



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

November 30, 1995

Mr. Robert S. Martin
Director and Librarian
Texas State Library
P.O. Box 12927
Austin, Texas 78711-2927

Letter Opinion No. 95-077

Re: Whether the State Library and Archives Commission may deny federal grant monies to a municipal library that annually lends more than 20,000 items to individuals not residing in the municipality based solely upon the municipal library's provision of services to nonresidents (RQ-834)

Dear Mr. Martin:

On behalf of the Texas State Library, you have requested an opinion regarding recent amendments to section 441.135(a) of the Government Code. You state that the Texas State Library and Archives Commission (the "commission") has denied a municipal library a federally funded Major Urban Resource Library ("MURL")¹ grant because, you indicate, the applicant-library failed to provide library services to nonresidents in compliance with the commission's grant guidelines. You inform us that the MURL grant program is established pursuant to section 441.009 of the Government Code.

In its appeal to the commission, the applicant-library contends that an amendment to section 441.135(a) of the Government Code prohibits the commission from denying an applicant a grant based solely on the provision of services to nonresidents. The applicant-library thus is construing the amendment to section 441.135(a) to apply to a grant program established under section 441.009. You, on the other hand, believe the amendment to section 441.135(a) applies only to grant monies distributed pursuant to section 441.135. According to your letter, the applicant-library loans more than 20,000 items per year to nonresidents.

We must first consider whether the guidelines established by the commission for the MURL program are authorized by section 441.009. Under those guidelines for fiscal year 1996, the Texas State Library will accept a grant application from a Texas public library that, among other things, "agrees to support and expand . . . without charge to

¹Federal law defines "major urban resource library" as "any public library located in a city having a population of 100,000 or more individuals, as determined by the Secretary" of Education. 20 U.S.C. § 351a(14).

persons living outside the political subdivision(s) that financially support(s) the library . . . reference services" Major Urban Resource Libraries Program Guidelines SFY 1996 App. F at F-1 (Tex. State Library, Library Dev't Div. Dec. 30, 1994). Furthermore, the library must provide the services to nonresidents "under the same conditions as residents." *Id.* Thus, the guidelines deny a federally funded MURL grant to any library that fails to provide relevant services to nonresidents under the same conditions as those services are made available to residents.

Section 441.009 of the Government Code provides as follows:

(a) The commission may adopt a state plan for improving services of and constructing county, municipal, and other public libraries.

(b) The state library shall prepare the plan for the commission and shall administer the plan the commission adopts.

(c) The plan must include a procedure by which a county or municipal library may apply for money under the plan and a procedure for a fair hearing for a library whose application for money is refused. Money from local, state, or federal sources may be used. The money shall be administered according to local, state, and federal requirements.

As we have indicated, the MURL grant program is federally funded. Although one federal law proscribes a grant of funds under the MURL program "unless the major urban resource library *provides services* to users through the regional area in which such library is located," 20 U.S.C. § 353(a)(3), it does not specify what "services" are included, nor does it require the *equal* treatment of residents and non-residents. We have been cited to no federal law or regulation that authorizes a funding conduit such as the commission to deny funds to a library because of disparate treatment of nonresidents.² And certainly, no language in section 441.009 does so. To the contrary, subsection (c) states that "[t]he money shall be administered according to local, state, and federal requirements." So, far from being a "requirement of any such law," denial of funding for this reason is not even *permitted* by section 441.009 or other law.³ In our opinion, there is no basis in any state

²It is our understanding that federal authorities have "signed off" on the MURL guidelines as part of the "state plan" required for receipt of federal funds; however, there is no evidence that this action in any way constitutes substantive approval of the details of the guidelines at issue here.

³Even the commission's own regulations fail to authorize this funding restriction. Section 1.21 of title 13 of the Texas Administrative Code, as amended, states that

[t]he Texas State Library and Archives Commission adopts by reference the Library Services and Construction Act Annual Program, 1994, the Library Services and Construction Act Annual Program, 1995, and the Library Services and Construction Act Annual Program, 1996, and Long Range Plan 1994-1997,

or federal law or regulation for inferring commission authority to condition funding to local libraries upon the equal treatment of residents and nonresidents.

Because we conclude that, pursuant to section 441.009, Government Code, the commission is without authority to deny a federally funded MURL grant to a municipal library merely because the library has failed to provide library services to nonresidents in compliance with the commission's grant guidelines, we need not address the issue of whether the recent amendments to section 441.135(a), Government Code, apply to a grant program established under section 441.009.⁴

(footnote continued)

Long Range Plan 1994-1997 (amended July 1994), and Long Range Plan 1996-1999. Copies may be obtained from the Library Development Division of the Texas State Library, P.O. Box 12927, Austin, Texas 78711.

Tex. State Library and Archives Comm'n, 20 Tex. Reg. 2761 (1995) (revision marks omitted), *adopted* 20 Tex. Reg. 4343 (1995) (to be codified as an amendment to 13 T.A.C. § 1.21). Thus, it is not even a commission rule, adopted in conformity with the requirements of the Administrative Procedure Act, Gov't Code ch. 2001, but a mere *application* of a rule, that is here responsible for the denial of funding to this library.

⁴As amended, section 441.135 provides as follows:

(a) The Texas State Library and Archives Commission shall establish a program of state grants within the limitations of funds appropriated by the legislature. *The commission shall adopt by rule the guidelines for awarding grants, except that any municipal library which lends more than 20,000 items per year to nonresidents cannot be denied any grant awarded after January 1, 1995, based solely upon the provision of services to nonresidents.*

(b) The program of state grants shall include one or more of the following:

(1) system operation grants, to strengthen major resource system services to member public libraries and regional library system services to member libraries, including grants to reimburse other libraries for providing specialized services to major resource systems and regional library systems;

(2) incentive grants, to encourage public libraries to join together into larger units of service in order to meet criteria for major resource system membership or regional library system membership;

(3) establishment grants, to help establish public libraries that will qualify for major resource system membership or regional library system membership;

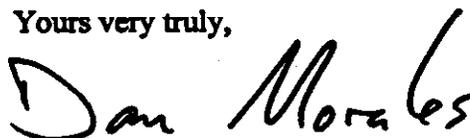
... and

(5) public information technology grants, to help public libraries make state, local, and federal government information that is accessible through the Internet or electronic bulletin board systems available to the public through computer terminals at a library.

S U M M A R Y

The Texas State Library and Archives Commission is not authorized by section 441.009 of the Government Code, or any other federal or state statute or regulation, to deny a federally funded Major Urban Resource Library grant to a municipal library merely because the library has failed to provide library services to nonresidents in compliance with the commission's grant guidelines.

Yours very truly,



DAN MORALES
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JORGE VEGA
First Assistant Attorney General

SARAH J. SHIRLEY
Chair, Opinion Committee

Prepared by Rick Gilpin
Assistant Attorney General

(footnote continued)

(5) public information technology grants, to help public libraries make state, local, and federal government information that is accessible through the Internet or electronic bulletin board systems available to the public through computer terminals at a library.

Act of May 25, 1995, 74th Leg., R.S., ch. 988, §§ 1, 2, 1995 Tex. Sess. Law Serv. 4962, 4962 (some original italics and bracketed strikeover removed).