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STATE OF MONTANA

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Department of Justice
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VOLUME NO. 57

OPINION NO. 3

CITIES AND TOWNS - The authority for the removal of a trustee appointed to the board of a free public library is a matter to be adopted and implemented by the board of trustees under its statutory duty to adopt bylaws and rules for the transaction of business and the governance of the library;

LIBRARIES – The authority for the removal of a trustee appointed to the board of a free public library is a matter to be adopted and implemented by the board of trustees under its statutory duty to adopt bylaws and rules for the transaction of business and the governance of the library;

STATUTORY CONSTRUCTION – A court should interpret a statute based on its plain language, neither inserting nor omitting language;

MONTANA CODE ANNOTATED – Title 22; Title 22, chapter 1, part 3; Title 22, chapter 1, part 7; Title 7, chapter 4; Title 7, chapter 4, part 41; sections 1-2-101, 1-2-102, 7-4-4103(4), 7-4-4303, 7-4-4303(2), 22-1-303(1), 22-1-308(1), 22-1-308(4), 22-1-308(5), 22-1-309(1), 22-1-402, 22-1-702(1), 22-1-706, 22-1-706(8), 35-1-217(2), 35-1-236(2).

HELD: The authority for the removal of a trustee appointed to the board of a free public library is a matter to be adopted and implemented by the board of trustees under its statutory duty to adopt bylaws and rules for the transaction of business and the governance of the library.

September 27, 2018

Ms. Lori A. Harshbarger
Town Attorney
Town of Twin Bridges
c/o 336 Waterloo Road
Whitehall, MT 59759

Dear Ms. Harshbarger:

[P1] You have requested an Attorney General Opinion, which I have restated below:

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MONTANA DEPARTMENT OF JUSTICE

Legal Services Division ★ Division of Criminal Investigation ★ Highway Patrol Division ★ Forensic Science Division
Gambling Control Division ★ Motor Vehicle Division ★ Information Technology Services Division ★ Central Services Division

Ms. Lori A. Harshbarger

September 27, 2018

Page 2

After the creation of a free public library and the appointment of library trustees, under Title 22, chapter 1, part 3 of the Montana Code Annotated, what is the source of authority and the procedure to remove a trustee from office?

[P2] Twin Bridges' town council passed a resolution to create a free public library under Mont. Code Ann. § 22-1-303(1). The Town is presently in the process of drafting an interlocal agreement pertaining to the Twin Bridges Town Library. The library is not part of a public library district (Title 22, chapter 1, part 7, Mont. Code Ann.) and is not part of a library federation (Mont. Code Ann. § 22-1-402). The draft interlocal agreement allows the Mayor of Twin Bridges to remove an appointed library trustee "for cause" with the consent of the Town Council.

[P3] You inform me that an attorney with the State Library Board has suggested that the Town's proposed provision conflicts with "the statutes protecting Library trustees" within Title 22. Presumably that attorney was referring to Mont. Code Ann. § 22-1-706. You propose instead that the mayor may remove a free library trustee under the general powers granted mayors in Title 7, chapter 4 (Local Government Officers and Employees) and specifically under Mont. Code Ann. § 7-4-4303.

[P4] Your question involves statutory interpretation. A primary rule of statutory interpretation requires courts to apply plain and unambiguous statutes according to their express terms. Mont. Code Ann. § 1-2-101. A court cannot amend, omit or insert terms of a statute. *Id.* The intention of the legislature is to be pursued if possible. Mont. Code Ann. § 1-2-102.

[P5] "When the statute is plain, unambiguous, direct and certain, the statute speaks for itself and there is no need to resort to extrinsic means of interpretation." *In re Marriage of Christian*, 295 Mont. 352, 356, 983 P.2d 966, 968 (1999); *State ex rel. Cobbs v. Montana Dep't of Social and Rehabilitation Servs.*, 274 Mont. 157, 162, 906 P.2d 204, 207 (1995) ("The Court is to effectuate the intent of the Legislature, and if the Legislature's intent can be determined from the plain meaning of the words used in a statute, the courts may not go further and apply any other means of interpretation.").

[P6] Title 22, chapter 1, part 3 of the Montana Code Annotated—titled “Free Public Libraries”—provides for the creation of a public library in the manner chosen by Twin Bridges—by resolution of the governing body. Mont. Code Ann. § 22-1-303(1). Under that statute, the resolution must contain language “to the effect that a free public library is established under the provision of Montana laws relating to public libraries.” *Id.*

[P7] Upon the establishment of a free public library, the mayor, with the advice and consent of the city council or city commissioners, shall appoint a board of five trustees for the library. Mont. Code Ann. § 22-1-308(1). Trustees serve in staggered terms, with each trustee limited to two five-year terms. *Id.*, § 22-1-308(4). Vacancies and replacements are made by appointment in the same manner as the original board. *Id.*, § 22-1-308(5). However, Title 22, chapter 1, part 3 does not provide a specific procedure by which a free public library trustee may be removed from that appointed office.

[P8] As noted above, Montana courts will not insert what has been omitted from a statute. Mont. Code Ann. § 1-2-101; *Sturchio v. Wausau Underwriters Ins. Co.*, 2007 MT 311, ¶ 15, 340 Mont. 141, 172 P.3d 1260. A reasonable reading of the statute, in its entirety, is one method of arriving at legislative intent. *Id.* Because Title 22, chapter 1, part 3 does not include a specific provision for the removal of trustees, I must look to the general authority provided within this part, unless another section of the Code specifically applies to free public libraries.

[P9] The removal of appointed trustees of a public library is not provided for by Title 7, chapter 4 as you contend. While Mont. Code Ann. § 7-4-4303(2) provides that the mayor may suspend or remove “nonelective officers” with the approval of the council, the “officers” referred to are the nonelected officers listed in part 41 that the mayor may appoint. *See* Mont. Code Ann. § 7-4-4103(4) (nonelected officers of towns include one clerk, one marshal, and “other officers necessary to carry out the provisions of *this title*.”) (emphasis added). The board members of a public library established under Title 22 are not “necessary to carry out the provisions of” Title 7. When considering Title 7 in its entirety, the mayor’s power to remove “nonelective officers” under § 7-4-4303(2) does not include the power to remove public library board trustees. To read this statute as broadly as you suggest would be to improperly insert something that the Legislature omitted, in violation of Mont. Code Ann. § 1-2-101. *See also University of Texas*

Southwestern Med. Ctr. v. Nassar, 570 U.S. 338, 353 (2013) (when the language of a statute is clear “it would be improper to conclude that what [the Legislature] omitted from the statute is nevertheless within its scope.”).

[P10] Likewise, the provisions of Title 22, chapter 1, part 7 are not applicable. This section provides for the creation of a “public library district,” including the *election* of a board of trustees for the library district. Mont. Code Ann. § 22-1-706. These elected library district trustees may only be removed “by a court of competent jurisdiction pursuant to state law governing the removal of elected officials.” Mont. Code Ann. § 22-1-706(8). A public library created under part 3, and a library district created under Part 7, however, are different entities. A “public library” under Part 3 means “a library created under (a) [Part 3]; or (b) Title 7.” Mont. Code Ann. § 22-1-301(3) (Part 7 is not listed as an alternative). Here you represent that the town created the free public library under Part 3. And Public library trustees are also appointed by the mayor, not elected. While a “public library” under Part 3 may be “conver[ted] . . . to a public library district,” Mont. Code Ann. § 22-1-702(1), until “conversion” occurs, Part 3, not Part 7, controls.

[P11] I must look to Title 22, chapter 1, part 3, then, to locate authority regarding removal of a trustee. The power to determine the criteria for trustee removal lies with the library board of trustees. The board is specifically provided the authority to “adopt bylaws and rules for its own transaction of business and for the government of the library, not inconsistent with law.” Mont. Code Ann. § 22-1-309(1). The “government of the library” generally includes removal of a trustee. Because the remainder of part 3 fails to specify the manner for removal of an appointed trustee, it necessarily may be implied that the procedure for removal of trustees is a matter to be determined by the board when pursuing its self-governance rulemaking obligation.

[P12] This result complies with Montana law regarding corporate governance. Generally, the removal of a board member, director, officer or agent of a corporation is governed by the corporation’s bylaws, charter, certificate of incorporation or by statute. 19 C.J.S. Corporations §§ 536, 537 (2018). Montana provides corporations (both business and nonprofit) the broad authority to adopt bylaws intended to regulate and manage the affairs of the corporation “consistent with law or the articles of incorporation.” Mont. Code Ann. § 35-1-236(2) and

Ms. Lori A. Harshbarger

September 27, 2018

Page 5

§ 35-1-217(2), respectively. Similarly, where “the legislature has failed to prescribe policy, local boards have inferred general powers to act.” *School District v. Hughes*, 170 Mont. 267, 274, 552 P.2d 328, 332 (1976) (citing *Campana v. Calderhead*, 17 Mont. 548, 44 P. 83 (1896)). In the absence of specific authority to the contrary, a public library board may adopt procedures for the removal of trustees as part of its bylaws.

THEREFORE, IT IS MY OPINION:

The authority for the removal of a trustee appointed to the board of a free public library is a matter to be adopted and implemented by the board of trustees under its statutory duty to adopt bylaws and rules for the transaction of business and the governance of the library.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'T. Fox', with a long horizontal line extending to the right.

TIMOTHY C. FOX
Attorney General

tcf/jss/jym