



## Public Library Successfully Challenges State Aid Rules

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The Herrick District Library ("Herrick" or "Library") has succeeded in its circuit court action challenging the State Aid Rules enacted by the Department of History, Arts and Libraries ("HAL") and the Library of Michigan.

### A. THE STATE AID RULES

In 2008, HAL and the Library of Michigan began the process of promulgating administrative rules that would regulate the operation of all public and cooperative libraries and impose new conditions on public libraries for receiving state aid. Among the provisions, the State Aid Rules eliminated critical state aid to public libraries that did not provide identical library services to all members of a legal service area population, including non-residents who live in a library's contractual service area.

Specifically, the State Aid Rules required each public library to provide "all" library services to members of its legal service area population:

To be eligible for state aid . . . a public library shall meet all of the following:

A public library shall provide library service to its legal service area population. R 397.31(1). "Library service" is defined as "**all** library services that are offered by a public library," and "legal service area population" is defined as "the total population residing within an area designated for and served by a public library, including the jurisdictional area **and any contractual service area . . . .**" R 397.03 (emphasis added). This means that a public library that fails to provide "all" library services to non-residents in its contractual service area is precluded from receiving any state aid, which is critical for a public library's operation. Not only would the Library lose the state aid for the contracted service area, the Library would lose the state aid for its entire district.

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#### **PRACTICE AREAS**

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## **B. THE LAWSUIT**

As a result, Herrick filed an action in the Ottawa County Circuit Court on October 2, 2009, seeking a judicial declaration that the Department of Education (the agency now responsible for administering the State Aid Rules after the abolishment of the Department of History, Arts and Libraries) and the Library of Michigan (collectively the "Defendants") lacked authority to promulgate the State Aid Rules, that the State Aid Rules are contrary to law, and that State Aid Rules are unconstitutionally vague and overbroad. Herrick challenged the State Aid Rules because, like other public libraries, it desired to have the flexibility to provide fewer library services if contracting municipalities did not want to pay as much as residents in the Library's district, and Herrick did not want to lose state aid for exercising those contractual rights.

Although the Defendants conceded that they did not have the express rulemaking authority to promulgate the State Aid Rules, they argued that they possessed "inferred" rulemaking authority. Specifically, Defendants argued that the ability to promulgate the State Aid Rules could be inferred from two provisions of the State Aid to Public Libraries Act, 89 PA 1977. However, the Court rejected Defendants' position and instead agreed with Herrick's argument that Defendants lacked authority to promulgate the State Aid Rules.

## **C. THE COURT'S RULING**

In ruling in Herrick's favor, the Court held as follows:

This Court holds that in Michigan, the power of an administrative agency to promulgate administrative rules may not be derived from inference from a statute or statutes that govern the agency. In the absence of a clear and express statutory mandate to promulgate administrative rules, an administrative agency is without such power.

Because the Library of Michigan and the Michigan Department of Education conceded that they did not have express statutory authority, and because there is no "inferred authority" to adopt administrative rules, the Library of Michigan and HAL were without authority to enact rules beyond their express statutory authority.

Defendants have appealed the decision. In addition, they have filed a Motion for Stay with the Circuit Court to try to prevent the Court's order from going into effect until the Court of Appeals has issued its opinion. That hearing will be held on October 18.

## **D. IMPACT OF THE COURT'S RULING**

This court ruling gives libraries more flexibility to determine the terms of their contracts with their contracting service areas. With the decreased funding and increased use of libraries during these tough economic times, libraries can now continue to explore different ways to provide library service to neighboring communities for a fair price without placing the primary (if not total) burden of funding on the taxpaying residents of the district or library's jurisdictional area. This ruling prevents an "all or nothing" approach for contracting service areas, which will benefit both the library and their neighboring communities.