

WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION

Form #7

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Effective Date

August 2, 1996

NOTICE OF AN EMERGENCY RULE

AGENCY: Library Commission TITLE NUMBER: 173

CITE AUTHORITY: West Virginia Code 10-1-20

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series I

TITLE OF RULE BEING AMENDED: Administrative Regulations

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: \_\_\_\_\_

TITLE OF RULE BEING FILED AS AN EMERGENCY: \_\_\_\_\_

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

Use additional sheets if necessary

*R. D. Childers*

Signature

Rule Title: Administrative Regulations

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

None

C. Economic Impact on Citizens/Public at Large.

None

Date: June 18, 1996

Signature of Agency Head or Authorized Representative

*R. B. Childers*

DATE: June 18, 1996

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia Library Commission

EMERGENCY RULE TITLE: Administrative Regulations

1. Date of Filing June 18, 1996

2. Statutory authority for promulgating emergency rule:

West Virginia Code, 10-1-20

3. Date of filing of proposed legislative rule: June 18, 1996

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule?

Adopts new language

5. Has the same or similar emergency rule previously been filed and expired?

N/A

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.

To prevent substantial harm to the public interest. Without this

Emergency Rule approximately 54 public libraries would be ineligible

to receive state and/or federal grants-in-aid.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

N/A

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8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

Without rule libraries would be ineligible for federal money and  
could be forced to close.

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**APPENDIX B**

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Administrative Regulations

Type of Rule:  Legislative     Interpretive     Procedural

Agency: Library Commission

Address: Cultural Center  
Charleston, WV 25305-0620

**1. Effect of Proposed Rule**

NO FINANCIAL IMPACT

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	HEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$	\$	\$	\$	\$
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:    N/A

3. Objectives of these rules: To allow public libraries to continue to legally receive state and federal funds.

## West Virginia Library Commission

### Exit Conference

An exit conference was held on April 19, 1996, with the Director, Assistant Director and other employees of the West Virginia Library Commission. All findings and recommendations were reviewed and discussed. The above officials' responses are included in italics in the Summary of Findings, Recommendations and Responses and after our recommendations in the General Remarks sections of this report.

One of the findings cited in the audit was that the Library Commission was making grants to some public libraries illegally, in that they were not meeting the conditions of the Commission's Administrative Regulations for receiving grants-in-aid. Mr. Thedford Shanklin, CPA, Director of the Post Audit Division, stated that he agreed in theory with what the Commission had done, but said that an emergency rule would have allowed the grants to be made legally, and suggested that the Commission investigate getting an Emergency Rule.

When the audit was presented to a Legislative Interim Committee on May 27, 1996, at Berkeley Springs, Mr. Shanklin again suggested that the Commission seek an emergency rule which would allow the libraries in violation of the Administrative Regulations to legally receive grants. The legislators present agreed that this would be the best way to distribute grant funds without violating the Commission's Regulations.

# STATE OF WEST VIRGINIA

## AUDIT REPORT

OF

WEST VIRGINIA LIBRARY COMMISSION

FOR THE PERIOD

JULY 1, 1978 - JUNE 30, 1995



OFFICE OF LEGISLATIVE AUDITOR

CAPITOL BUILDING

CHARLESTON, WEST VIRGINIA 25305

Agency's Response

Agency did not respond to the audit recommendation. (See pages 28-31.)

Maintenance of Effort Waiver

4. The Commission utilized a Maintenance of Effort Waiver for public libraries which did not meet the eligibility requirements for per capita grants-in-aid as specified in the Commission's Legislative Rules and Regulations.

We recommend the Commission comply with Title 173, Series 1, Section 2.2.1 of its Legislative Rules and Regulations or amend its Rules and Regulations if they believe the Maintenance of Effort Waiver is essential.

Agency's Response

If our interpretation of the waiver as an administrative policy is deemed invalid, we will take the necessary steps to comply with the audit recommendation. (See pages 32-37.)

Inventory

5. We could not locate equipment appearing on the Commission's equipment listing. The Commission did not include 67 items of equipment on its inventory listing. The Commission did not tag 66 items of State equipment and did not complete added property forms for 45% of the equipment purchases tested. The Commission did not submit an annual inventory listing to the Purchasing Division of the West Virginia Department of

TITLE 173  
LEGISLATIVE RULES  
LIBRARY COMMISSION

SERIES 1  
ADMINISTRATIVE REGULATIONS

§173-1-1. General.

1.1. Scope. -- Regulations for allocation and administration of library funds and system of auditing and reporting disbursements of those funds and establishment of grace period.

1.2. Authority. -- W. Va. Code §10-1

1.3. Filing Date. -- March 26, 1986

1.4. Effective Date. -- March 26, 1986

§173-1-2. Regulations For Use Of Funds For Public Library Service.

2.1. Basic grants-in-aid. -- Will be determined annually by the West Virginia Library Commission from state and federal appropriations and will be made to the regional libraries and public library service centers (library systems). These libraries must have a plan approved annually by the Library Commission. Such grants-in-aid may be used for any public library in the area covered in the approved plan, but may be used only for the following purposes:

(a) Salaries of professional librarians;

(b) Salaries of library assistants who hold a bachelor's degree from an accredited college or university;

(c) Salaries for all other personnel, i.e., bookkeepers, bookmobile drivers, clerks, janitors, etc.;

(d) Books and other library materials;

(e) Equipment;

(f) Travel expenses for staff and library board members to attend meetings, workshops and conferences called by the Library Commission and any other professional institute, conference or extension activities approved by the library board;

(g) Audits required by the Library Services and Construction Act, when performed by the State Tax Commissioner, or any accountant appointed by the State Tax Commissioner;

(h) Matching payroll taxes, retirement matching and all other current operating expenses approved by the library board;

and

(i) Graduate fellowships for candidates for Master of Library Science degree subject to the following regulations:

(1) Must attend a school accredited by the American Library Association;

(2) Must hold a bachelor's degree from an accredited college or university;

(3) Amount of the grant to be determined by the sponsoring agency, but may not exceed the beginning salary for a library assistant, which has been approved by the West Virginia Civil Service Commission;

(4) The grant will be made on the condition that the trainee agrees to return to the sponsoring agency for at least two (2) years following receipt of the degree. If a position with the sponsoring agency is not available, the trainee may seek employment in any public library in West Virginia for two (2) years. If no employment is available at a salary commensurate with the trainee's education, repayment of the grant may be waived at the discretion of the Library Commission; otherwise the grant must be repaid to the sponsoring agency;

(5) Applications to the public library board will be made on forms and in such manner as described by the Library Commission;

(6) Grant payments may not exceed twelve (12) months, or the academic year of the institution at which the trainee is enrolled, whichever is less; and

(7) The trainee must receive a degree from the library school within eighteen (18) months, absent reason accepted by the Library Commission. For example, illness or illness in the family may delay or make it impossible to receive a degree. Payment may be waived if there is a reason which is acceptable to the Library Commission. If it is necessary for a grant to be repaid by a trainee, the Library Commission will make necessary adjustments in reports to the United States Government. In all cases possible, the Library Commission will credit the sponsoring agency with any funds which are not required to be refunded to the United States Government if the grant was originally made from the basic grant-in-aid.

2.2. Minimum requirements for public libraries to earn grants-in-aid. The Library Commission shall determine by evaluation visits and required reports whether public libraries meet the requirements of the West Virginia State Plan. Any library failing to meet such requirements shall not be eligible for grants-in-aid.

2.2.1. Requirements for public libraries to qualify as regional libraries, public library service centers (library

systems) or designated recipients of grants-in-aid.

(a) The public library must be organized and must operate under a legally-appointed library board in accordance with sections one through eleven, article one, chapter ten of the West Virginia Code.

Public library boards receiving appropriations from governing authorities must serve as a disbursing agent, as described in paragraph two, section two, article one, chapter ten of the West Virginia Code.

A public library organized as defined in section nine, article one, chapter ten is defined as a corporation. As such, if the service center library board of directors desires coverage of employees, which designates the library board of directors as the coverage group, to the State Auditor. For coverage under the Public Employees Retirement System, the library board of directors must apply to the Public Employees Retirement System.

(b) If the public library is organized and operating under a special law, that law must provide that:

The library board members are appointed by one or more of the following governing authorities: County court, governing body of any municipality, county board of education;

The library board members are appointed for specific terms and elect officers annually;

The library board is governed by bylaws, rules and regulations which it has adopted for the administration, supervision and protection of the library and all property belonging thereto;

The library board shall deposit and disburse through its designated bonded officer from the library board's bank account, all funds appropriated and collected for public library purposes; libraries designated by the Library Commission as service centers prior to January 1, 1969, excepted; and

The library board is empowered to erect upon ground secured through gift or purchase an appropriate building for use of the library.

(c) The designated public library or any regional library in operation prior to January, 1967, excepted, must assure the Library Commission that it has an operating budget from local funds (exclusive of capital expense) of one dollar (\$1.00) per capita or twenty-five thousand dollars (\$25,000), whichever is greater. Through interim steps developed in consultation with the Library Commission, the public library must have an annual operating budget from local funds of two dollars (\$2.00) per capita for the county population in which the library is located or seventy-five thousand dollars (\$75,000), whichever is greater, by 1975. A regional library must have an annual operating budget from local funds of one dollar (\$1.00) per capita or fifty

thousand dollars (\$50,000), whichever is greater; by 1975. Public libraries newly designated as grant-in-aid recipients must achieve the two dollars (\$2.00) per capita within five (5) years of first grant award.

(d) At least sixty-six and two-thirds percent (66 2/3%) of the operating budget must be available from tax funds.

(e) The public library must have on the staff a full-time professionally-trained librarian. A service center or regional library not now meeting this requirement must meet such requirement by July 1, 1972. Such librarian must hold a degree in library science from a library school accredited by the American Library Association. Incumbent regional librarians as of July 1, 1967, will be considered professionally trained if they hold a bachelor's degree from an accredited college or university, have at least thirty (30) hours in library science, and have been a regional librarian in West Virginia for at least five (5) years. All service center libraries and all regional libraries must have at least two (2) full-time professional librarians by July 1, 1975. All libraries receiving grants-in-aid must be open to the public a minimum of forty (40) hours weekly.

(f) The librarian for the public library will be required to attend planning meetings, workshops and conferences called by the Library Commission.

(g) The public library must provide free service to all residents of the area included in the plan submitted by the regional library or service center and approved by the Library Commission; and must provide advisory service and book credits to public libraries eligible under the plan.

(h) The Library Commission will officially designate service centers and other qualifying public libraries for receipt of grants. All funds appropriated for library purposes must be administered and disbursed by the public library board so designated.

(i) Local operational funds shall not be less than the amount received during the previous year. Grants are established to supplement service and are not intended to reduce the amount of local funding. Should local funding be less than in the proceeding year, the library will be ineligible for grants-in-aid. Funds remaining in the library's account at the end of the fiscal year must be explained to the Library Commission in order to retain eligibility for grants-in-aid.

(j) Failure of an established regional library, public library service center (library system) or designated recipient of grant-in-aid to meet the eligibility requirements shall result in the following actions:

(1) The library will notify the Library Commission in writing of the requirements which are not met. Notification

should be made with the annual financial report to the Commission.

(2) The Library Commission will review the status of the library and may grant a waiver of requirements for the ensuing fiscal year. The Commission may request additional documentation from the library of their attempts to meet the eligibility requirements.

(3) When a waiver is granted, the library will relinquish all budgetary and program review authority to the Library Commission until such time as eligibility requirements are met.

(4) Eligibility requirements shall be reviewed each fiscal year. The term of the waiver shall be for one year. Libraries still failing to meet the requirements must reapply for the waiver condition.

(jk) The mandatory functions of a regional library, service center and designated public library, where applicable, are as follows:

To expend the grant-in-aid funds to benefit all residents of the area assigned;

To file a plan for assisting each affiliate library located in the counties assigned, based on a joint agreement between the libraries. Said plan to be filed no less than ninety (90) days after the beginning of the fiscal year (use forms WVLC 300 and WVLC 301);

To operate a neighborhood-style bookmobile if service is requested by the local community and funds are available. Grant-in-aid funds may be used;

To filter special requests for most interlibrary loans originating in the assigned area for bibliographic accuracy before turning to the statewide WATS lines or teletype. Emergency requests can be sent directly to the Library Commission;

To employ a staff member as a resource librarian making, at least, quarterly visits to affiliate libraries. Said staff member would advise on library management details where needed. When more than one hundred thousand (100,000) persons are served by a center library, a full-time resource person, professionally-trained, must be made available;

To account for any amount of funds to assist with administration of the regional or service center library but, in no instance, shall this exceed twenty percent (20%); and

To offer a minimum of forty (40) hours of service at the headquarters library.

2.2.2. Requirements for public libraries which are not regional, service center or grant-in-aid libraries.

(a) The public library must be organized and must operate under a legally-appointed library board, in accordance with sections one through eleven, article one, chapter ten of the West Virginia Code, or if the public library is organized under special law, that law must have the same provisions as are enumerated under 2.2.1(b) of this section of the regulations.

(b) The public library must have a minimum annual operating budget of five thousand dollars (\$5,000).

(c) The public library must be open at least thirty (30) hours per week.

(d) The public library must purchase two hundred (200) recently published books per year, or pay personnel.

(e) The public library must, in addition to buying two hundred (200) currently published books per year pay personnel at least minimum state wages.

(f) The public library must be open free to all residents of the county.

(g) The public library must be a member of a system which meets requirements under section one of the regulations.

2.2.3. Provisions for direct public library service from the Library Commission.

The Library Commission staff will serve in the same capacity as a public librarian who manages a regional or service center for public libraries not meeting the requirements for regional or service centers and not a part of a system.

2.3. Financial accounting, regional libraries and library service centers (library systems). All accounting and fiscal procedures must include provisions and/or records, in a form acceptable to the Library Commission, to substantiate the following:

2.3.1. The fiscal year begins with the first day of July and ends with the thirtieth day of June.

2.3.2. No member of a public library board of directors is interested directly or indirectly in any claim or contract with the public library except for lawful compensation of expenses incurred. This should not mean that a board member may not be a stockholder, officer, or director of a bank designated as a depository for the public library.

2.3.3. The board of directors of the public library has designated an officer to perform the duties of the treasurer and

has designated the professional librarian who manages the system as the financial clerk. The financial clerk has been authorized to delegate a staff member to perform the actual accounting. In the event either is temporarily incapacitated, the board may appoint one (1) of its members to serve temporarily in either capacity.

2.3.4. A satisfactory minute book is used for recording minutes of meetings of the board. Minutes show board action on all expenditure schedules.

2.3.5. The financial clerk maintains a distribution ledger which records receipts and itemized payments by classification, as may be required for reporting to the Library Commission.

2.3.6. Provision is made for the signature of the treasurer and as many additional signatures as the library board may require on all voucher checks used in payment of all obligations of the library.

2.3.7. At least thirty (30) days prior to ensuing fiscal year, an estimate of the receipts and appropriations (annual budget) has been prepared on forms prescribed by the Library Commission.

2.3.8. Amendments to the budget at any time during the fiscal year provide for appropriations from additional revenues received.

2.3.9. All incurred obligations in each fiscal year are within the amount authorized by the budget and amendments thereto.

2.3.10. All accounts of the library system are settled on or before July 30th.

2.3.11. Library funds are disbursed only on basis of itemized invoices submitted by claimants, and audited by the board, or the board has designated the financial clerk to audit all invoices before payment.

2.3.12. The payroll is duly certified by the financial clerk in accordance with rates approved by the library board.

2.3.13. If the library board members are reimbursed for travel expenses, such reimbursement is in accordance with rules adopted by the library board.

2.3.14. The treasurer's monthly report shows balance on hand at the beginning of month, receipts during month, withdrawals during month, and reconciliation with bank statement.

2.3.15. A quarterly report has been filed with the Library Commission by the fifteenth day of October, January, April and July, showing receipts and expenditures for the preceding quarter.

2.3.16. All regional, service center and designated public library boards and grant-in-aid recipients in public library boards must maintain accounting records in the library business office, in a form which can be audited, and make them available to the Library Commission, or authorized representative of the State of West Virginia or United States Government on request.

2.3.17. An annual audit of the financial records of the library, either by the State Tax Commissioner or any accountant appointed by the Tax Commissioner. A copy of the audit report has been filed with the Library Commission on or before the thirteenth of September, or any extension of time approved by the Library Commission.

The library board must provide adequate filing equipment for protection, preservation and systematic arrangement of all paid and unpaid bills, canceled checks, bank statements, debit charge slips, contracts and other financial records.

The library board will be required to file with the Library Commission, on forms prescribed by the Library Commission, a financial report of the preceding fiscal year within forty-five (45) days of the close of such fiscal year.

Application for grants-in-aid will be made on forms prescribed by the Library Commission and must be signed by the President of the library board and the chairman of the Library Commission, when officially approved by the state agency.

2.4. Supplementary grants-in-aid to regional libraries and library service centers (library systems) and designated public libraries. After basic grants-in-aid have been made, supplementary grants-in-aid may be made to regional libraries, service system centers and designated public libraries for the following purposes:

2.4.1. Training for state agency staff. -- A portion of the sum available in supplementary grants-in-aid may be expended directly by the state agency to provide graduate training for qualified staff members. The state agency will award the grant directly to the staff member. The amount of the grant shall be determined by the Library Commission, but may not exceed the beginning salary for a library assistant, as approved by the West

2.4. Supplementary grants-in-aid to regional libraries and library service centers (library systems) and designated public libraries. After basic grants-in-aid have been made, supplementary grants-in-aid may be made to regional libraries, service system centers and designated public libraries for the following purposes:

2.4.1. Training for state agency staff. -- A portion of the sum available in supplementary grants-in-aid may be expended directly by the state agency to provide graduate training for qualified staff members. The state agency will award the grant directly to the staff member. The amount of the grant shall be determined by the Library Commission, but may not exceed the beginning salary for a library assistant, as approved by the West

Virginia Civil Service Commission. The same conditions as those outlines in Sec. 2.1, Item 9, a-g will be required, except that application will be made to the executive secretary and the trainee must return to the West Virginia Library Commission or a location appointed by the Library Commission. Civil service regulations relating to the Library Commission staff shall also apply: Civil Service Regulations, Appendix A, Section 9, Educational Leave.

"An agency which subsidizes advanced educational training for state employees may grant educational leave to an employee selected for such training, subject to conditions stipulated by the agency concerned. Such leave shall be considered as continuous employment, except that employees, while on educational leave, shall not accrue sick or annual leave."

2.4.2. For special projects which will extend library service to the unserved or undeserved.

2.4.3. For other programs and purposes. -- Supplementary grants will be made by the Library Commission for other special purposes and needs as determined by the Library Commission to further the development of public libraries.

**§173-1-3. Regulations For Use Of Funds For Public Library Construction.**

3.1. Eligibility. -- Library shall be defined as a "Public Library" in accordance with the definition of "Public Library Services" in Federal Regulations Title 45 -Public Welfare - Chapter 1, Office of Education: "Public library services..... means library services provided by, or on behalf of a public library. The term does not include those library services that are properly the responsibility of the schools."

3.2. Priorities. -- Priorities set by the Library Commission are as follows:

(a) Construction to strengthen units within a library system;

(b) Construction which will provide facilities when none now exist;

(c) Construction which meets minimum American Library Association standards for space and location;

(d) Construction in population growth area;

(e) Construction in potential economic growth area;

(f) Remodeling which is accompanied by a program statement prepared by a professional librarian;

(g) Construction to provide housing for the Library Commission; and

(h) Construction grants will be made by the Library Commission for other special purposes and needs as determined by the Library Commission to further the development of public libraries.

### 3.3. Procedures.

3.3.1. Certification will be required on forms prescribed by the Library Commission that the public library board has been appointed by one or more governing authorities and in such manner as to permit the Library Commission to enter into an agreement with the library board.

(a) Provisions must be made for the library to operate under sections one through eleven, article one, chapter ten of the West Virginia Code; or

(b) If the library is organized and operating under a special law, that law must include all the provisions listed in Section 2.2.1.B of these regulations.

3.3.2. Certification will be required, of the library board, of an operating budget to comply with Library Commission regulations governing standards of service:

(a) When total construction project costs as approved by the Library Commission are four hundred thousand dollars (\$400,000) or more, the library must be managed by a professionally trained librarian; must be open sixty (60) hours per week; must add by purchase at least three thousand (3,000) volumes a year; and must agree to serve as a service center library for at least a county area, if so designated by the Commission;

(b) When total construction project costs as approved by the Library Commission are two hundred thousand dollars (\$200,000) to three hundred ninety-nine thousand dollars (\$399,000), the library must be managed by a college graduate with some library training or experience; must be open to the public forty (40) hours per week; must add by purchase at least one thousand five hundred (1,500) volumes per year; and must agree to operate as an integral member of a regional or service center system;

(c) When total project costs as approved by the Library Commission are one hundred thousand dollars (\$100,000) to one hundred ninety-nine thousand dollars (\$199,000), the library must be managed by a staff member with at least two (2) years of special training after high school, must be open to the public at least thirty (30) hours per week; and must add by purchase at least seven hundred fifty (750) volumes per year. The board must agree to operate the library as an integral part of a regional or service center system; and

(d) All workers staffing the hours indicated in these standards must be paid no less than the state minimum wage scale.

3.3.3. A copy of the feasibility study is to be filed with the Library Commission if proposed construction is the expansion, remodeling or alteration of an existing building. Such study is to be done by a professional librarian or a registered architect.

3.3.4. A program statement must be prepared by the professional librarian for the system and submitted to the Library Commission with the project application.

3.3.5. Preliminary estimates of construction costs including architect's fees, site acquisition, new construction, expansion, remodeling or alteration of existing building, initial equipment and contingency, are to be filed with the Library Commission.

3.3.6. An estimate of total project cost and a statement as to method to be used in providing additional funds, if needed, must be filed with the Library Commission.

3.3.7. A list of initial equipment is to be filed with the Library Commission.

3.3.8. There must be a certification by the library board to the Library Commission of all local funds available from tax levy, bonds and other sources for matching a grant from the Library Commission for this project, including the anticipated date of receipt of funds. An estimate and verification of all local funds available from tax levy, bonds and other sources must be filed with the Library Commission.

3.3.9. A survey and description of the site is to be filed with, and approved by, the Library Commission.

3.3.10. The local library board must agree that construction contracts will be entered into within three hundred sixty-five (365) days following state agency's approval of project. Since all of West Virginia is eligible for assistance under Section 214 of the Appalachian Act, additional time may be granted to complete applications for funds under the Appalachian Act. Copies of all contracts for all work under the approved project must be filed with the Library Commission.

3.4. Opportunity for hearing. -- A local library whose application has been denied by the Library Commission will have an opportunity for a fair hearing before the state agency. Written notice of disapproval will be forwarded to the local library board within ten (10) days following the Library Commission's action. Review of denied application will be made in the following manner:

Within sixty (60) days after receiving notice of the Library Commission's action, a library board may request a review by a mediation committee composed of three (3) professionally trained librarians employed in West Virginia, one (1) to be appointed by the Library Commission, one (1) to be appointed by the President of the Library Association, and one (1) to be appointed by the

library board making the request. No member of the mediation committee can be a member of the regular staff of the Library Commission, nor connected in any way with the library board making the request. The mediation committee will make such recommendations as deemed proper to the Library Commission. The Library Commission will review the denied application and the recommendations of the mediation committee. Written notice of its decision on the application under review will be forwarded to the library board concerned within a reasonable time. This decision shall be final.

3.5. Conformance with the requirements of pertinent Federal Wage and Contract Work Hours Standards Acts. The Library Commission will require assurance that all laborers and mechanics employed by contractors or subcontractors on all construction projects assisted under the Library Services and Construction Act, will be paid wages at rates not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended, and will receive overtime compensation in accordance with, and subject to, the provisions of the Contract Work Hours Standards Act.

### 3.6. Financial accounting.

3.6.1. Local matching funds for construction will be deposited in an account separate from all other funds. A certification by the bank as to the amount of these funds and certification that these funds are free from encumbrances must be furnished to the Library Commission.

3.6.2. Payment of federal and state matching funds on a construction project will be made to local library boards after approval of invoices by the Library Commission and the State Auditor. All contracts should specify that bills will be paid thirty (30) days after invoice. However, local library board must be prepared to meet payments.

3.6.3. A request for a federal and state share will be made on forms prescribed by the Library Commission.

3.6.4. A retainage of ten percent (10%) will be withheld from the federal and state share of each construction project. The creditor's invoice should reflect the total amount due in order to prevent duplication of the retainage.

3.6.5. A copy of weekly payrolls with the required certification in regard to anti-kickback provisions of the Copeland Act must be kept on file by the owner. These payrolls will be checked by the owner against the minimum wage determination for the project and will be reviewed periodically by the Library Commission. Periodic on-the-job interviews will be made by the Library Commission to assure compliance with federal regulations. A copy of this interview will be at the Library Commission. Copies of weekly payrolls will be filed by the owner. A copy of the labor interview will be forwarded to

owner for filing with the payroll for the week.

3.6.6. The portion of the architect's fee, which is paid for supervision, must be based on that portion of the "Contract Completed" at the date of the request.

3.6.7. Any change from the original construction contract must be made by a formal "Change Order" accompanied by a letter of authorization by the library board's president. If the change or addition required additional funds over and above the approved budget, the local library board must certify that the additional funds are available.

3.6.8. All initial equipment purchased under the project must be put on inventory and a copy of the inventory must be filed with the Library Commission.

3.6.9. The ten percent (10%) retainage from federal and state share will be paid only after local architect's certification of completion of the construction contract and after an audit report by the State Tax Commissioner and independent CPA or Registered Public Accountant is filed with the Library Commission. This audit will be made at the expense of the library board and may be a part of the total project cost.

3.6.10. All records pertaining to a construction project must be kept by the owner for at least three (3) years after completion of the project, or until notification that the Office of Education has made a fiscal audit, whichever is later. These records must be made available to the Library Commission or authorized representative of the State of West Virginia or United States Government on request.

#### **§173-1-4. Grace Period For Return Of Library Materials.**

4.1. Each year in April designated National Library Week by the American Library Association and the week in November designated Children's Book Week by the Children's Book Council, Inc., are established pursuant to section eleven, article one, chapter ten of the West Virginia Code, as grace periods during which time library patrons may return any overdue library materials without being subject to prosecution under section eleven, article one, chapter ten of the West Virginia Code, or any fine, penalty or other payment.

#### **§173-1-5. Definitions.**

5.1. "Basic Grants-In-Aid" means grants awarded on a per capita basis for public library service.

5.2. "Supplementary Grants-In-Aid" means additional grants awarded to public libraries meeting requirements for basic grants-in-aid but after such basic grants have been made.

5.3. "A Library System" is a coordinated group of public libraries. A main library or regional library center, managed by

a professional librarian, offers services, usually under an approved plan, to neighboring communities and libraries. These libraries in turn reciprocate through contractual arrangements or cooperative projects.

5.4. "Service Center" is a public library managed by a professional librarian. The service center has a minimum operating budget of one dollar (\$1.00) per capital or twenty-five thousand dollars (\$25,000), whichever is greater, two thirds (2/3) of which is from tax sources, and provides free service to residents of the area included in the plan submitted to the Library Commission.

5.5. "Book Credits" means the number of new books available to a public library when meeting minimum requirements in state regulations.

5.6. "Community Library" is a library which is operated by a community organization, does not operate under a board of directors in accordance with requirements in West Virginia Administrative Regulations, Library Commission, Chapter 10-1, Series I (1967), Sec. 2.2.3, but still offers free service to the public.

5.7. "Direct Service" means service performed by the state agency which ordinarily would be performed by a public library. The term also means service to an individual or community without public library service.

5.8. A "Regional Area" is a geographical area in which library service is performed. A service center or regional center usually coordinates a service. A "Regional Area" may also be interstate as well as intrastate in emphasis. For example, regional service to the blind is performed for West Virginia from a regional center in Pennsylvania. A regional area may mean the whole state when a specific project is conducted which involves several types of libraries.

5.9. "Affiliate Library" is a public library assigned by the Library Commission to a regional and/or service center library for assistance from state grants-in-aid. Affiliates differ from branch libraries in that they have their own management boards and local funds for operations.

5.10. "Administrative Funds" means those funds used to maintain and operate the physical plant, such as utilities, insurance and accounting.



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KEN HECHLER  
Secretary of State

WILLIAM H. HARRINGTON  
Chief of Staff

MARY P. RATLIFF  
Deputy Secretary of State

JUDY COOPER  
Director, Administrative Law

STEPHEN N. REED  
Deputy Secretary of State

PENNEY BARKER  
Supervisor, Corporations

CATHERINE FREROTTE  
Executive Assistant

(Plus all the volunteer  
help we can get)

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0770

Telephone: (304) 558-6000  
Corporations: (304) 558-8000  
FAX: (304) 558-0900

August 1, 1996

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Library Commission

RULE: Amendments, Series 1, Administrative Regulations

DATE FILED AS AN EMERGENCY RULE: June 24, 1996

DECISION NO. 13-96

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be **approved**. A copy of the complete decision with required findings is available from this office.

  
KEN HECHLER  
Secretary of State

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

STEPHEN N. REED  
Deputy Secretary of State

CATHERINE FREROTTE  
Executive Assistant

Telephone: (304) 558-6000  
Corporations: (304) 558-8000  
FAX: (304) 558-0900



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Chief of Staff

JUDY COOPER  
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PENNEY BARKER  
Supervisor, Corporations

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

SECRETARY OF STATE

Building 1, Suite 157-K  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0770

(Plus all the volunteer  
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EMERGENCY RULE DECISION  
(ERD 13-96)

AGENCY: Library Commission  
RULE: Amendments, Series 1, Administrative Regulations  
FILED AS AN EMERGENCY RULE: June 24, 1996

- par. 1 The Library Commission (Commission) has filed the above amendments to an existing rule as an emergency rule.
- par. 2 West Virginia Code 29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [(29A-3-15a(b))].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the thirty-five day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The Commission filed this emergency rule with supporting documents with the Secretary of State June 24, 1996 and with the LRMRC June 24, 1996.

par. 7 It is the determination of the Secretary of State that the Commission has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §10-1-20 reads:

*The West Virginia library commission is hereby authorized and empowered to render such aid and assistance, financial, advisory and/or otherwise, to public, school, county or regional libraries, whether established or maintained by said library commission or not, under such conditions and rules and regulations as the said commission deems necessary to further the interests of the State and best increase the efficiency of the service it is expected to render the public.*

*Having determined that the development and support of such libraries will further the education of the people of the State as a whole and will thereby aid in the discharge of the responsibility of the State to encourage and foster education, the West Virginia library commission is authorized and empowered to pay over and contribute to any board of library directors created and maintained pursuant to the provisions of this article or any special act of the legislature such sum or sums of money as may be available from funds included in appropriations made for the West Virginia library commission for such purpose. The amount of any such payment or contribution by the commission to any such local library board of directors shall be determined in accordance with rules and regulations promulgated by the commission. The library commission shall have authority to promulgate rules and regulations governing the manner in which such amount or amounts of money shall be accounted for and expended.*

par. 9 It is the determination of the Secretary of State that the Commission has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency -- WV Code 29A-3-15(f) defines "emergency" as follows:

*(f) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.*

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Commission are as follows:

An exit conference was held on April 19, 1996 with the Director, Assistant Director & other employees of the WV Library Commission. One of the findings cited in the

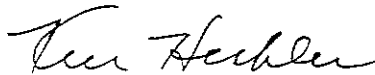
audit was that the Library Commission was making grants to some public libraries illegally, in that they were not meeting the conditions of the Commission's Administrative regulations for receiving grants-in-aid. Mr. Thedford Shanklin, CPA, Director of the Post Audit Division, stated that he agreed in theory with what the Commission had done, but said that an emergency rule would have allowed the grants to be made legally, and suggested that the commission investigate getting an Emergency Rule.

When the audit was presented to a Legislative Interim Committee on May 27, 1996, at Berkeley Springs, Mr. Shanklin again suggested that the Commission seek an emergency rule which would allow the libraries in violation of the Administrative Regulations to legally receive grants. The legislators present agreed that this would be the best way to distribute grant funds without violating the Commission's Regulations.

Without this emergency rule, approximately 54 public libraries would be ineligible to receive state and/or federal grants-in-aid. Without this rule libraries would be ineligible for federal money and could be forced to close.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(f). . . "to prevent substantial harm to the public interest."

par. 14 This decision shall be cited as Emergency Rule Decision 13-96 or ERD 13-96 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Library Commission, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER  
Secretary of State

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SECRETARY OF STATE

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