

Memo

To: Commission Members
From: Darlene Staffeldt, State Librarian
Date: January 30, 2006
Re: Interlibrary loans reimbursement update

Please know that I received the following message from our agency's attorney regarding changes needed to implement the action passed by the Commission in August regarding FY06 and FY07 interlibrary loan reimbursement:

Darlene,

I'm sorry this took so long, but I wanted to make sure I took a close and careful look at your questions so that I can properly advise you. As I understand it, you're asking about two proposals. The first one would split the entire pot of money in half, with every library being reimbursed out of the first half of the pot, and only "net lender" libraries being reimbursed out of the second half of the pot. The second proposal is to just reimburse net lender libraries. If I have misunderstood anything please let me know. Here is my opinion based on these two proposals.

First Proposal

*In my opinion, the existing language in the statute and the rule would **not** permit reimbursement pursuant to the two-tiered approach your email describes below (the second set of steps 1, 2, and 3, where half the pot is distributed as it currently is, and the other half goes to net lenders). The statute currently states that each Montana library eligible for reimbursement "must be reimbursed according to the rules adopted by the commission." MCA 22-1-328. ARM 10.102.4001(2) states that reimbursement shall be made on an annual basis using a rate determined by the State Library. The rule, in subsection (2)(a)(i), states that the rate is based on the two factors: 1) the estimated number of annual loans, and 2) available funds. Subsection (2)(a)(ii) states that the rate may be adjusted "by dividing any remaining funds by the number of interlibrary loans claimed for reimbursement."*

Thus, while both the statute and the rule give the Commission a degree of discretion to determine the rate of reimbursement, that discretion is currently limited by the language

of the rule. According to the express language in the rule, the rate of reimbursement may only be based on the above two factors, and there is no authority to weight "net" loans more than regular loans, thereby authorizing payment of additional reimbursement to libraries who happen to engage in more loan transactions than borrowing transactions.

I do believe the Commission could implement this reimbursement plan following amendment of the rule to expressly authorize this formula, and in my opinion it would not be necessary to amend the statute to do so -- as long as the rule change preserves the right of each Montana library eligible for reimbursement to receive some reimbursement.

Second Proposal

For similar reasons, I do not believe the Commission could choose to reimburse using only the net loan option, at least without both a statutory and rule change. As I understand the proposal, only libraries who have engaged in more loan transactions than borrowing transactions (thereby qualifying as "net lenders") would be eligible for reimbursement. In my view this directly conflicts with the existing language in the statute and the rule. The statute is mandatory -- each Montana library eligible for reimbursement must be reimbursed. Although reimbursement is to be made "according to the rules adopted by the commission," this does not give the commission the authority to, by rule, change the language of the statute requiring reimbursement for each eligible library. To carry out this proposal the Commission would have to seek a statutory amendment, and then amend the rule to implement any statutory change.

Give me a call if you would like to discuss this.

I will try to have some draft rule language changes prepared for your February meeting. We can start the rule changes as soon as possible and if they pass, proposal one for FY'06 reimbursement in July of 2006 will be okay. The law changes for the FY07 proposal will have to be taken to the 2007 Legislative session.