

COA Opinion: Department of Education proposed regulations forcing libraries to provide equal services to citizens outside their jurisdiction are ultra vires and unconstitutional

18. August 2011 By Gaetan Gerville-Reache

In *Herrick District Library v. Library of Michigan*, No. 300393, the Court of Appeals chastised the Department of Education (“DOE”) for attempting to force local libraries to offer equal services to citizens outside their jurisdiction, without authority from the Legislature and contrary Michigan’s constitution. In so ruling, the Court rejected broad statements in Michigan Supreme Court dicta that suggest agencies always have implied rule-making power. Instead, a more limited standard applied: the power of an agency must be conferred by clear and unmistakable statutory language or “necessary to the due and efficient exercise of the powers expressly granted.”

First, the Court explained that the State Aid to Public Libraries Act did not grant DOE (or formerly the Department of History, Arts and Libraries (“HAL”)) authority to issue any non-personnel related rules or regulations under the Act, either expressly or by implication. No such power could be implied because the proposed rules were not necessary to the due and efficient exercise of any express powers.

Second, the Court held that such rules were contrary to Michigan Constitution article 8, section 9. That section provides that “The Legislature shall provide by law for the establishment and support of public libraries which shall be available to all residents of the state under regulations adopted by the governing bodies thereof.” Under prior Supreme Court precedent, this provision indicates that (1) local libraries shall be “available,” not free, and (2) the libraries shall be governed by the local jurisdiction. The Court of Appeals concluded that this right of local control gives the library the option of providing different services to residents and non-residents. Accordingly, it affirmed the trial court’s declaratory judgment against promulgation of the DOE’s proposed rules.