

Shannon Holdsambeck

From: Staffeldt, Darlene [dstaffeldt@mt.gov]
Sent: Thursday, April 28, 2011 11:55 AM
To: Staffeldt, Darlene
Subject: FW: Bitterroot Public Library

From: Michael Spreadbury [mailto:mspread@hotmail.com]
Sent: Friday, January 07, 2011 11:38 AM
To: Staffeldt, Darlene
Subject: RE: Bitterroot Public Library

Ms. Staffeldt,

I acknowledge your letter indicating duties of the state library.

All state meetings are public, and I wish to make public comment.

A BPL librarian lied to a judge, and lied to law enforcement. Feeling threatened is not being threatened. I have never committed a crime in my life, and free speech includes speech, assembly, and petition are protected actions; **ALL OF WHICH WERE VIOLATED BY THE BITTERROOT PUBLIC LIBRARY. Montana Constitution Art. II s. 7.**

A person's privileges to use a library found in MCA 22-1-311 was VIOLATED by Dr. Bob Brophy; no violation of rules. It violates your mission to the state as a State Library Commission. It is a sad day when a state librarian covers up crime for a member library. Specifically misuse of public funds (coverage of librarian for municipal "insurance").

I would like the access code for the public meeting and make comment Feb. 11 2011. I will follow up with a phone call to obtain public access to this meeting. While my "criminal" matters are under appeal, I do not seek assistance with them.

Michael Spreadbury

From: dstaffeldt@mt.gov
To: mspread@hotmail.com
Subject: Bitterroot Public Library
Date: Fri, 7 Jan 2011 16:45:53 +0000

January 7, 2011

Mr. Michael E. Spreadbury
P.O. Box 416
Hamilton, MT 59840

Re: Bitterroot Public Library

Dear Mr. Spreadbury:

I received and reviewed several emails and some faxed documents that you sent to me, describing disputes you have had with the Bitterroot Public Library. You have suggested that the Montana State Library Commission (Commission) should discontinue the distribution of State funds to the Bitterroot Public Library based on the matters set forth in your emails and faxes. You have also expressed your intention to attend the next meeting of the Commission, which is scheduled for February 11, 2011.

As you probably know, the Commission has statutory authority to provide assistance and advice to all tax-supported public libraries in Montana. See Mont. Code Ann. § 22-1-103. Local public libraries, however, are governed by a board of trustees appointed by the local governing body pursuant to Mont. Code Ann. §§ 22-1-308 and 22-1-309. The Commission has no authority to supervise, control, or otherwise review the day-to-day operations of a local public library.

In addition, while the Commission has established certain general standards for public libraries receiving state funds, the Commission has no authority to withhold the distribution of state aid to a public library that has met all requirements of the state laws and rules that govern distribution of the funds. See Mont. Code Ann. § 22-1-326 and ARM 10.102.4003.

I am also aware, based on public records, that your ongoing dispute with the Bitterroot Public Library has resulted in the filing of several criminal charges against you, and that you have filed a number of lawsuits in the courts in Hamilton, as well as several petitions with the Montana Supreme Court. The courts presiding over those cases are the appropriate forums to address your concerns. The Commission has no authority to consider or resolve the various factual and legal issues that pertain to those court proceedings.

The February Commission meeting will be held by teleconference but for the reasons set forth above the Commission will not entertain a discussion regarding your disputes with the Bitterroot Public Library.

Sincerely,

Darlene Staffeldt
Montana State Librarian

Shannon Holdsambeck

From: Michael Spreadbury [mspread@hotmail.com]
Sent: Monday, December 20, 2010 11:41 AM
To: Staffeldt, Darlene
Subject: Hamilton Library

Dear State Librarian Staffeldt,
Helena, Montana

Thank you for our initial conversation about state funding for the Bitterroot Public Library in Hamilton, Montana.

Prior to your next governing board meeting in February, 2011 I would ask that members of this board review the Documentary "Beneath the Beauty" which is currently in the Montana catalogue, and visually portrays the harassment by Hamilton Police due to sitting peacefully on public property, and attempting to submit a 3 ring binder with plastic covered pages of a letter to President Obama by Peter Pilkey, formally of Hamilton, Montana. The letter can be seen at www.Peterpilkey.com by your board. The movie can be acquired at www.beneaththebeauty.com for less than \$15. The second copy would alleviate the demand on the one copy currently available in Montana.

Upon review of current Montana Code, the library trustees must abide by current law [MCA 22-1-309(9)] "exercise such other powers, not inconsistent with law, necessary for the effective use and management of the library." The actual use by patrons is found in [MCA 22-1-311 (which you will see me read to the Hamilton Police Sergeant, upside down on the Department's counter in the Documentary); privileges can be removed only if the board finds "willful violation" of the rules takes place. When the former director under oath indicates that no staff member had ever asked me to leave the library, and is now removed from service, it is hoped the governing board will not hesitate to take action.

When a library presses charges for trespassing on public property, let's hope the State Librarian and board will take action against the member library.

When a patron asks for help of a librarian (due to not understanding criminal trespass on public property), on a sidewalk, 10 feet away, and the librarian responds that she thinks she knows how to help, the response should not be criminal charges for free speech without credible threat. The librarian "felt threatened" (HPD report # 1-209CR0002579; unsigned by supervisor--illegitimate) and the matter is under appeal. Patron has executed an affidavit that no threat, communicated or otherwise was made to librarian in Hamilton, MT. Librarian testified in Nov. 20, 2009 hearing that she "did not know anything (patron) said" witnessed by 4 adults in hearing room where City attorney acted outside duties [MCA 7-4-4604], led witness, potential tampering with witness (felony). This case is before Montana Supreme Court currently to determine official misconduct of City Attorney. Judge had conversation prior to trial with City Attorney, ex parte and violates patrons due process. The Judge who oversaw the "appeal" is the same who sentenced a Canadian to die who has the right to live in prison, and never allowed a new hearing outside of law, due process for patron. This leaves an order of protection in place for the same librarian who approached, and "hugged" patrons Welmermer less than 10 days from being "stalked" and "assaulted".

My last visit to the State Library, in 2005 I made copies of historic photographs of the Blackfoot river near Bonner for the log jams. I later called Keith Large, Montana DEQ director and informed him that submerged logs were the state's property, and to expect quite a few of them due to 25% sinking from historic booming practices. Due to abandoned property laws, on the river bottom, the state had ownership. This information was exciting to Mr. Large, and was a \$35M windfall to the state of Montana. I did not receive a "thank you", award, or monetary gratuity; now due to the BPL, and their criminal activity, leaves irreparable damage to my character and future. The access to the Bitterroot Public Library was inappropriately removed, and violates the state's mission of access to all Montana residents to public libraries.

Perhaps now the logjam of justice, as in Mr. Pilkey's letter can begin to be broken up by the correct action of this state library board.

I have a Bitterroot Public Library "**Reconsideration Request Form**" dated 7-8-09 which indicates several infractions of the American Library Association by the BPL. It also has violations of the "Library Bill of Rights" to which I will fax today. The Hamilton Montana library never responded to this form. Appropriate Montana Code re: library policy will be included in the fax transmission.

There is no doubt what is the right course of action: [MCA 22-1-326 (State Aid to Public Libraries) all state funds should be removed until Nov. 2014] when as a patron who has committed no crime, or ever asked to leave has access returned to this "public" library. Since the February meeting is a state meeting, it is open to the public, and I wish to attend.

I hope this information, and other testimony will be more than enough to make the correct decision, opposite to the current course of action currently by Montana Libraries.

It is hoped that with consensus with the board, discussions, and/or questions to me, the appropriate course of action will take place. I fear that the responsibilities of this board will fall short due to fear of prior activity in this case. It could not be more clear for me, and should be evident to your library board.

My only fear is: will another state government agency do the wrong thing due to fear from other state officials? Your government service was to do the right thing for the state's libraries, and their patrons.

To that end, I will quote from the Governmental Accountability Act in Montana Code [MCA 2-11-102]:

"...Both the government and the people will have fuller understanding of the limits of the law and the facts to which the law applies. This understanding will benefit both the government and the people by helping to resolve disputes between government servants and the people., without lengthy and costly litigation, by instilling trust in government, and by helping to identify deficiencies in the law so that those deficiencies may be addressed by legislative action." (or State library board policy making)

Best,

Michael Spreadbury

Shannon Holdsambeck

From: Michael Spreadbury [mspread@hotmail.com]
Sent: Monday, December 27, 2010 1:24 PM
To: Staffeldt, Darlene
Subject: Bob Brophy

Dear Ms. Staffeldt,
Montana State Librarian

In the statutes for library function in Montana, it includes abiding by law:

MCA 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:*

(1) adopt bylaws and rules for its own transaction of business and for the government of the library, not inconsistent with law;

The use of all public libraries are not limited, and privileges can only be removed with willful violation of the rules. My question is: if never asked to leave the library, how does one knowingly violate the rules? If a library Director (June 11, 2009), and Board Chairman Dr. Bob Brophy DVM (February 23, 2010) make written notice to remove privileges without explanation, or administrative process, isnt this a violation of law?

MCA 22-1-311. Use of library -- privileges. *Every library established under the provisions of this part shall be free to the use of the inhabitants of the city or the county supporting such library. The board may exclude from the use of the library any and all persons who shall willfully violate the rules of the library. The board may extend the privileges and use of the library to persons residing outside of the city or county upon such terms and conditions as it may prescribe by its regulations.*

Dr. Bob Brophy has taken rights of a patron of a public library, has overseen the charging of trespassing for sitting peacefully on public property, disallowed due process, right to participation, and right to free speech at a public library.

I don't know of a more appropriate time to remove state funds from The Bitterroot Public Library who violates Montana Code Annotated as described above. I am in disbelief of the abuse of law, discretion, and violation of rights by a place who is supposed to uphold these values. If the courts cannot uphold the law in Montana it is time the State Library Commission does this for the public.

Michael Spreadbury

Shannon Holdsambeck

From: Michael Spreadbury [mspread@hotmail.com]
Sent: Monday, January 03, 2011 8:26 AM
To: Staffeldt, Darlene
Subject: fraud at BPL

Dear State Librarian Staffeldt,

It has come to my attention due to viewing public meeting minutes for the Bitterroot Public Library that the library is engaging in municipal fraud by accepting MMIA (Montana Municipal Insurance Authority) coverage for legal liability. The liability arose from a librarian giving false information to the Hamilton, MT police department, outside of "official duties". A library is not a municipality, nor is this library run by a majority of city appointed officials. It is a city-county or county library with funding of \$450,000 from local taxes.

I will fax the meeting minutes from May 20, 2010, a month after the suit was filed against Nansu Roddy for intentional infliction of emotional distress. The case was dismissed due to a prosecutor, best friends with Board Chairman (responsible for placement on board no less) charged felony intimidation with no threats, engaged his local newspaper (on board) to tamper with jury, public.

Now that there is proof of public insurance fraud, a felony offense if over \$10,000 (two cases covered by most expensive firm in Missoula for librarian, one for city attorney outside duties). It is hoped now that state funds can be removed from the Bitterroot Public library through at least 2014.

Expect my fax shortly (8:30 am); am working on raw video of Hamilton Police day of "trespassing" on public property, will make copy and send within two weeks.

Thank you for your service to the public, and I expect this public library held accountable for their transgressions, crimes. Happy new year.

Michael Spreadbury

Shannon Holdsambeck

From: Staffeldt, Darlene [dstaffeldt@mt.gov]
Sent: Friday, January 07, 2011 9:46 AM
To: Michael Spreadbury
Subject: Bitterroot Public Library

January 7, 2011

Mr. Michael E. Spreadbury
P.O. Box 416
Hamilton, MT 59840

Re: Bitterroot Public Library

Dear Mr. Spreadbury:

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Michael Spreadbury

From: dstaffeldt@mt.gov
To: mspread@hotmail.com
Subject: Bitterroot Public Library
Date: Fri, 7 Jan 2011 16:45:53 +0000

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P.O. Box 416
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Sincerely,

Darlene Staffeldt
Montana State Librarian

Shannon Holdsambeck

From: Michael Spreadbury [mspread@hotmail.com]
Sent: Tuesday, January 18, 2011 3:48 PM
To: Staffeldt, Darlene
Subject: access

Ms. Staffeldt,

Hello, trying to gain access to the public meeting Feb. 11, 2011 with the Montana Library Commission.

After speaking with a librarian, she said you were "an angel". The angels I know help people.

Michael Spreadbury

Shannon Holdsambeck

From: Staffeldt, Darlene [dstaffeldt@mt.gov]
Sent: Wednesday, January 19, 2011 9:13 AM
To: Michael Spreadbury
Subject: RE: access

Mr. Spreadbury,

Please know that a press release with access number and link to agenda items (which have not been developed yet) will be going out in approximately a week. I will make sure that you get a copy of the meeting notice at that time. In the meantime, I believe the access number and code will be 1-888-617-3400; 208475#. Again, when the official announcement is released I will make sure that you are copied. Good day from Helena. Sincerely, Darlene Staffeldt

From: Michael Spreadbury [mailto:mspread@hotmail.com]
Sent: Tuesday, January 18, 2011 3:48 PM
To: Staffeldt, Darlene
Subject: access

Ms. Staffeldt,

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Michael Spreadbury

Shannon Holdsambeck

From: Michael Spreadbury [mspread@hotmail.com]
Sent: Thursday, January 27, 2011 2:10 PM
To: Staffeldt, Darlene
Subject: the comment

Dear Ms. Staffeldt,

I have an appointment at 11am on the day of your meeting with the library board.

Could you convey to the board I have no access to the Bitterroot Public Library, and pay taxes to the City of Hamilton, and County of Ravalli for its function. (Note: 65% of the BPL budget [\$450,000] goes to administration).

I was never asked to leave the library, and never was told I was "willfully violating the rules" which is required to legally remove privileges.

The former BPL director felt sitting peacefully on public property, (again a protected right in the US and MT) was criminal trespassing.

The access to libraries by the public is a facet of your state library mission: I would recommend the removal of state funds for these procedural, and constitutional errors on the part of BPL. This library may be a great example; perhaps a learning rubric can be developed: don't violate your patrons rights, or access to a public library in Montana!

That is the extent of the public comment. Thank you.

Michael Spreadbury

Shannon Holdsambeck

From: Staffeldt, Darlene [dstaffeldt@mt.gov]
Sent: Tuesday, February 01, 2011 12:10 PM
To: Michael Spreadbury
Subject: FW: Montana State Library Commission to Meet via Telephone

Mr. Spreadbury, Information regarding the Commission meeting:

FOR IMMEDIATE RELEASE
February 2, 2011

Contact: Sara Groves
(406) 444-5357

Montana State Library Commission to Meet Via Telephone

(HELENA)--The Montana State Library Commission will conduct a meeting via telephone on Wednesday, February 9, 2011 from 2 - 3p.m. For agenda and related meeting materials, please visit:
http://www.msl.mt.gov/About_MSL/commission/mtgmaterials.asp.

The Montana State Library Commission meets six times per year. State Library Commissioners are Chairperson Donald Allen of Billings; Bonnie Allen of Missoula, Dean of Libraries at the University of Montana; Marsha Hinch of Choteau; Denise Juneau of Helena, Superintendent of Public Instruction; Lee Phillips of Butte; Richard Quillin of Whitefish; and Anita Scheetz of Sidney.

Through its statewide programs, the Montana State Library empowers Montanans; enhances learning in families and communities; builds 21st Century skills; and provides opportunities for civic participation. For more information about the Montana State Library, visit <http://msl.mt.gov>.

Members of the public interested in joining the conference call will need to contact Marlys Stark at (406) 444-3384 by 5 p.m. on February 8, 2011.

-END-

Sincerely, Darlene Staffeldt

Shannon Holdsambeck

From: Staffeldt, Darlene [dstaffeldt@mt.gov]
Sent: Tuesday, February 01, 2011 12:12 PM
To: Michael Spreadbury
Subject: RE: the comment

If you are not able to attend the meeting I will read your message to the Commission at the time provided for Public Comment. Darlene

From: Michael Spreadbury [mailto:mspread@hotmail.com]
Sent: Thursday, January 27, 2011 2:10 PM
To: Staffeldt, Darlene
Subject: the comment

Dear Ms. Staffeldt,

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That is the extent of the public comment. Thank you.

Michael Spreadbury

Shannon Holdsambeck

From: Michael Spreadbury [mspread@hotmail.com]
Sent: Friday, March 04, 2011 3:56 PM
To: Staffeldt, Darlene
Subject: hope I catch you

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Ms. Staffeldt,

Hope I catch you before the weekend. I wanted to thank you for sharing my comments to the State library commission.

Today, I filed a \$22M case: Spreadbury v. Bitterroot Public Library et. al. in the 21st District court. As you may remember, I tried to place a publication in this library in the summer of 2009. I then sat on the public property outside the library after being "banned" by the now vacated director, outside Montana law MCA 22-1-311 (Use of library--Privileges).

The library decided that no administrative remedy should be afforded to me to answer the arbitrary removal of my privileges, or for the submission.

This might be a learning moment, and encourage member libraries to uphold constitutional rights, and ALA provisions, even common decency.

I don't think defaming people is a business of a public library. The submission is linked below on one of my blogs, and has been read by millions for the sole reason that it was **Banned from the Bitterroot Public Library**.

What role can the state library board, state librarian perform to ensure no library in Montana operates like BPL?

Michael Spreadbury

<http://recnmontana.blogspot.com/2011/02/reason-not-to-recnmontana.html>

Letter to the President of the United States from Montana 2009

Shannon Holdsambeck

From: Michael Spreadbury [mspread@hotmail.com]
Sent: Friday, April 22, 2011 7:47 AM
To: Staffeldt, Darlene; Cooper, Bob
Cc: salllakecity@lc.fbi.gov; askdoj@usdoj.gov; chauser@kecl.com; michael@bitterrootstar.com
Subject: FW: Sreadbury v. City, Library, et.al.

Dear Darlene Staffeldt,
Montana State Librarian

Bob Cooper, Chairman
Montana State Library Commission

I am forwarding a message from William L. Crowley conveying that their client, Bitterroot Public Library, Hamilton, MT is accepting fraudulent public funds for their legal defense. This is the second time an ineligible INDEPENDENT library district per MCA 22-1-601(3)(e) is accepting legal representation as a municipality. As you are probably aware, a library district is not a municipality, and does not pay into the MMIA for "coverage" from that corporation who exclusively protects municipalities in the State of Montana.

With this knowledge, action is required, either the removal of state funds to Bitterroot Public Library, or your resignation for failure to take action after several requests.

I am giving permission for this information to be made public.
Your constituent,

Michael Spreadbury

From: BCrowley@boonekarlberg.com
To: mspread@hotmail.com
CC: npjones@boonekarlberg.com; sholdsambeck@boonekarlberg.com
Date: Thu, 21 Apr 2011 11:35:49 -0600
Subject: Sreadbury v. City, Library, et.al.

Your phone message to the paralegal for Tasha and I was referred to me for response. We disagree with you that state law claims can not be removed to federal court under the circumstances of this action. A defense for the Library is being provided by the Montana Municipal Interlocal Authority. We do not share your concerns with Tasha representing Defendants in the action.

William L. Crowley

201 West Main St., PO Box 9199
Missoula, MT 59807
406.543.6646
www.boonekarlberg.com

Shannon Holdsambeck

From: Staffeldt, Darlene [dstaffeldt@mt.gov]
Sent: Friday, April 22, 2011 10:42 AM
To: Michael Spreadbury
Subject: RE: Sreadbury v. City, Library, et.al.

Mr. Spreadbury:

Thank you for your email inquiring about the Bitterroot Public Library. The State Library Commission and the State Library have no authority to dictate how or from what source a public library or library district obtains its insurance coverage. I'm sorry I can't be of more assistance.

Sincerely, Darlene Staffeldt

Shannon Holdsambeck

From: Michael Spreadbury [mspread@hotmail.com]
Sent: Friday, April 22, 2011 12:50 PM
To: Staffeldt, Darlene
Subject: RE: Sreadbury v. City, Library, et.al.

Dear Ms. Staffeldt,

When a library accepts fraudulent public monies, you have every ability to do something about it. Will you look the other way while a library takes away privileges outside of law, charges trespassing on public property, and defames a resident, goes against library mission?

Its really easy to say It is not your authority, so do you condone this practice?

Lets just say I am disgusted in you, this library, and the daylight crime that goes on here. This is a member library in your system--deal with it.

Michael Spreadbury

From: dstaffeldt@mt.gov
To: mspread@hotmail.com
Subject: RE: Sreadbury v. City, Library, et.al.
Date: Fri, 22 Apr 2011 16:42:16 +0000

Mr. Spreadbury:

Thank you for your email inquiring about the Bitterroot Public Library. The State Library Commission and the State Library have no authority to dictate how or from what source a public library or library district obtains its insurance coverage. I'm sorry I can't be of more assistance.

Sincerely, Darlene Staffeldt

Shannon Holdsambeck

From: Michael Spreadbury [mspread@hotmail.com]
Sent: Friday, April 22, 2011 1:07 PM
To: Staffeldt, Darlene
Cc: Cooper, Bob
Subject: Crime

Dear Honorable Montana Library folks:

When a state librarian says BPL can choose any insurance coverage they want, means I DONT CARE IF THEY COMMIT CRIME, I SIT AT THE TOP AND THIS HAS NO BEARING ON US.

Montana is ranked 48th in the lower 48 because of courageous people like you who allow crime, victimizing the public and retains a paycheck. This is condoning the abuse of library users, taxpayers, and negligence as public officials.

Michael Spreadbury

Shannon Holdsambeck

From: Michael Spreadbury [mspread@hotmail.com]
Sent: Friday, April 22, 2011 1:16 PM
To: saltlakecity@ic.fbi.gov; askdoj@usdoj.gov
Cc: Staffeldt, Darlene
Subject: FW: Sreadbury v. City, Library, et.al.

Dear DOJ,

Here, the state librarian condones crime on behalf of her library system in Montana. MMIA is for municipalities (hence Montana Municipal Interlocal Authority) not independent library districts. Public funds are being used fraudulently; this is your top criminal priority. Show me some fireworks in April, these scumbags, and white collar criminals are covering for each other. I've charged the Bitterroot Public Library with civil conspiracy, what about the criminal conspiracy that the City of Hamilton, MT is "providing coverage" improperly (for the 4th time with MMIA and this library).

thank you.

Michael Spreadbury

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Shannon Holdsambeck

From: spreadmaster [makinpets@yahoo.com]
Sent: Saturday, April 23, 2011 9:14 PM
To: Staffeldt, Darlene
Subject: The Big Picture : Montana State Librarian a hypocrite

spreadmaster has sent you a link to a blog:

PRICELESS !!

Blog: The Big Picture

Post: Montana State Librarian a hypocrite

Link: <http://wethepeoplemt.blogspot.com/2011/04/montana-state-librarian-hypocrite.html>

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Powered by Blogger
<http://www.blogger.com/>

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Sent: Saturday, April 23, 2011 9:42 PM
To: Staffeldt, Darlene
Subject: mspread@hotmail.com Wanted to share this article from www.mtstandard.com

dstaffeldt@mt.gov,

Well, a library is independent unless they are misusing public funds, then they can be a "municipality".

1996-2011 thank you for your service, as a constituent, I'm asking you to please resign.

State panel backs Butte library's case

Click on the link or Copy and Paste the address into your internet browser window.

http://www.mtstandard.com/news/local/article_f7a0b292-2c86-50bb-9721-128ee3b5de5d.html

- mspread@hotmail.com

This e-mail contains information for the purpose of tracking abuse.
If you believe this email is offensive or may be considered spam, please visit the website <http://abuse.townnews.com> and create an incident report. From this site you can also block messages like this from sending to your email address. Please retain this Mail-ID [26670c3e7438156b244e832a9c3ceacd], it's needed to view information associated with this message. Click the link below to view the incident.
<http://abuse.townnews.com/?MailID=26670c3e7438156b244e832a9c3ceacd>

Read the acceptable use policy: <http://support.townnews.com/docs/aup>

Shannon Holdsambeck

From: Staffeldt, Darlene [dstaffeldt@mt.gov]
Sent: Thursday, April 28, 2011 10:03 AM
To: Staffeldt, Darlene
Subject: FW: fraud at BPL

From: Michael Spreadbury [mailto:mspread@hotmail.com]
Sent: Monday, January 03, 2011 8:25 AM
To: Staffeldt, Darlene
Subject: fraud at BPL

Dear State Librarian Staffeldt,

It has come to my attention due to viewing public meeting minutes for the Bitterroot Public Library that the library is engaging in municipal fraud by accepting MMIA (Montana Municipal Insurance Authority) coverage for legal liability. The liability arose from a librarian giving false information to the Hamilton, MT police department, outside of "official duties". A library is not a municipality, nor is this library run by a majority of city appointed officials. It is a city-county or county library with funding of \$450,000 from local taxes.

I will fax the meeting minutes from May 20, 2010, a month after the suit was filed against Nansu Roddy for intentional infliction of emotional distress. The case was dismissed due to a prosecutor, best friends with Board Chairman (responsible for placement on board no less) charged felony intimidation with no threats, engaged his local newspaper (on board) to tamper with jury, public.

Now that there is proof of public insurance fraud, a felony offense if over \$10,000 (two cases covered by most expensive firm in Missoula for librarian, one for city attorney outside duties). It is hoped now that state funds can be removed from the Bitterroot Public Library through at least 2014.

Expect my fax shortly (8:30 am); am working on raw video of Hamilton Police day of "trespassing" on public property, will make copy and send within two weeks.

Thank you for your service to the public, and I expect this public library held accountable for their transgressions, crimes. Happy new year.

Michael Spreadbury

Shannon Holdsambeck

From: Staffeldt, Darlene [dstaffeldt@mt.gov]
Sent: Thursday, April 28, 2011 10:05 AM
To: Staffeldt, Darlene
Subject: FW: Bitterroot Public Library

From: Michael Spreadbury [mailto:mspread@hotmail.com]
Sent: Friday, January 07, 2011 11:38 AM
To: Staffeldt, Darlene
Subject: RE: Bitterroot Public Library

Ms. Staffeldt,

I acknowledge your letter indicating duties of the state library.

All state meetings are public, and I wish to make public comment.

A BPL librarian lied to a judge, and lied to law enforcement. Feeling threatened is not being threatened. I have never committed a crime in my life, and free speech includes speech, assembly, and petition are protected actions; **ALL OF WHICH WERE VIOLATED BY THE BITTERROOT PUBLIC LIBRARY, Montana Constitution Art. II s. 7.**

A person's privileges to use a library found in MCA 22-1-311 was VIOLATED by Dr. Bob Brophy; no violation of rules. It violates your mission to the state as a State Library Commission. It is a sad day when a state librarian covers up crime for a member library. Specifically misuse of public funds (coverage of librarian for municipal "insurance").

I would like the access code for the public meeting and make comment Feb. 11 2011. I will follow up with a phone call to obtain public access to this meeting. While my "criminal" matters are under appeal, I do not seek assistance with them.

Michael Spreadbury

Shannon Holdsambeck

From: Bruhn, Anastasia [ABruhn@mt.gov]
Sent: Thursday, April 28, 2011 10:35 AM
To: Staffeldt, Darlene
Subject: Emalling: scan0002.pdf
Attachments: scan0002.pdf

Your message is ready to be sent with the following file or link attachments:

scan0002.pdf

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

April 28, 2011

To: Jim Scheier and then perhaps Natasha Prinzling Jones, Boone Karlberg

From: Darlene Staffeldt, Montana State Librarian

Re: summary of email that I will be forwarding to you regarding the Spreadbury request.

First contact from Michael to State Librarian was on December 15, 2010 via phone call, when Michael called asking questions about the State Library's role with local libraries. Brief conversation, clarification of some questions on State aid and public library standards as he had found them from the State Library's website.

Correspondence from Michael Spreadbury to State Librarian and responses from State Librarian to Michael Spreadbury:

12/20/11 email from Michael Spreadbury(MS) to Darlene Staffeldt(DS) Subject: Hamilton Library

12/20/11 FAX from MS to DS Subject: Bitterroot Public Library

12/27/10 email from MS to DS Subject: Bob Brophy

01/03/11 email from MS to DS Subject: fraud at BPL

01/03/11 FAX from MS to DS Subject: Bitterroot Public Library

01/07/11 email from DS to MS Subject: Bitterroot Public Library

01/07/11 email from MS to DS Subject: Bitterroot Public Library

01/18/11 email from MS to DS Subject: access

01/19/11 email from DS to MS Subject: access

01/27/11 email from MS to DS Subject: the comment

02/01/11 email from DS to MS subject: Montana State Library Commission to meet via teleconference

02/01/11 email from DS to MS Subject: the comment

03/04/11 email from MS to DS Subject: hope I catch you

04/22/11 email from MS to DS Subject: FW: Sreadbury v. City, Library, etal.

04/22/11 email from DS to MS Subject: FW: Sreadbury v. City, Library, etal

04/22/11 email from MS to DS Subject: FW: Sreadbury v. City, Library, etal

04/22/11 email from MS to DS Subject: Crime

04/22/11 email from MS to saltlakecity@lc.fbi.gov; askdoj@usdoj.gov, cc'd to DS Subject: FW: Sreadbury v. City, Library, etal

04/23/11 email from spreadmaster to DS Subject: The Big Picture

04/23/11 email from mspread@hotmail to DS Subject: mspread@hotmail.com Wanted...

04/23/11 FAX from WE the People of Montana

F a x

From: Michael E. Spreadbury
PO Box 416
Hamilton, MT 59840
Phone: (406) 363-3877

To: Darlene Staffeldt
Montana State Librarian
PO Box 201800
Helena, MT 59620
Fax: (406) 444-0266

Pages: 1 pg cover, and

Subject: *Bitterroot Public Library*

2pg Reconsideration Request Form

Date: December 20, 2010

4 pg Montana Code: re Library

Urgent []

For Review []

Reply []

Comments:

Dear State Librarian Staffeldt,

Enclosed please find supporting materials to an electronic message sent today. Content descriptions are above.

If a patron cannot have access to a library, then the library does not deserve state funds, it is that simple. Please find the supporting documents.

Thank you, and happy holidays.

Michael Spreadbury

BITTERROOT PUBLIC LIBRARY RECONSIDERATION REQUEST FORM

By completing this form, your request will be considered according to established procedures. Thank you for providing the needed information.

NAME Michael G. Spreadbury
(Must have a current Bitterroot Public Library card and be at least 18 years old)

ADDRESS P.O. Box 416 Hamilton, MT 59840
PHONE 363-6877

MATERIAL FOR COMMENT: Title President Pilkey Letter
(One item per request) Author Roy P. Pilkey
Format other than print? 3 ring binder

COMMENTS ON THE MATERIALS (PLEASE BE SPECIFIC)

This material was brought to the Hamilton Police Department by your director. Ask her why she did this. The 'right to Read' within the ALA guidelines dictate approval. This is a request to uphold your...
(Please use other side for additional comments.)

WHAT ACTION ARE YOU REQUESTING THE LIBRARY TO CONSIDER?

Please uphold "library Bill of Rights" and place on temp. reserve.

Have you read the library's Collection Management policy? YES

Have you discussed the policy with the Library Director? Not able to - "she made up her mind"

Have you read/listened to/viewed the entire content of the material? YES

Have you read any professional critic's reviews of this material? See letters page Bitterroot
Please cite the source or attach a copy. "Breathless" Joan (retired reporter) Rising.org

SIGNATURE [Signature]

DATE 7-8-09

Also,

Review "Freedom to Read" within ALA Library Bill of Rights

Not in public interest to reject material

North Valley Library, Stearnville has accepted material.

Circulation policy. If the ALA rights are not upheld, your library is not following its own policies.

The actions of the director in this matter warrant review. Banning a material and patron violates ALA guidelines for behavioral policies. No warning or request to leave the library was given. I would find a director who respects people's rights. Officials of libraries are public servants (who serve the people).

Library Bill of Rights

- Para # 1. "... in no case should library materials be excluded because of ... social, political views of the authors."
2. "Libraries should provide books and other materials presenting all points of view concerning the problems + issues of our times."
3. "... responsibility to provide public information..."
4. "... resisting abridgement of free expression and free access to ideas."
5. Right to use library not to be denied for social or political views

Montana Code Annotated 2009

[Previous Section](#) [MCA Contents](#) [Part Contents](#) [Search](#) [Help](#) [Next Section](#)

GOVERNMENT ACCOUNTABILITY ACT

2-11-102. Findings and purpose. The purpose of this part is to require government entities to make known the legal authority upon which certain action is based. The benefits of this requirement will be that government officials will articulate and reaffirm their legal authority to act and that both the government and the people will have a fuller understanding of the limits of the law and the facts to which the law applies. This understanding will benefit both government and the people by helping to resolve disputes between government servants and the people, without lengthy and costly litigation, by instilling trust in government, and by helping to identify deficiencies in the law so that those deficiencies may be addressed by legislative action.

History: En. Sec. 2, Ch. 502, L. 1997.

Provided by Montana Legislative Services

Montana Code Annotated 2009

[Previous Section](#) [MCA Contents](#) [Part Contents](#) [Search](#) [Help](#) [Next Section](#)

22-1-326. State aid to public libraries. (1) As used in 22-1-326 through 22-1-331, "public library" means a library created under Title 7 or under 22-1-301 through 22-1-317.

(2) As provided in 22-1-325 through 22-1-329, the commission shall administer state aid to public libraries and public library districts created and operated under part 7 of this chapter. The purposes of state aid are to:

(a) broaden access to existing information by strengthening public libraries and public library districts;

(b) augment and extend services provided by public libraries and public library districts; and

(c) permit new types of library services based on local need.

(3) Money appropriated for the purposes of this section may not be used to supplant general operating funds of recipient public libraries or public library districts. The commission may withhold a distribution to a library or district that receives less support from a mill levy or local government appropriation than its average for the preceding 3 fiscal years if the decrease may reasonably be linked to money received or expected to be received under 22-1-325 through 22-1-329.

History: En. Sec. 2, Ch. 670, L. 1989; amd. Sec. 2, Ch. 356, L. 1991; amd. Sec. 1, Ch. 203, L. 2005.

Provided by Montana Legislative Services

Montana Code Annotated 2009

Previous Section MCA Contents Part Contents Search Help Next Section

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:

(1) adopt bylaws and rules for its own transaction of business and for the government of the library, not inconsistent with law;

(2) establish and locate a central public library and may establish branches thereof at such places as are deemed necessary;

(3) have the power to contract, including the right to contract with regions, counties, cities, school districts, educational institutions, the state library, and other libraries, to give and receive library service, through the boards of such regions, counties, and cities and the district school boards, and to pay out or receive funds to pay costs of such contracts;

(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 required by the library and to insure the real and personal property of the library;

(5) pay necessary expenses of members of the library staff when on business of the library;

(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.

(7) make an annual report to the governing body of the city or county on the condition and operation of the library, including a financial statement. The trustees shall also provide for the keeping of such records as shall be required by the Montana state library in its request for an annual report from the public libraries and shall submit such an annual report to the state library.

(8) have the power to accept gifts, grants, donations, devises, or bequests of property, real or personal, from whatever source and to expend or hold, work, and improve the same for the specific purpose of the gift, grant, donation, devise, or bequest. These gifts, grants, donations, devises, and bequests shall be kept separate from regular library funds and are not subject to reversion at the end of the fiscal year.

(9) exercise such other powers, not inconsistent with law, necessary for the effective use and management of the library.

History: Ap. p. Sec. 5, Ch. 260, L. 1967; Sec. 44-222, R.C.M. 1947; Ap. p. Sec. 1, Ch. 47, L. 1927; re-en. Sec. 5668.17, R.C.M. 1935; Sec. 11-1006, R.C.M. 1947; R.C.M. 1947, 11-1006(part), 44-222.

Provided by Montana Legislative Services

F a x

From: Michael E. Spreadbury
PO Box 416
Hamilton, MT 59840
Phone: (406) 363-3877

To: Darlene Staffeldt
Montana State Librarian
PO Box 201800
Helena, MT 59620
Fax: (406) 444-0266

Pages: 1 pg cover, and
2pg Meeting Minutes

Subject: Bitterroot Public Library

Date: January 3, 2011

Urgent []

For Review [x]

Reply []

Comments:

Dear State Librarian Staffeldt,

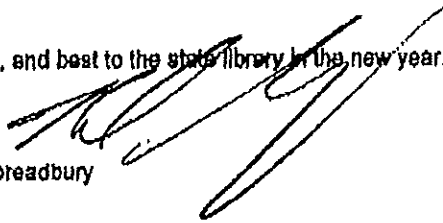
The enclosed two pages from the Bitterroot Public Library May 20, 2010 public meeting. Upon reviewing MMIA's 23 page "memorandum of liability coverage" an independent library does not qualify for coverage.

The city prosecutor, acting outside statutory duties MCA 7-4-4804 is also not eligible for MMIA coverage for not acting ~~within~~ ^{within} scope of duties (here in a civil courtroom leading librarian).

Ms. Staffeldt, this is criminal conspiracy, as well as civil conspiracy to deprive civil rights. All that matters to your office is the public fraud committed by a member library in your district.

I am asking for public funds to be removed through 2014, and all necessary changes to Bitterroot Public Library, done in a very public manner.

Thank you, and best to the state library in the new year.



Michael Spreadbury

P.S. See opening public comment - Ken Bell
~~not library related~~

BITTERROOT PUBLIC LIBRARY
BOARD OF TRUSTEES
MEETING MINUTES
MAY 20, 2010

OPENING

- Chair Bob called the meeting to order at 9:07 AM.
Trustees present: Bob Brophy (Chair), Warren Neyenhuis (Federation Representative),
Bruce Welde (Foundation Liaison & Vice Chair), Ellyn Jones, Carole Olson
Staff present: Gloria Langstaff, Library Director
Public present: Ken Bell, City Attorney
- Adoption of the agenda. (ACTION)
Moved by Warren to adopt the agenda as written. Passed unanimously.
- Public comment:
Ken Bell gave an update on the appeals and the lawsuit related to the library. MMIA will cover Nansu's attorney fees.
- Minutes of previous meeting approval. (ACTION)
Moved by Warren to approve the April 2010 minutes as written. Passed unanimously.
- Claims for May approval. (ACTION)
Moved by Ellyn to approve the May claims as presented. Passed unanimously.

REPORTS

- Financial.
Gloria reviewed the budget year to date and the city's Trial Balance. A draft of the FY 2010/2011 budget was presented in its new format which has two funds, one for operations and one for grants and donations.
- Foundation.
Bruce informed the trustees that the foundation made \$1,220.10 at the garage sale May 15th.
- Friends of the Library.
Gloria met with the Friends at their quarterly meeting on May 13th. They will not have a table at Farmers Market this summer but will look into other venues for book sales in the future. The book sales from the lobby shelf average \$160/month. During National Library Week 100 boxes of donated books were given away free at the gazebo.
- Tamarack Federation.
Ellyn attended the bi-annual meeting in Warren's stead in Superior on April 30th. Gloria also attended. At the morning business meeting the Plan of Service (POS) for FY 2010/2011 was approved. Next year there will be a teleconference September 13th and a two-day meeting in Big Fork on April 29th and 30th. The POS goals/programs available for funding remain the same. The afternoon workshop on early literacy was presented by Cindy Christin of the Bozeman Public Library. Gloria will check into the "Reach Out and Read" program of the Pediatricians Association at Ellyn's suggestion.
- Director.
~The new library assistant, Shannon Smith, has been a wonderful addition to our staff. She works well with other staff, our volunteers and our users, especially the after-school crowd.
~A two-hour staff meeting was held on May 13th. There was a full agenda which included summaries of the MLA conference, the possibility of one hour lunches beginning in September, certification and portfolios.
~Nansu, Sally and Gloria visited the North Valley Library in Stevensville to observe their public computer time management program. Nansu has written a grant application to the Annie Maclay Leffingwell foundation for \$1995.00 to purchase it.

- Changes to the Public Library Standards were discussed, including the requirements for certification and requiring a user survey to every two years instead of annually.
- Gloria visited Bain's high school library in Corvallis to begin brainstorming on how our public library could have a presence in Corvallis.
- There is a request in for chairs from a local bank during their furniture updating project to replace the uncomfortable chairs in the reading area.
- Nansu and Gloria attended the Montana Shared Catalog membership meeting in Billings May 6th and 7th. Due to the repurposing of the interlibrary loan reimbursement program funds, our library's cost for the shared catalog is now \$4,288.12 compared to \$7,026.00 the previous year.
- A reminder was given for the County budget hearing on June 10th at 9:00 AM.

- Trustees.
None.

UNFINISHED BUSINESS

- FY 2010/2011 budget update.
As discussed in the Director's Report above, the new budget will have two separate funds for operating expenses and for grants and donations. Gloria and staff will need to cut more expenses before approval at the June meeting.
- Operations policy update.
Gloria will get staff input on the draft policy before presenting it to the board for approval.

NEW BUSINESS

- **Custodial contract approval. (ACTION)**
Moved by Carol to approve the Northern Maintenance contract as presented. The \$1,200.00/month remains the same as the current year. Passed unanimously.
- **Computer consultant contract approval. (ACTION)**
Moved by Bruce to approve the Top Down Computer Consultants contract as presented. The \$900.00/month remains the same as the current year. Passed unanimously.
- **Increase open hours to 50. (ACTION)**
To meet the minimum hours open for a library our size in the Public Library Standards, the library will remain open until 6:00 PM on Mondays and Thursdays. These times were chosen in response to repeated requests to stay open later during the work week for those working downtown. To fund this increase in hours and to be in compliance with governmental break periods, hourly wage staff will work from 9:30 AM to 6:30 PM Monday through Thursday with a one-hour unpaid lunch break and from 8:30 AM to 5:30 AM on Fridays and Saturdays with a one-hour unpaid lunch break. Staff will also get a 15-minute break during the first four hours and the second four hours as close to the middle of the shifts as can be scheduled.
Moved by Bruce for Gloria to adjust the staff schedule to accommodate the open hours as discussed above without affecting the budget and with the changes to begin the first working day in September 2010. Passed unanimously.
- **Year in Review 2009/2010 report approval. (ACTION)**
Moved by Ellyn to table the report. Passed unanimously.

CLOSING

- The next regular meeting will be Thursday, June 17, 2010 at 9:00 AM in the library. The agenda will include the FY 2010/2011 Preliminary Budget approval. An officers' slate will be created for voting at the July meeting.
- Meeting adjourned at 10:32 AM.

Respectfully submitted, Gloria Langstaff

WestlawNext™

RELATED TOPICS

Federal Civil Procedure

Summary Judgment

Genuine Issue of Material Fact

Sudberry v. Arizona
 United States District Court, D. Arizona, April 21, 2010 Slip Copy 2010 WL 1654140
 Only the Westlaw citation is currently available.
 United States District Court,
 D. Arizona.

Richard SUDBERRY, et al., Plaintiff,

v.

State of ARIZONA, et al., Defendants.

No. CV09-0779-PHX-NVW. April 21, 2010.

Attorneys and Law Firms

David John Sandoval, Carmichael & Powell PC, Phoenix, AZ, for Plaintiff.

Kevin E. O'Malley, Raymond Kenneth Ramella, Gallagher & Kennedy PA, Michele Marie lafrate, lafrate & Associates, Kathleen L. Wieneke, Shannon M. Bell, Jones Skelton & Hochuli PLC, Phoenix, AZ, for Defendants.

Opinion**ORDER**

NEIL V. WAKE, District Judge.

*1 Before the Court is Defendant City of Phoenix's Motion for Summary Judgment (doc. # 47).

I. Legal Standard for Summary Judgment

Summary judgment is proper if the evidence shows there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c). The moving party must produce evidence and show there is no genuine issue of material fact. *Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Cos., Inc.*, 210 F.3d 1099, 1102 (9th Cir.2000). To defeat a motion for summary judgment, the nonmoving party must show that there are genuine issues of material fact. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). A material fact is one that might affect the outcome of the suit under the governing law. *Id.* at 248. A factual issue is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.*

The party seeking summary judgment bears the initial burden of identifying the basis for its motion and those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which demonstrate the absence of any genuine issue of material fact. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). When the moving party has carried its burden, the nonmoving party must produce evidence to support its claim or defense by more than simply showing "there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986). Where the record, taken as a whole, could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue of material fact for trial. *Id.*

On summary judgment, the nonmoving party's evidence is presumed true, and all inferences from the evidence are drawn in the light most favorable to the nonmoving party. *Eisenberg v. Ins. Co. of North America*, 815 F.2d 1285, 1289 (9th Cir.1987). If the nonmoving party produces direct evidence of a genuine issue of fact, the Court does not weigh such evidence against the moving party's conflicting evidence, but rather denies the motion and leaves the issue to the trier of fact for resolution. *Id.*

II. Facts Presumed True for the Purpose of Deciding the City's Motion for Summary Judgment

Following a court hearing on December 10, 2007, seventeen-year-old Daniel Byrd ("Byrd"), who had spent years in Juvenile Intensive Probation Services, standard probation, and juvenile treatment or detention facilities, was released to the care and custody of his older half-brother Stephen Byrd and placed on juvenile probation. On December 30, 2007, Stephen Byrd was arrested and detained in Kingman, Arizona, on drug and weapons charges.

On January 10, 2008, Officer Douglas Beland of the Phoenix Police Department responded to a call from Moon Valley High School regarding an assault and theft purportedly committed by Byrd against his seventeen-year-old ex-girlfriend, Kaitlyn Sudberry ("Kaitlyn"). Kaitlyn and Byrd had dated for a year or two until they broke up in approximately late December 2007.

*2 Officer Beland's report indicates that Kaitlyn said that on January 10, 2008, when she was walking through a school common area between classes, Byrd grabbed her sweatshirt and told her she owed him \$70. When Kaitlyn denied owing him the money, Byrd grabbed her backpack from her shoulder, took her driver's license from it, and returned the backpack to her. He told Kaitlyn he was going to keep the driver's license until she paid him the money and walked away. Kaitlyn reported the incident to the school's assistant principal who retrieved the driver's license from Byrd and returned it to Kaitlyn. Kaitlyn told Officer Beland that she was not injured and her shirt was not damaged, but she wanted to press charges against Byrd for "grabbing her." Officer Beland obtained Byrd's name, address, and telephone number from the assistant principal, but was unable to speak with Byrd at school that day because Byrd had been suspended.

Officer Christopher Granado's report states that on January 11, 2008, Granado was assigned to investigate this case and sent a letter to Kaitlyn's parents to determine whether they wanted to prosecute Byrd or if they were satisfied with the school's intervention. On January 15, 2008, Officer Granado received a message from Kaitlyn's stepmother, Bobbi Sudberry, indicating that she wanted to prosecute Byrd for the January 10, 2008 incident.

On January 18, 2008, Officer Granado went to the school, pulled Byrd out of class, and spoke to him regarding the January 10, 2008 incident. According to Officer Granado's report, Byrd became irritated that Kaitlyn had reported the incident, raised his voice, and told the officer that Kaitlyn had "tried to run [him] over." Upon being informed of his Miranda rights, Byrd stated he did not wish to waive them, and the interview was stopped. Officer Granado informed Byrd that he would be submitting charges against Byrd for theft and Byrd was free to return to class.

On January 22, 2008, on school grounds, Byrd reportedly grabbed Kaitlyn by the straps of her backpack, shook her, and yelled at her. Kaitlyn said Byrd screamed at her, "Why are you pressing charges?" and "You don't care that my life is crap." A witness said Byrd appeared to be very angry and screamed at Kaitlyn, "You need to understand," while Kaitlyn kept yelling, "Let go of me." Teachers interceded, and Byrd was suspended from school. School staff communicated to police that Byrd had "a high tendency for violence."

Also on January 22, 2008, the Phoenix Police Department received a telephone call from Byrd's biological mother, Lucille Revelles, who stated that Byrd was distraught and had made a verbal threat to murder Kaitlyn and take his own life. After the call, Officer James Waik went to Byrd's residence three different times that day to check Byrd's welfare, but Byrd was not there, and his location was unknown.

On January 23, 2008, Sergeant Roger Heinrich met at school with the assistant principal. They spoke with Byrd by telephone. Byrd told them he hated Kaitlyn, but he was not going to kill her. The assistant principal informed Byrd that he was going to be suspended and transferred to a different school. Sergeant Heinrich did not inform Byrd that he was sending police officers to arrest him. Sergeant Heinrich anticipated that

Byrd may have had a weapon. Five officers went to Byrd's residence to arrest him, but they received no answer at the door.

*3 On January 23, 2008, Sergeant Heinrich also contacted Bobbi Sudberry, told her that he thought the threat was real, advised that she obtain an order of protection for Kaitlyn, and recommended keeping Kaitlyn home from school. Kaitlyn stayed home from school that day. Sergeant Heinrich also contacted Byrd's probation officer and informed her of the assaults and threat. Further, Sergeant Heinrich assigned police officers to cover the school throughout the remainder of the school day.

Also on January 23, 2008, Officer Granado spoke with Bobbi Sudberry who told the officer that two additional incidents, an assault and a threat, had occurred off school grounds the day before. Officer Granado determined that these incidents were being investigated by the Assaults Unit. Although Officer Granado was unable to reach the assistant principal, he was able to speak to Officer Thomas Hitaffer, who was at the school and had just called in the assault report. Officers had gone to Byrd's residence, but were not able to find Byrd there. For two days a uniformed police officer patrolled in front of the high school, both to serve as a visual deterrent and to be available for quick response.

The parties have offered no evidence regarding any actions taken or events that occurred after Wednesday, January 23, 2008, other than, tragically, on Monday, January 28, 2008, Byrd murdered Kaitlyn and then killed himself. Sudberry's response to the City's motion for summary judgment states, "Kaitlyn walked home from school the following week and was shot to death by Byrd, just yards from her front door," without evidentiary citation.

Sudberry's expert states that he "reviewed all police reports (including supplements), deposition transcripts, witness statements, photographs, journals, incident reports, drawings and other documents relevant to this case," and found "no indication in the records [he] reviewed that the City of Phoenix Police Department made any effort, whatsoever, to locate and apprehend Daniel V. Byrd, after January 23, 2008." In its reply, the City's affidavit states only that on January 23, 2008, the misdemeanor threat report generated in this case was assigned to a Police Assistant in the Violent Crimes Bureau for follow-up investigation. The City does not contend that efforts to locate and apprehend Byrd were made after January 23, 2008. Therefore, for the purpose of this summary judgment decision, the Court presumes the Phoenix Police Department made no further efforts to locate and apprehend Byrd after January 23, 2008.

On January 27, 2009, Kaitlyn's father, Richard Sudberry ("Sudberry"), individually, on behalf of all statutory beneficiaries, and as the Personal Representative, initiated this case in the Maricopa County Superior Court. On April 16, 2009, Defendants State of Arizona, Cynthia Mancinelli, and John Doe Mancinelli removed the case to this Court.

III. Evidentiary Objections and Motions to Strike Evidence Supporting or Opposing Summary Judgment

*4 LRCiv 7.2(m)(2) permits objections to the admission of evidence offered in support of a motion for summary judgment.

Sudberry objects to the facts contained in paragraphs 22 and 23 of the City's statement of facts as inadmissible speculation. (Doc. # 54.) Paragraph 22 states, "If Byrd had been located, officers might have encountered a barricade situation in which Byrd refused to come outside." Paragraph 23 states, "If Byrd had been located, officers might have encountered a situation involving a shootout between officers and Byrd." These paragraphs refer to Sergeant Heinrich's deposition testimony explaining why he sent five officers to arrest Byrd. The City cited these paragraphs to show that it cannot be assumed that if the City found Byrd, they necessarily would have been able to apprehend him. Sergeant Heinrich's testimony is not necessary to make their point, and both their point and Sergeant Heinrich's testimony have little or no separate probative value. However, the City did not respond to Sudberry's motion to strike these paragraphs. Therefore, Sudberry's objection is sustained.

The City objects to Charles Fraas's affidavit because Sudberry failed to disclose Fraas as an expert witness pursuant to the case scheduling order. (Doc. # 66.) Sudberry's

deadline for full and complete expert disclosure was extended to February 4, 2010, based on a joint motion for extension agreed to by the City. (Doc. # 51.) Sudberry filed his response, including Fraas's affidavit, to the City's motion for summary judgment on January 20, 2010, two weeks before his expert disclosure was due. (Doc. # 53.) Therefore, Fraas's affidavit will not be stricken for failure to provide timely expert disclosure. The City also argues that Fraas's affidavit sets forth only ultimate facts and conclusions of law, which cannot defeat a motion for summary judgment. Although the affidavit opines regarding the City's duty and breach of that duty, it does not address causation or gross negligence requirements, which are not otherwise established. Therefore, the City's objection to Fraas's affidavit is overruled, but whether the affidavit is considered does not affect determination of the City's motion for summary judgment.

Defendant Cynthia Mancinelli objects to the City's separate statement of facts relying on unauthenticated police reports, which include purportedly inadmissible hearsay and hearsay within hearsay, although she does not oppose the City's motion for summary judgment. (Doc. # 55.) Defendant State of Arizona objects to Plaintiffs' reliance on those same unauthenticated police reports. (Doc. # 63.) The State and Mancinelli join each other's objections. (Doc. 58, 64.) Subsequently, the City filed a declaration by the custodian of records for the Phoenix Police Department authenticating the reports attached to the City's statement of facts.

Only admissible evidence can be considered in ruling on a motion for summary judgment. Fed.R.Civ.P. 56(e). Although "unauthenticated documents cannot be considered in a motion for summary judgment," *Orr v. Bank of America*, 285 F.3d 764, 773 (9th Cir.2002), neither the City nor Sudberry challenge the authenticity of the police reports or object to their use for the purpose of this motion for summary judgment, which does not involve Mancinelli or the State. Law enforcement records setting forth "factual findings resulting from an investigation made pursuant to authority granted by law" may be admissible under the public records exception to the general exclusion of hearsay "unless the sources of information or other circumstances indicate lack of trustworthiness." *United States v. Sims*, 617 F.2d 1371, 1377 (9th Cir.1980); Fed.R.Evid. 803(8). No one contends that the Phoenix Police Department or any of the officers who prepared the police reports were unreliable or untrustworthy. Further, there is no embedded hearsay in the context of the City's motion for summary judgment because the police reports are used to prove what the Phoenix Police Department knew or should have known, including what its officers were told by others, and not to prove the truth of the information gathered by the officers. *See id.* at 1376 ("It goes without saying that the broad exclusion of the hearsay rule has no bearing on those statements which are not offered to prove the truth of the matter asserted therein."). The objections by Mancinelli and the State, therefore, are overruled.

IV. Analysis

*5 The Complaint includes three counts: (1) Wrongful Death-A.R. S. § 12-611, *et seq.*; (2) Survival Action-A.R.S. § 14-3110, *et seq.*; and (3) Civil Rights Violation-42 U.S.C. § 1983 (against only Defendant Cynthia Mancinelli). When a person's death is caused by a wrongful act, neglect, or default that would have entitled the deceased person to maintain an action to recover damages if the person had not died, the person or corporation that would have been liable if death had not ensued shall be liable to an action for damages. A.R.S. § 12-611. A wrongful death action survives the death of the person entitled to recover damages under the action and may be asserted by the personal representative of such person. A.R.S. § 14-3110. Thus, Counts One and Two together plead one cause of action against all Defendants, and Count Three is not pled against the City.

A. Law Enforcement Liability

To establish a claim for negligence, a plaintiff must prove four elements:

- (1) a duty requiring the defendant to conform to a certain standard of care;
- (2) a breach by the defendant of that standard;
- (3) a causal connection between the defendant's conduct and the resulting injury;
- and (4) actual damages. Thus, a negligence action may be maintained only if there is a duty or obligation, recognized by law, which requires

the defendant to conform to a particular standard of conduct in order to protect others against unreasonable risks of harm.

Vasquez v. Arizona, 220 Ariz. 304, 311, ¶ 21, 206 P.3d 753, 760 (Cl.App.2008) (internal quotation marks and citations omitted). When a municipality chooses to provide police protection, it has "a duty to act as would a reasonably careful and prudent police department in the same circumstances." *Id.* at 313, ¶ 29, 206 P.3d at 762 (quoting *Austin v. City of Scottsdale*, 140 Ariz. 579, 581-82, 684 P.2d 151, 153-54 (1984)). But a municipality does not have a duty to protect each of its citizens from all harms. *Austin*, 140 Ariz. at 582 n. 2, 684 P.2d at 154 n. 2. "By establishing a police department, a municipality becomes neither a general insurer of safety nor absolutely liable for all harms to its citizens." *Id.*

In *Austin*, when an anonymous caller told the Scottsdale Police Department dispatcher the name of a potential victim and where and when he may be in danger, the dispatcher looked in the city telephone directory and, finding no person with that name listed as living where the caller said the potential victim would be, the dispatcher did nothing further regarding the call. *Id.* at 579-80, 684 P.2d at 151-52. The Scottsdale Police Department violated its own procedure for handling emergency telephone calls requiring immediate attention and assignment to the most readily available unit and acknowledged it should have attempted to inform the victim or his family of a threat. *Id.* at 140 Ariz. at 582, 684 P.2d at 154. *Austin* concluded that a reasonable jury could find that the City of Scottsdale breached its duty by not doing more than it did. *Id.* Relying on *Austin*, Sudberry contends that "a reasonably careful and prudent police department in the same circumstances would have done more" after January 23, 2008, to apprehend Byrd before Kaitlyn's death on January 28, 2008. See *id.*

*6 However, *Austin*, published June 14, 1984, was partially superseded by A.R.S. § 12-820.02, effective August 3, 1984,¹ which provides the City with qualified immunity for specific acts or omissions:

Unless a public employee acting within the scope of the public employee's employment intended to cause injury or was grossly negligent, neither a public entity nor a public employee is liable for:

1. The failure to make an arrest or the failure to retain an arrested person in custody.
-
3. An injury resulting from the probation, community supervision or discharge of a prisoner or a youth committed to the department of juvenile corrections, from the terms and conditions of the prisoner's or youth's probation or community supervision or from the revocation of the prisoner's or youth's probation, community supervision or conditional release.

A.R.S. § 12-820.02. Sudberry agrees that the City is liable here only if the facts demonstrate that the Phoenix Police Department was grossly negligent in its handling of Byrd's threats toward Kaitlyn's life.

"A party is grossly or wantonly negligent if he acts or fails to act when he knows or has reason to know facts which would lead a reasonable person to realize that his conduct not only creates an unreasonable risk of bodily harm to others but also involves a high probability that substantial harm will result." *Walls v. Arizona Dep't of Public Safety*, 170 Ariz. 591, 595, 826 P.2d 1217, 1221 (Cl.App.1991). Gross negligence "fairly proclaims itself in no uncertain terms." *Id.* "It is flagrant and evinces a lawless and destructive spirit." *Id.* Whether gross negligence exists "may be resolved on summary judgment if no evidence is introduced that would lead a reasonable person to find gross negligence." *Id.*; accord *Badia v. City of Casa Grande*, 195 Ariz. 349, 356, ¶ 27, 988 P.2d 134, 141 (Cl.App.1999). To defeat summary judgment, the evidence of gross negligence must be "more than slight" and not "border on conjecture." *Badia*, 195 Ariz. at 356, ¶ 27, 988 P.2d at 141.

B. *Badia v. City of Casa Grande*

In *Badia*, Ida Perez was arrested around 9:45 p.m. after a police officer had seen her back her truck into a parked vehicle. *Id.* at 350, ¶ 2, 988 P.2d at 135. Perez's boyfriend and a female relative of Perez were passengers in the truck at the time of the arrest. Perez was charged with various misdemeanor offenses, including driving with a suspended license, driving under the influence of alcohol, and resisting arrest. After processing, a police dispatcher telephoned Perez's relative to inform her that Perez would be released and wanted the relative to pick her up without the boyfriend. Although the relative conveyed that information to the boyfriend, he accompanied the relative to the police substation. When they arrived at the substation, sometime before 1:00 a.m., the dispatcher immediately released Perez to her relative, who was with Perez's boyfriend. While still inside the substation, Perez and her boyfriend began arguing and pushing each other, which they continued into the parking lot outside the substation. A toxicology report showed Perez's blood alcohol level was between .24 and .26 percent when she left the police substation. *Id.* at 357, ¶ 29, 988 P.2d at 142.

*7 Perez's relative, who did not drink at all that night, drove Perez and her boyfriend directly to a convenience store because Perez wanted to purchase more beer. *Id.* at 351, ¶ 8, 988 P.2d at 136. Perez and her boyfriend then resumed their drinking. At some point Perez told her relative that she had told the police she did not want her boyfriend to pick her up and he had threatened to kill her a month earlier. Within approximately two hours after Perez was released, her boyfriend stabbed her to death at her apartment. *Id.*

The plaintiff's police procedures expert opined that the police department and officers grossly violated generally accepted police custom and practice in several respects, proximately causing Perez's death. The appellate court affirmed summary judgment in favor of defendants, concluding:

The record does not establish, nor could a trier of fact reasonably infer, that Perez's sobriety level or defendants' other alleged violations of police custom and practice proximately caused [the boyfriend] to attack Perez, which resulted in her death. Sheer speculation is insufficient to establish the necessary element of proximate cause or to defeat summary judgment.

Moreover, the police procedures expert's opinions are neither binding nor determinative. Expert opinions, without more, do not necessarily render a plaintiff's allegations of gross negligence triable issues of fact. That is particularly so when, as here, the expert's opinions on the issues of gross negligence and causation are largely conjectural and conclusory.

....

Viewing all the evidence in the light most favorable to plaintiff, we conclude that a reasonable trier of fact could not find gross negligence in this case. Plaintiff failed to present any evidence that defendants "act[ed] or fail[ed] to act" knowing or objectively having reason to know that their actions "create[d] an unreasonable risk of bodily harm to [Perez] ... [and] involve[d] a high probability that substantial harm [would] result." In addition, based on this record, a reasonable trier could not find that defendants' alleged acts or omissions proximately caused Perez's death.

Id. at 357, ¶¶ 29-33, 988 P.2d at 142 (footnote and citations omitted).

C. McCleaf v. Arizona

In *McCleaf*, Josie Sanchez was sentenced to three years intensive probation after pleading guilty to one count of possession of a dangerous drug, a class four felony. 190 Ariz. 167, 168, 945 P.2d 1298, 1299 (Cl.App.1997). The terms of probation included obeying all laws, abstaining from alcohol and drugs, obeying a curfew schedule, and refraining from associating with criminals, probationers, parolees, and drug users. Sanchez violated probation on November 26, 1987, December 14, 1987, and March 9, 1988. *Id.* at 169, 945 P.2d at 1300. Although Sanchez previously had been required to take frequent random urinalysis tests, none were required between April 4, 1988, and September 7, 1988. In August or September 1988, a newly hired probation officer with no prior experience as a probation officer and only a one-week training session was assigned to Sanchez's case.

*8 On September 7, 1988, Sanchez accompanied another probationer to a potential heroin purchase where they did not obtain heroin, but did purchase and consume a quantity of alcohol. Inebriated, Sanchez drove a jeep into a stucco fence. When police officers administered field sobriety tests to Sanchez, they noted she was almost too intoxicated to stand. She became disorderly and uncooperative and had to be handcuffed and forced into a patrol car. Subsequent testing indicated Sanchez's blood alcohol content to be more than twice the legal limit. Because Sanchez misled investigating officers as to her true identity, the officers did not learn she was on intensive probation and released her after citing her for driving under the influence of alcohol.

Later that evening, Sanchez contacted her surveillance officer and admitted to the citation for driving under the influence of alcohol. The surveillance officer reported the incident to her probation officer, who filed a petition to revoke probation. The petition recommended the court issue a summons requiring Sanchez's attendance at the revocation arraignment rather than issuing an arrest warrant. She made her initial appearance September 19, 1988, and, on September 29, 2008, admitted to all the violations except one. Her disposition hearing was scheduled for October 19, 2008, and she remained out of custody, by court order, pending disposition.

In the early afternoon of October 14, 1988, Sanchez accompanied another probationer to purchase alcohol. After a day of heavy drinking, she crashed the Cadillac she was driving into two parked cars. Shortly thereafter, she disregarded a stop sign and collided with a small Chevrolet. The collision killed the driver's six-year-old son and injured the driver and her ten-year-old daughter.

The driver brought an action against the state, claiming gross negligence in its supervision of Sanchez's probation and in its failure to take her into custody following her probation violation. The driver alleged that, but for the state's gross negligence, Sanchez would have been in custody on October 14, and thus would not have killed her son and injured her and her daughter. The trial court directed a verdict in favor of the state, holding that there was insufficient evidence of gross negligence and insufficient evidence that any of the state's purported negligent acts were the proximate cause of the accident. *Id.* at 170, 945 P.2d at 1301. The appellate court affirmed, holding that the judge's decision not to incarcerate Sanchez became a superseding cause of harms to the plaintiff and precluded assignment of liability to the probation officers.

In addition, the plaintiff asserted that the probation officers' supervision of Sanchez while she was on intensive probation and the state's hiring and assignment of the inexperienced probation officer was negligent. The appellate court found the directed verdict to be proper because to do otherwise would have required the jury to speculate on causation:

*9 In order to find that different supervisory measures would have prevented the fatal accident, the jury would have had to speculate that the alternative measures would have been successful. Plaintiff did not prove that other programs, or a different probation officer, would have kept Sanchez from reoffending.

Id. at 172, 945 P.2d at 1303.

D. Gross Negligence

Sudberry's police procedures expert opined that "for more than 4 days following January 23, 2008, the City of Phoenix Police Department failed to act in a reasonable and careful manner to protect Kaitlyn Sudberry from a specific threat of lethal harm from an identified potential perpetrator" and "the Phoenix Police Department's failure to make any effort, whatsoever, to locate and detain Daniel V. Byrd after January 23, 2008, particularly in light of the potentially lethal nature of his threats, constituted a gross deviation from the standard of care that would have been exercised by a careful and prudent police department under similar circumstances." But expert opinions do not necessarily establish triable issues of fact, particularly where, as here, the expert's opinions are largely conjectural and conclusory. See *Badia*, 195 Ariz. at 357, ¶ 30, 988 P.2d at 142.

Sudberry does not dispute the care with which the Phoenix Police Department conducted its investigation before January 24, 2008. Before January 24, 2008, the Phoenix Police Department notified Kaitlyn and her family of the threat, including suggesting to Kaitlyn's stepmother to keep Kaitlyn home from school. Police officers went to Byrd's residence four different times but were unable to find him. A police officer contacted Byrd's probation officer. Police officers were stationed at Kaitlyn's school for two days. Sudberry offers no basis for concluding that failing to conduct further investigation from Thursday, January 24, 2008, through Sunday, January 27, 2008, demonstrates flagrant negligence that "fairly proclaims itself in no uncertain terms." Based on this record, the Phoenix Police Department did not ignore or disregard the threat of harm to Kaitlyn or flagrantly demonstrate "a lawless and destructive spirit." See *Walls*, 170 Ariz. at 595, 826 P.2d at 1221.

Further, the police did not increase the risk of harm to Kaitlyn. They did not induce Kaitlyn's reliance on police protection; rather, they suggested that Kaitlyn's family obtain an order of protection and keep her home from school. They did not release her in a vulnerable condition to the custody of someone who had threatened to kill her. They did not leave her alone without safe transportation or injured without medical assistance. By failing to apprehend Byrd before he harmed Kaitlyn, the Phoenix Police Department certainly did not reduce the risk of harm, but also did not increase the risk of harm.

Thus, a reasonable jury could not conclude that the Phoenix Police Department's failure to "take any steps to locate or apprehend Byrd after January 23, 2008," constitutes gross negligence.

E. Proximate Causation

*10 "Sheer speculation is insufficient to establish the necessary element of proximate cause or to defeat summary judgment." *Badia*, 195 Ariz. at 357, ¶ 29, 988 P.2d at 142. Sudberry's police procedures expert opined that "a reasonably careful and prudent police department in the same circumstances" would have: (1) assigned a detective to immediately conduct a follow-up investigation; (2) informed both uniform officers and investigative personnel of the urgency to locate and apprehend the suspect; (3) used joint shift briefings for patrol and criminal investigative personnel to keep apprised of efforts to locate and apprehend the suspect; (4) contacted the suspect's family members, acquaintances, classmates, etc.; (5) maintained ongoing contact with Kaitlyn and her family; and (6) attempted to gain access to the suspect's known residence to establish whether lethal weapons were present. Completing any or all of the foregoing actions may have increased the likelihood of apprehending Byrd, but predicting that the police would have apprehended Byrd and prevented Kaitlyn's death if only they had conducted some or all of the foregoing actions requires sheer speculation. See *McCleaf*, 190 Ariz. at 172, 945 P.2d at 1303.

Arizona law, as narrowly drawn by the legislature, leaves little play for shifting the costs of crime to police agencies. Even the depth of tragedy in this case cannot override the rule of Arizona law.

IT IS THEREFORE ORDERED that Defendant City of Phoenix's Motion for Summary Judgment (doc. # 47) is granted.

DATED this 20th day of April, 2010.

Footnotes

- 1 A.R.S. § 12-820.02 was added by Arizona Laws 1984, Ch. 285, § 3, in the Second Regular Session of the 36th Legislature, with an effective date of August 3, 1984.

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