



Michigan Court of Appeals Holds that State Aid Rules for Libraries are Unlawful

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In a published opinion issued on August 16, 2011, the Michigan Court of Appeals held that the Michigan Department of Education lacks authority to promulgate the State Aid Rules, which sought to impose new conditions on public libraries' eligibility to receive critical state funding. The Court also concluded that the State Aid Rules' requirement that libraries provide identical services to contract service areas is contrary to the Michigan Constitution.

Herrick District Library ("Herrick") filed suit against the Michigan Department of Education ("MDE") and the Library of Michigan in 2009, seeking a declaration that MDE's now-defunct predecessor, the Department of History, Arts and Libraries ("HAL"), lacked authority to adopt the State Aid Rules and that the State Aid Rules are contrary to Michigan law. The Ottawa County Circuit Court agreed with Herrick and concluded that HAL lacked the authority to promulgate the State Aid Rules. MDE and the Library of Michigan appealed, arguing that their authority to adopt the rules could be inferred from various statutes.

The Michigan Court of Appeals affirmed the circuit court's decision in favor of Herrick. First, the Court held that administrative agencies like HAL and MDE can only infer rulemaking authority that is implied by an enabling statute – but here, no statute gives HAL or MDE any express or implied rulemaking authority. Consequently, MDE does not have the authority to adopt rules to govern distribution of state aid to public libraries.

The Court further held that the State Aid Rules conflict with the Michigan Constitution, which was intended to promote local control of libraries. The Court concluded that because the Constitution promotes local library control, "any act by the Legislature requiring that libraries provide equal services to all individuals, regardless of where they live and their financial contribution, would be of dubious constitutionality" – and if the Legislature's ability to adopt such a requirement is in doubt, then "an administrative agency certainly cannot claim an implied ability

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to do so." (Opinion at 13.)

As a result of this decision, the State Aid Rules remain invalid and unenforceable. It is unknown whether MDE will seek leave to appeal this decision to the Michigan Supreme Court or whether MDE will attempt to enforce its "minimum standards" for state aid, which are substantively identical to the constitutionally deficient State Aid Rules.

Herrick was represented in both the circuit court and the Court of Appeals by Foster, Swift, Collins & Smith, P.C. The opinion can be read [here](#).