special tax that may be levied by the governing body of a city may not exceed 7 mills on the dollar on all property in the city.*

Mont. Code Ann. § 22-1-304 (1999) (emphasis added).

[P17] In 2001, the legislature removed the mill levy limits in Mont. Code Ann. § 22-1-304. The present version of the statute now provides more simply:

*Subject to 15-10-420, the governing body of a city or county that has established a public library may levy in the same manner and at the same time as other taxes are levied a tax in the amount necessary to maintain adequate public library service.*

[P18] This, however, is not the only change the 2001 legislature made that is germane to funding of public libraries. If it were, a library board's authority to demand unlimited public funds at the expense of other important government programs would be left unchecked. Instead, the legislature also enacted Mont. Code Ann. § 7-6-4035, which provides in relevant part, "The proposed budget and mill levy for *each board, commission, or other governing entity are subject to approval by the governing body.*" (Emphasis added.)

[P19] The legislature also enacted Mont. Code Ann. § 7-6-4036, which provides:

The governing body shall fix the tax levy for each taxing jurisdiction within the county or municipality . . . after the approval and adoption of the final budget . . . at levels that will balance the budgets as provided in 7-6-4034.

Mont. Code Ann. § 7-6-4036(1)(b)-(c).

[P20] Thus, the 2001 legislature in effect upended the funding of public libraries. It went from a scheme in which library boards had complete control over the library budget, but the budget could not exceed the mill limits provided in Mont. Code Ann. § 22-1-304, to a scheme in which there were no mill limits in Mont. Code Ann. § 22-1-304, but the library board's proposed budget was subject to approval by the local governing body.

[P21] As I indicated in 53 Op. Att'y Gen. No. 2 (2009), requiring approval of a proposed budget of a local board (in that case, hospital districts) by the local governing body, as Mont. Code Ann. § 7-6-4035 does, would be a meaningless exercise if the local board could still require the governing body to approve its budget proposal without change. See 53 Op. Att'y Gen. No. 2, ¶ 12 (2009). This logic applies with equal force to library boards. And, as stated in 53 Op. Att'y Gen. No. 2, it is presumed the "legislature does not pass meaningless legislation." 53 Op. Att'y Gen. No. 2, ¶ 12 (citing Peris v. Safeco Ins., 276 Mont. 486, 492, 916 P.2d 780, 784 (1996)).

[P22] The Library Board correctly points to previous opinions of this office which conflict with my conclusion in this matter. However, two of the three opinions relied upon by the Library Board were issued prior to the changes to local government finance enacted by the 2001 legislature. To the extent those opinions conflict with the Local Government Budget Act and other provisions of the Montana Code, they are inapplicable to this question. It is worth noting, however, that one of those opinions acknowledged the exact concern I have expressed here and in 53 Op. Att'y Gen. No. 2 (2009), concerning the Library Board's authority to require a governing body to fund the library budget as requested without change. In 48 Op. Att'y Gen. No. 3 (1999), this office

acknowledged that interpreting the statutes at issue to allow a library board to force the governing body to adopt the board's budget beyond the mill levy limit at the time, "would allow library trustees to adopt a budget that could assume the entire general fund levy."

[P23] It should also be noted that this opinion is consistent with the Montana Supreme Court's holding in Trustees of Butte-Silver Bow Public Library v. Butte-Silver Bow County, 2009 MT 389, 353 Mont. 326, 221 P.3d 1175 ("BSB Public Library"), in a couple of significant respects. First, the Court in that matter was dealing largely with the question of whether the Butte-Silver Bow Public Library was, in fact, a "public library" under Mont. Code Ann. § 22-1-301. The county argued that because the library was not a "public library," the library "cannot be regulated under this statutory scheme because the Board is not a board of trustees within the meaning of § 22-1-308, MCA (2007)." BSB Public Library, ¶ 14. Accordingly, the county sought to exercise the authority found at Mont. Code Ann. § 22-1-310 to "appoint and set the compensation of the chief librarian . . ." BSB Public Library, ¶ 16 (quoting Mont. Code Ann. § 22-1-310). This authority, otherwise, belonged to the library board itself.

[P24] The Court concluded that the library met the definition of a "public library" and, in so doing, found that the "plain language" of Mont. Code Ann. § 22-1-310 "grants the Board, and not BSB, the authority to determine the salaries and compensation of Library employees. Notably, however, the opinion never touched on the question posed here of whether a library board's proposed budget is subject to approval by the local governing body as provided for in Mont. Code Ann. § 7-6-4035. Indeed, the Court never even cited to Mont. Code Ann. §§ 7-6-4035 or -4036 at all.

[P25] Thus, this opinion and the Montana Supreme Court's opinion in BSB Public Library are consistent: while this opinion holds that the library board's proposed budget is subject to approval by the local governing body, as provided for in Mont. Code Ann. § 7-6-4035, the Supreme Court's opinion in BSB Public Library holds that the *details* of that budget, such as fixing salaries and compensation and prescribing duties of employees, is the sole discretion of the library board, pursuant to Mont. Code Ann. § 22-1-310.

[P26] Finally, to the extent 49 Op. Att'y Gen. No. 16 (2002), failed to address Mont. Code Ann. §§ 7-6-4035 and -4036, its analysis is incomplete and it is inapplicable to the questions presented here.

III.

[P27] Due to my disposition of your second question, your third question is rendered moot. However, it should be noted that under both Mont. Code Ann. §§ 15-10-420 and 22-1-304, it is the “governing entity” or “governing body” that levies the tax, not the library board. Therefore no unconstitutional delegation of the legislature’s taxing authority exists. This same conclusion has been reached in previous opinions of this office. See 53 Op. Att’y Gen. No. 2, ¶ 6 (2009).

IV.

[P28] Your final question is answered in the same manner as the first, by reference to Mont. Code Ann. § 7-6-4431(3) which states, “An election is not required for a governing body to impose less than the maximum number of mills or to carry forward authorization to impose the maximum number of mills in a subsequent tax year as provided in 15-10-420(1)(b).” Accordingly, the City is not obligated to continue to levy a particular number of mills in perpetuity.

THEREFORE IT IS MY OPINION:

1. While the City and County have the inherent discretion not to levy mills, Mont. Code Ann. § 22-1-309 clearly provides that the Library Board alone has the discretion to determine how to use unspent funds in the library reserve.
2. A library board no longer has sole discretion in determining the number of mills that must be levied for support of the library because Mont. Code Ann. § 7-6-4035 clearly provides that the proposed budget and mill levy for each board is subject to approval by the local governing body. Therefore the Library Board cannot require the City or County to levy a certain number of mills in support of the library.
3. Because the City and County have discretion to determine the number of mills necessary, they do not have to levy a particular number of mills in perpetuity.

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Sincerely,

A handwritten signature in black ink, appearing to read 'S. Bullock', with a long horizontal line extending to the right.

STEVE BULLOCK  
Attorney General

sb/zz/jym