Rules, Regulations, and Codes Covering
Grants-In-Aid To Public Libraries

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State grants-in-aid to public libraries are being provided in twenty-five of the fifty states in 1960. As has been apparent in earlier discussion, the grant-in-aid patterns vary from state to state in method of distribution and amount. In common, the grant-in-aid programs are administered by a state library agency which is either a part of the state department of education or an independent state department. Frequently the agency or the grant-in-aid program is governed by a board or commission having certain quasi-legislative powers conferred upon it by law.

During the latter half of the nineteenth century and the early decades of the twentieth century state functions were greatly expanded. As new functions were added and old ones expanded, both at the state and federal level, boards and commissions were developed to provide administrative machinery to carry out the increasing functions of government. With the growth and complexity of government, legislative bodies were faced with the need to delegate a great deal of "subordinate legislative power" or rule-making power to administrative bodies.¹

Reasons for this development of delegated or administrative law, i.e. rules and regulations, Julius Cohen, professor of law, Rutgers University, has summarized as "(1) the requirement of greater flexibility in the details of a law than the legislature can supply . . . (2) the need for freeing the legislature from concern with details in the initial consideration of a law . . . (3) the desirability of expert determination of numerous matters involved in modern legislative schemes such as those affecting . . . public services of many sorts. . . ." ²

As outline legislation supplanted the older detailed legislation, administrative agencies were faced with an increasing responsibility in

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the formulation and promulgation of rules and regulations having the force and effect of law. Furthermore the rules had to be applied and interpreted by the responsible agency.

With the development of outline legislation difficulties arose at both the federal and the state levels. Rules were not consistently made available to the public, sometimes their existence was ignored by the agency which had promulgated them. To overcome laxity in publication of rules and regulations, legislation was adopted by the federal government and various states during the nineteen-thirties, and in subsequent years, requiring central filing or publishing of rules and regulations. Massachusetts in 1932 was the first state to adopt legislation requiring central filing of rules and regulations. In 1937, South Carolina became the first state to require publication. In 1951, twenty states required central filing of rules and regulations, fifteen states required publication, and four, including Michigan, required legislative approval.3

F. E. Cooper, professor of law, University of Michigan, in *Administrative Agencies and the Courts* has discussed in considerable detail the practices and procedures involved in the making of rules. His definitions and distinctions should be helpful to state library agencies facing the task of promulgating rules for administration of grants-in-aid. Like other legal authorities, he appears to use “rule” and “regulation” interchangeably. According to the dictionary, the two words are practically synonymous. Regulations may be conceded to be quasi-legislative, or binding like laws, while rules tend to be interpretative, if one follows the thinking of another legal authority, Reginald Parker, professor of law at Willamette University, in his study of *Administrative Law*.4

Cooper makes an interesting distinction between interpretative regulations and legislative regulations. “If the statute provides a sanction for violation of the regulation, and it is written pursuant to specific delegation of power, then the regulation is legislative. If . . . the statute does not provide for such delegation of legislative power, and the regulation represents only the agency’s opinion as to what the statute requires, then the regulation is interpretative.”5 “Sanction” is used by Cooper with its legal definition: “The detriment, loss of reward, or other coercive intervention, annexed to a violation of a law as a means of enforcing the law.”6 In addition to the two categories, legislative and interpretative, Cooper cites procedural rules as a third. He subdivides “interpretative” into three groups, e.g., (1) A regula-
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tion which requires filing of reports, keeping of records. (2) Agency interpretation or definition of statutory interpretation which the agency will follow. (3) Discretionary policies of agency—i.e., setting standards, granting certificates.7

The statutes authorizing grants-in-aid to public libraries in certain states authorize the state agency, state library board, commission or a commissioner to set standards or certification requirements and require compliance with standards or certification requirements for receipt of state aid. Since noncompliance with standards or certification requirements results in a loss of state aid, the statute provides a sanction for violation or noncompliance. In such instances it would appear that regulation setting standards or listing certification requirements would be considered legislative rather than interpretative.

Some examples of statutes which authorize sanctions for noncompliance with standards or requirements as set up in rules and regulations authorized by law follow:

1. New Jersey. State Library Aid Act, 1959. (Chapter 177) (Sec.) 12. Regulations. In order to participate in any apportionment made according to the provisions of this act, municipalities and counties shall comply with the regulations and standards which have been . . . prescribed by law or formulated by the Commissioner of Education subject to the approval of the State Board of Education. . . . The Commissioner of Education is hereby authorized to withhold all or part of such apportionment for failure to comply with any such regulation or standard.8

2. New York. Education Law Section 272 (paragraph) 8. Each library system receiving state aid pursuant to this section and section two hundred seventy-three shall furnish such information regarding its library service as the commissioner may from time to time require to discharge his duties under such sections. The commissioner may at any time revoke his approval of a plan of library service if he finds that the library system operating under such plan no longer conforms to the provisions of this section or the regulations promulgated by the commissioner hereunder. . . .

3. Michigan. State Aid for Public Libraries Law, 1956. Sec. 6a. Any public library in order to receive an apportionment of funds appropriated by the state for aid to public libraries must conform to such certification requirements for personnel as are or may be established by the state board for libraries. . . .

To differentiate between rules and regulations which would be
classed as legislative because the statute authorizing them provides a sanction for violation or noncompliance, and interpretative or procedural rules examples are listed below, which in the judgment of the author belong in the latter two categories:

Examples of interpretative rules:

1. Kentucky. Public Library Service Commission. Regulations. PLSC: 5. "Local Agency. (1) The local agency administering a public library program supported by grant from the Public Library Service Fund may be any of the following:
   (1) A county library board;
   (2) A municipal library board within the county which is willing to assume the responsibility for county-wide public library service under contract with the Fiscal Court;
   (3) An institution of learning within the county which is willing to contract with the Fiscal Court for county-wide public library service." 11

2. Michigan. State Board for Libraries. Rules and regulations. 5. Standards for public libraries. R 397.51. Definitions. The term "public library" includes any and all libraries maintained in whole or in part by any county, township, school district, city, village, or other municipality, or by two or more such governmental units or local communities, as defined in the state aid for public libraries law.
The term "staff" includes professional, clerical, and full time pages but not part time pages nor those employees doing building or janitorial work. . . .12

Examples of procedural rules:

1. Kentucky. Public Library Service Commission. Regulations. PLSC: 6. Applications. To qualify for a grant from the Public Library Service Fund, a county must file an official application on the forms provided by the Public Library Service Commission. Applications shall be filed for each year during the month of October 1-31. The application must be accompanied by a brief outline of the proposed plan (bookmobiles, branches, stations, etc.) for the distribution and use of books throughout the county.18

2. Michigan. State Board for Libraries. Rules and regulations. R. 397.2 Rule No. 1.2. Whenever a public library or a governmental unit agrees to receive any or all of its library service through a second library, the board of trustees of the public library or the governing body of the governmental unit receiving
such service may waive any or all allocations of state aid funds in favor of the library giving the service. A copy of the agreement shall be filed with the state board for libraries. Thereafter, and as long as the agreement is in force, for purposes of allocating state aid funds, the population of the library or governmental unit receiving such library service shall be added to the population of the governmental unit supporting the library giving the service.\textsuperscript{14}

Having discussed the three major categories or rules, interpretative, procedural, and legislative, attention should be given to rule making practices. Cooper has stated that good administration requires an agency to obtain and consider all comments of interested parties as to contents of proposed rules.\textsuperscript{15} As mentioned earlier, several states have provided for publication of a state code which includes rules and regulations of all agencies, assuring that rules are available after promulgation. In Michigan, for example, the Administrative Code Act (88, 1943) provides for the making, filing, compiling, codification and publication of the rules and regulations of state officers, boards, departments, agencies, and commissions. A further axiom suggested by Cooper may be common practice of state agencies: “Legislation providing for the deferred effectiveness of regulations having statutory effect . . . is to be recommended.”\textsuperscript{16} Financial requirements, standards of personnel and similar regulations need to be made known in advance of the effective date in order that governmental units, library boards and librarians may make plans to meet them. This is particularly needful if requirements have been upgraded.

Suggested steps to be followed in rule making are:

1. Announcement of intent to make rule.
2. Fact gathering.
   2a. Conference or hearing of interested parties.
3. Publication of tentative draft.
4. Public examination and criticism.

Frequently, state library association committees or special committees involving laymen as well as professional librarians have been involved in studies which have formed the groundwork for drafting of state aid legislation, library standards and certification requirements. The actual formulation of the text of a law or rule has been the ultimate responsibility of the agency. Rules and regulations must conform to the statutory authority granted in the law. For this reason,
statutes setting forth rule making procedures may require approval of rules and regulations by a state legal department or officer, e.g. approval of the attorney general, and, in certain states rules are reviewed and approved by the legislature.

Examination of state aid laws of various states shows that at least eighteen authorize rules and regulations, requirements or standards. Three laws apparently contain no such requirement. In two the wording suggests that standards or rules and regulations are permissive but the authorization is not definite.

Although not all states require publication of rules and regulations, it appears to be a desirable practice. Publication should insure that rules and regulations are more readily available to affected parties, in this instance libraries and librarians. Since the rules and regulations frequently detail conditions under which libraries may receive state aid grants, knowledge and compliance by librarians and library boards is desirable and, to some degree, may be dependent upon ease of access to the information.

Responsibility for rule making is allocated by statute to the agency responsible for distribution of grants-in-aid. In some instances the agency is a state library board or commission, in others a state board of education or commissioner of education is responsible. Kentucky has two rule making bodies sharing responsibility for requirements on which grants are dependent. The Kentucky Public Library Service Commission has promulgated rules applying to grants-in-aid. This commission in its rules delegates responsibility for certification qualifications to the State Board for the Certification of Librarians. Rules and regulations of both the Commission and the Board for Certification are published in the state official code. It would appear that a single board or commission and one body of rules would simplify day-to-day administration of both the certification program and grants-in-aid.

One important result of grants-in-aid programs has been improvement in quality of public library service. This is particularly true where mandatory certification is embodied in the statute and public library standards are authorized as criteria for receipt of grants. One advantage of inclusion of certification requirements and standards in rules and regulations, rather than in laws, is the greater flexibility

which can be embodied in rules. Adjustment or alteration of rules, while not a simple process, should be easier to accomplish than amendment of a law. A very important function of rules is the interpretation of the statutes by the responsible agency. While the agency may not interpret the statute in a manner inconsistent with the legislation, it can define terms in the manner in which they will be applied under the statute and detail procedures which the agency will follow in administering the grant program. Rules setting forth standards for public libraries are only effective if the grants-in-aid, authorized by the statute, offer sufficient incentive to meet standards. Orderly procedures which are detailed in regulations serve to simplify the administration of a grant program and improve the climate of acceptance of "state control" which is inherent in any program designed to upgrade and equalize a public service.

References

2. Ibid.
15. Cooper, op. cit., p. 262.
16. Ibid., p. 270.