

OP. NO. 04-067

LIBRARIES: STATE LIBRARY AND LIBRARY BOARD — STATE AND FEDERAL AID.

‘Librarian’ is synonymous with ‘library director’ or ‘library administrator.’ Librarian serving as director of local/regional library, and other persons holding full-time professional positions, must meet qualification standards established by Library Board. Branch librarian serving under direction of regional library board, in full-time position of librarian or other full-time professional librarian position, must be certified librarian. Board must seek legislative or regulatory authority to provide standards and guidance for alternative credentialing. Local and regional libraries may employ, and pay with public funding, library personnel who do not have American Library Association-accredited training or its equivalent, provided such individuals are not employed in full-time professional librarian positions. No authority for Library Board to ‘grandfather’ librarians serving before 1988 who do not meet current qualifications or to charge fee for considering applications of library systems requesting waivers of certain regulatory requirements for receiving state aid.

Mr. Peter E. Broadbent, Jr.
Chairman, The Library Board
November 4, 2004

Issues Presented

You ask several questions regarding the meaning of "librarian" and "professional librarian position," as those terms are used in § 42.1-15.1. You also inquire concerning certain responsibilities of the Library Board.

Applicable Law and Discussion

Section 42.1-15.1 sets forth the qualifications required to hold the position of professional librarian:

Public libraries serving a political subdivision or subdivisions having a population greater than 13,000 and libraries operated by the Commonwealth or under its authority, shall not use funds derived from any

state aid to employ, in the position of librarian or in any other full-time professional librarian position, a person who does not meet the qualifications established by the State Library Board.

A professional librarian position as used in this section is one that requires a knowledge of books and of library technique equivalent to that required for graduation from any accredited library school or one that requires graduation from a school of library science accredited by the American Library Association.

No funds derived from any state aid shall be paid to any person whose employment does not comply with this section.

This section shall not apply to law libraries organized pursuant to Chapter 4 (§ 42.1-60 et seq.) of [Title 42.1], libraries in colleges and universities or to public school libraries.

Section 42.1-52 provides:

The [Library] Board shall establish standards under which library systems and libraries shall be eligible for state aid and may require reports on the operation of all libraries receiving state aid.

As long as funds are available, grants shall be made to the various libraries, library systems or contracting libraries applying for state aid in the order in which they meet the standards established by the Board.

In the event that any library meets the standards of the State Library Board but is unable to conform to § 42.1-15.1 relating to the employment of qualified librarians, the Library Board may, under a contractual agreement with such library, provide professional supervision of its services and may grant state aid funds to it in reduced amounts under a uniform plan to be adopted by the State Library Board.

Further, § 42.1-8 provides that "[t]he Board shall make rules and regulations, not inconsistent with law, for the government and use of The Library of Virginia, and may by general or special regulation

determine what books and other possessions of the Library may not be removed therefrom." The Board has established regulations for the certification of librarians.¹

Question One

You first inquire as to the meaning of "librarian," as that term is used in § 42.1-15.1.

The term "librarian," as used in § 42.1-15.1, contrasts with the term "professional librarian position," which suggests that more than one individual in a library system may be covered. "When the [General Assembly] uses two different terms in the same act, it is presumed to mean two different things."² I understand that, historically, the Library Board and the library community have construed the term "librarian" synonymously with "library director." When the certification program began on July 1, 1937,³ there was one person on staff who possessed a master's degree in library science,⁴ who typically was the head of the State Library.⁵ Where a statutory term is of doubtful meaning, the contemporaneous construction placed upon it by governmental officers charged with its enforcement is entitled to great weight, and should not be disregarded or overthrown unless it is clear that such a construction is erroneous.⁶ The term "librarian" historically appears to be a term of art referring to what now is understood to be the "library director" or "library administrator."⁷

Question Two

You next ask whether §§ 42.1-15.1 and 42.1-52 require the Library Board to set standards for all persons who perform the function of a librarian, or only for persons who hold the title of director of a public library. You also ask, in the case of a large public library system with multiple branch libraries,⁸ whether § 42.1-15.1 requires standards only for the director of the entire system, or for the director of each branch library, or for each person performing a librarian function at any branch library.

Sections 42.1-15.1 and 42.1-52 require that librarians in local or regional libraries, in the position of director, and other persons holding full-time professional positions deemed by the local or regional library to require American Library Association-equivalent training, shall meet the qualification standards established by the Board. If a branch librarian is serving under the direction of the regional library board, in the full-time position of librarian or other full-time professional librarian position "that requires a knowledge of

books and of library technique equivalent to that required for graduation from any accredited library school,"⁹ the branch librarian must be a certified librarian.¹⁰

Question Three

You also ask whether the Library Board lawfully may adopt qualification standards for a professional librarian position that mandate graduation from a school approved by the American Library Association and that do not provide for the alternative test described in § 42.1-15.1. Section 42.1-15.1 stipulates that "[a] professional librarian position ... requires a knowledge of books and of library technique equivalent to that required for graduation from any accredited library school or ... graduation from a school of library science accredited by the American Library Association." (Emphasis added.)

No Virginia statute requires the Library Board to offer a dual-track certification if the Library Board deems an American Library Association-based certification to be sufficient.¹¹ If the Library Board elects to implement a certification process that is not approved by the American Library Association, however, legislation or regulations may be necessary to authorize the Library Board to provide standards and guidance for such alternative credentialing, including express authorization to "grandfather" librarians who obtained their Library of Virginia "certification for life" prior to the repeal of the State Board for the Certification of Librarians.¹²

Question Four

Further, you ask whether § 42.1-15.1 prohibits public libraries from employing librarians who do not meet Library Board qualifications; or whether the statute merely prohibits the use of state funds to pay such personnel. You advise that the first paragraph of § 42.1-15.1 seems to prohibit employment, but the third paragraph suggests that such persons may be employed, provided they are not paid by certain public funds. A statute must be read as a whole, and all of its parts examined so as to make it harmonious, if possible.¹³ Section 42.1-15.1 sets forth the requirements that "[a] professional librarian position" must meet in order to receive funding "derived from state aid." There is no conflict in the statute.¹⁴ Section 42.1-15.1 prohibits the use of state funds to pay personnel who do not meet Library Board qualifications for the positions specified in the statute.

Local and regional libraries may employ, and pay with monies not "derived from state aid," library personnel who do not have American Library Association-accredited training or its equivalent. Such libraries may not, however, employ those individuals in the position of librarian or any other full-time professional positions requiring the knowledge and accredited education prescribed in § 42.1-15.1 if any portion of the monies used to fund such position are "derived from state aid."¹⁵ Larger libraries that employ such individuals would be subject to a reduction in state aid.¹⁶

Moreover, assuming for argument that that there is any question regarding the limitation on what funds may be used to employ individuals other than employ those in full-time professional librarian positions requiring the knowledge and accredited education prescribed in § 42.1-15.1, the rules of statutory construction requires the conclusion that the limitation applies to those derived from state aid. An important rule of statutory construction is that "every part of a statute is presumed to have some effect and no part will be considered meaningless unless absolutely necessary."¹⁷ Additionally, when the legislature amends a statute it is presumed that it acted purposefully with the intent to change existing law.¹⁸ Prior to July 1, 2004, § 42.1-15.1 referred to "public funds" rather than "derived from state aid". Clearly, the General Assembly intended some change in the law by amending the language of § 42.1-15.1. Public funds such as local or federal funds, and private funds, i.e. those funds not "derived from state aid," may be used to employ individuals other than employ those in full-time professional librarian positions requiring the knowledge and accredited education prescribed in § 42.1-15.1 absent a local or federal prohibition.

Therefore, it is my view that the intent of the librarian certification statute is to encourage that all public libraries have at least one credentialed director/librarian available to that library system, as well as an American Library Association-credentialed librarian, or a similarly credentialed professional, for positions deemed by the local bodies to require such specialized training. It is incumbent on each local or regional library board to determine whether any particular position constitutes a "full-time professional librarian position" as described in § 42.1-15.1.

Question Five

You next ask whether § 42.1-15.1 authorizes the Library Board to "grandfather" librarians serving before 1988, though they do not meet current qualifications. If such "grandfathering" is permissible,

you ask whether it must be expressly authorized by Library Board regulations, as part of the Board's determination of librarian "qualifications," rather than by informal staff action.

The normal purpose of a "grandfather" provision is to delay application of some new and stricter standard.¹⁹ Section 42.1-15.1 provides no language suggesting that a "grandfather" provision is intended. I am not aware of any basis upon which certain librarians may be "grandfathered," absent express legislation authorizing such "grandfathering."

Question Six

Finally, you advise that the Library Board frequently receives requests from local public libraries to waive certain regulatory requirements which must be met to receive state grants-in-aid.²⁰ The Board has discretion to make exceptions for libraries that are unable to meet the requirements for receiving state aid.²¹ You ask whether, in considering requests by library systems for waivers to receive state aid under § 42.1-52, the Library Board may charge a fee or require a proffer for waiver applications, and if so, whether any fee or proffer must be related directly to the expenditure of time and effort by Library staff in processing a waiver request, or whether it may be a flat fee or percentage of the grant aid for which a waiver is sought.

Under well-accepted principles of statutory construction, when a statute creates a specific grant of authority, the authority exists only to the extent specifically granted in the statute.²² Nothing in § 42.1-52 suggests that the Library Board may impose a fee.

¹See 17 Va. Admin. Code ch. 100, 15-100-10 to 15-100-50 (Law. Co-op. 1996).

²City of Hopewell v. County of Prince George, 239 Va. 287, 294, 389 S.E.2d 685, 689 (1990).

³1936 Va. Acts ch. 84, § 363, at 107, 113-14 (establishing State Board for the Certification of Librarians), *amended by* 1946 Va. Acts ch. 169, at 247 (codified as amended at tit. 54, ch. 11, §§ 54-261 to 54-272); 1988 Va. Acts ch. 716, at 939, 945, 946 (repealing Chapter 11 of Title 54 and adding § 42.1-15.1, relating to qualifications required to hold professional library position); 2004 Va. Acts ch. 559 (amending and reenacting § 42.1-15.1, relating to

State Library Board; use of state funds), *available at* <http://leg1.state.va.us/cgi-bin/legp504.exe?041+ful+CHAP0559+pdf>.

⁴The Board's regulations regarding the certification process provide for the issuance of certificates to any "applicant who has earned a master's degree from a school of library or information science that had a program accredited by the American Library Association at the time the degree was awarded." 17 Va. Admin. Code 15-100-30, *supra* note 1.

⁵1936 Va. Acts, *supra* note 3, at 108-09 (citing §§ 351, 352).

⁶See 17 Michie's Jur. *Statutes* § 36, at 387-88 (1994).

⁷This historical understanding of the term is also consistent with its contemporary plain meaning. For instance, "librarian" means "a specialist in the care or management of a library"; "one whose vocation is working with library books (as by cataloging)"; or "one whose special task is the management of any body of literature (as the musical scores for an orchestra)." Webster's Third New International Dictionary of the English Language Unabridged 1304 (1993). Two of the three definitions suggest that the term "librarian" infers a managerial role and not simply a functional one.

⁸The Library of Virginia recognizes a "branch library" as an outlet that (1) has a permanent collection of reference and circulation books and a permanent paid staff, (2) is open at least twenty hours per week, and (3) is administered from a central library unit. See 1983-1984 Op. Va. Att'y Gen. 222, 223.

⁹Va. Code Ann. § 42.1-15.1 (LexisNexis Supp. 2004).

¹⁰1983-1984 Op. Va. Att'y Gen., *supra* note 8, at 223; *cf.* 1985-1986 Op. Va. Att'y Gen. 234, 235.

¹¹As a practical matter, I am advised that there is no substitute or equivalent to the American Library Association-based certification.

¹²See 1988 Va. Acts, *supra* note 3, at 945, 946 (effective Jan. 1, 1989) (repealing § 54.1-261, which continued State Board for Certification of Librarians, referenced in Chapter 11 of Title 54, and adding § 42.1-15.1, relating to qualifications required to hold professional library position); 2004 Va. Acts, *supra* note 3 (amending § 42.1-15.1, relating to State Library Board; use of state funds).

¹³See *Gallagher v. Commonwealth*, 205 Va. 666, 669, 139 S.E.2d 37, 39 (1964); 2A Norman J. Singer, *Sutherland Statutory Construction* § 46:05, at 154 (West 6th ed. 2000) ("A statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent. Consequently, each part or section should be construed in connection with every other part or section so as to produce a harmonious whole."); 2003 Op. Va. Att'y Gen. 130, 130.

¹⁴To the extent that a conflict was discernable, the 2004 amendment to § 42.1-15.1 appears to reconcile any such conflict. See 2004 Va. Acts, *supra* note 3.

¹⁵On July 1, 2004, the term "public funds" was changed to "funds derived from any state aid" thereby making the limitation on the use of governmental funds more narrow. See 2004 Va. Acts, *supra* note 3.

¹⁶See § 42.1-52 (LexisNexis Repl. Vol. 2002).

¹⁷*Sansom v. Bd. of Supvrs.*, 257 Va. 589, 595, 514 S.E.2d 345, 349 (1999) (quoting *Hubbard v. Henrico Ltd. P'ship*, 255 Va. 335, 340, 497 S.E. 335, 338 (1998), *quoted in* 2000 Op. Va. Att'y Gen. 117, 118.

¹⁸See *Cape Henry Towers, Inc. v. Nat'l Gypsum. Co.*, 229 Va. 596, 600, 331 S.E.2d 476, 479 (1985); *Wisniewski v. Johnson*, 223 Va. 141, 144, 286 S.E. 2d 223, 224-25 (1982).

¹⁹1980-1981 Op. Va. Att'y Gen. 331, 331.

²⁰See 17 Va. Admin. Code ch. 110, 15-110-10 (Law. Co-op. 1996).

²¹See *id.* 15-110-10(9).

²²2A Singer, *supra* note 13, § 47:23 (explaining maxim, *expressio unius est exclusio alterius*, as applied to statutory interpretation); 2002 Op. Va. Att'y Gen. 233, 237.

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