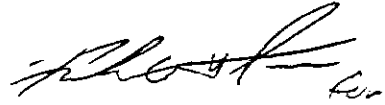


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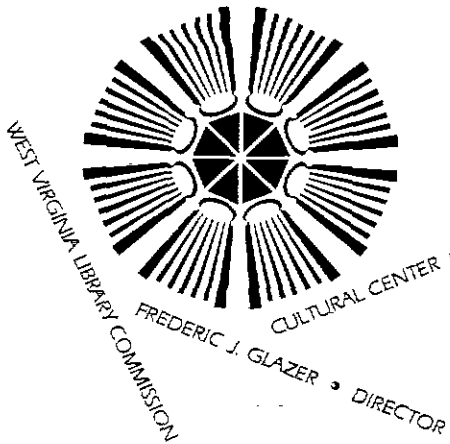
NOTICE OF RULE MODIFICATION

LEGISLATIVE RULE: Regulations for the State Library Commission;
Series 1.;Section 4 (Grace Period).

The above titled rule has been modified as a result of comments
by the Legislative Rule-Making Review Committee and the attached
modifications have been incorporated into the above titled rule
and filed in the Secretary of State's Office on Nov. 12, 1985



Frederic J. Glazer,
Director



CULTURAL CENTER • CHARLESTON, WEST VIRGINIA 25305 • (304) 348-2041

November 7, 1985

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Series I, Section 4. Grace Period for Return of Library Materials.

4.01. Grace Periods.

Each year, the week 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 W. Va. Code, 10-1-11, as grace periods during which time library patrons may return any overdue library materials without being subject to prosecution under W. Va. Code, 10-1-11, or any fine, penalty or other payment.

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Title 173

~~WEST VIRGINIA~~ LEGISLATIVE RULE
LIBRARY COMMISSION
SERIES 1

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Title: Administrative Regulations

Section 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 and related Code citation - Chapter 10-1

1.3 Filing Date - March 26, 1986

1.4 Effective Date - March 26, 1986

Section 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:

1. salaries of professional librarians;
2. salaries of library assistants who hold a bachelor's degree from an accredited college or university;
3. salaries for all other personnel, i.e., bookkeepers, bookmobile drivers, clerks, janitors, etc.;
4. books and other library materials;
5. equipment;

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6. 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;

7. 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;

8. matching payroll taxes, retirement matching and all other current operating expenses approved by the library board;

9. 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 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 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 prescribed by the Library Commission;

6. grant payments may not exceed twelve months, or the academic year of the institution at which the trainee is enrolled, whichever is less;

7. the trainee must receive a degree from the library school within eighteen 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 the West Virginia Code, Chapter 10, Article 1, Sections 1 through 11.

(1) Public library boards receiving appropriations from governing authorities must serve as a disbursing agent, as described in the West Virginia Code, Chapter 10, Article 1, Section 2, Paragraph 2.

(2) A public library organized under Chapter 10, Article 1, is defined in Section 9 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:

(1) 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;

(2) the library board members are appointed for specific terms and elects officers annually;

(3) the library board is governed by by-laws, rules and regulations which it has adopted for the administration, supervision and protection of the library and all property belonging thereto;

(4) 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

(5) 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 \$1.00 per capita or \$25,000, whichever is greater.

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Through interim steps developed in consultation with the Library Commission, the public library must have an annual operating budget from local funds of \$2.00 per capita for the county population in which the library is located or \$75,000, whichever is greater, by 1975. A regional library must have an annual operating budget from local funds of \$1.00 per capita or \$50,000, whichever is greater, by 1975. Public libraries newly designated as grant-in-aid recipients must achieve the \$2.00 per capita within five years of first grant award.

d. At least 66-2/3 per cent 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 30 hours in library science, and have been a regional librarian in West Virginia for at least five years. All service center libraries and all regional libraries must have at least two full-time professional librarians by July 1, 1975. All libraries receiving grants-in-aid must be open to the public a minimum of 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 preceding 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. The mandatory functions of a regional library, service center and designated public library, where applicable, are as follows:

(1) to expend the grant-in-aid funds to benefit all residents of the area assigned;

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

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 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.

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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 10 days following the Library Commission's action. Review of denied application will be made in the following manner:

Within 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 professionally trained librarians employed in West Virginia, one to be appointed by the Library Commission, one to be appointed by the President of the Library Association, and one 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 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 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 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 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.

Section 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 West Virginia Code, 10-1-11, as grace periods during

which time library patrons may return any overdue library materials without being subject to prosecution under West Virginia Code, 10-1-11, or any fine, penalty or other payment.

Section 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 \$1.00 per capita or \$25,000, whichever is greater, two-thirds 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 operation.

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

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: West Virginia Library Commission

Subject: Grace period for return of library materials.

PERTINENT DATES

Filed for public comment: July 16, 1985

Public comment period ended: August 20, 1985

Filed following public comment period: October 22, 1985

Filed LRMRC: October 22, 1985

Filed as emergency: July 15, 1985

ABSTRACT

Section 3.01 provides that National Library Week in April and Children's Book Week in November of each year are established as grace periods for public library patrons to return overdue library materials without payment of fines or penalties.

AUTHORITY

Statutory authority: W. Va. Code, §10-1-11

W. Va. Code, §10-1-11 provides in part as follows:

[Any person willfully retaining library materials is guilty of a misdemeanor]... Provided That a date or dates designating a grace period for the return of library materials to public libraries shall be established, said dates to be established by the state library commission pursuant to rules and regulations promulgated thereto....

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No. Under the above-cited code provisions, the Commission has the specific authority to promulgate rules and regulations of the type proposed.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes. It was clearly the intent of the Legislature that the Commission promulgate rules and regulations designating a grace period for the return of library materials to public libraries.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISION OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

Yes. The proposed rule can probably be made more understandable to the general public. The proposed rule refers to Senate Bill 555 which would be meaningless to most members of the general public. Reference should be made instead to W. Va. Code, §10-1-11.

Also, the last sentence stating that "any public library wishing to invoke said Act to recover articles which are considered within the scope of the wilful retention of library property must observe the grace periods so previously stated." is unnecessary and also incorrect. To begin with, the statute's purpose is to allow criminal prosecution for wilfully retaining library materials. It does not address the recovery of the materials. Also, the grace periods are established by the statute and thus must be observed by public libraries who wish to prosecute persons who willfully retain library property.

Finally, it should be noted that while the proposed rule supposedly adds a Section 4 to its rules, the proposed rule is numbered 3.01. Counsel assumes the number should be 4.01.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED
IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3
AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF
THE CODE?

Technically the Commission did not comply with the requirements of W. Va. Code, §29A-3-11(a) (2) and (3) which requires a brief summary of the content of the legislative rule and a statement of the circumstances which require the rule. However, the proposed rule is so brief that a brief summary would simply be a restatement of the proposed rule. Additionally, the proposed rule states that the grace periods are established with respect to Senate Bill 555 which in effect is a statement of the circumstances which require the rule.