

300 S. 2nd Street
Springfield, Illinois 62704

May 20, 2002

RE: Reciprocal Borrowing and Interlibrary Loan

The issues raised in your e-mails of April 24, 2002 were if a non-resident cardholder is eligible for Interlibrary Loan service and reciprocal borrowing privileges.

Your position is that the statutory language of both the Illinois Local Library Act and the Library District Act of 1991 does not permit the use of the Inter-Library Loan service. This is based upon your citing the following language taken from both of these Acts:

"privilege and use provided under the terms of the library's membership".

On the issue of reciprocal borrowing you cite the Section 3030.35 (b-2) of the Illinois Administrative Code. As you state, the term "reciprocal borrowing" is defined in Section 3030.10 of the Administrative Code as follows:

""Reciprocal Borrowing": The right of a person holding a valid library registration card from a full member public library or a library system, to borrow on site from all the other public libraries which are full members of the library system without using interlibrary loan mechanisms."

You also cite Section 3030.35 (a-5), which you state, "denotes what services are offered a developmental library" and cite Section 3030.35 (b-2) that governs full membership by a library in a system as follows:

"A full member shall also provide reciprocal borrowing to resident patrons of other public libraries that are full members of the library system and shall also honor library cards issued to non-residents of the system area that are valid for system-wide use."

Please note that Section 3030.35 (b-2) of the Administrative Rules is being amended in conjunction with the adoption of the rules for the nonresident legislation. This change is reflected in the above-mentioned reference. The change was necessitated to be consistent with the policy application called for in Public Act 92-0166.

By your readings on both of these citations your conclusion is that non-residents are not eligible for reciprocal borrowing services.

The State Library disagrees with your conclusions based upon a complete analysis of the provisions in question in the Illinois Local Library Act, the Public Library District Act and the Administrative Rules of the Secretary of State that govern application of these laws. These statutory provisions in question are listed below:

Illinois Local Library Act

75 ILCS 5/4-7 (paragraph 12)

"The nonresident cards shall allow for borrowing privileges at all participating public libraries in the regional library system. The nonresident fee shall not apply to privilege and use provided under the terms of the library's membership in a library system operating under the provisions of the Illinois Library System Act, under the terms of any reciprocal agreement with a public or private corporation or entity providing a library service, or to a nonresident who as an individual or as a partner, principal stockholder, or other joint owner owns taxable property or is a senior administrative officer of a firm, business, or other corporation owning taxable property within the city, incorporated town, village or township upon the presentation of the most recent tax bill upon that taxable property, provided that the privilege and use of the library is extended to only one such nonresident for each parcel of such taxable property."

Public Library District Act of 1991

75 ILCS 75 16/30-55.60

"The nonresident cards shall allow for borrowing privileges at all participating libraries in the regional library system. The nonresident fee shall not apply to any of the following:

- (1) Privileges and use provided (i) under the terms of the district's membership in a library system operating under the provisions of the Illinois Library System Act or (ii) under the terms of any reciprocal agreement with a public or private corporation or entity providing a library service.
- (2) Residents of an area in which the library is conducting a program for the purpose of encouraging the inclusion of the area in the library district.
- (3) A nonresident who, as an individual or as a partner, principal stockholder, or other joint owner, owns taxable property or is a senior administrative officer of a firm, business, or other corporation owning taxable property within the district, upon presentation of the most recent tax bill upon that taxable property, provided that the privileges and use of the library is extended to only one such nonresident for each parcel of taxable property.

The debate transcripts of the General Assembly for the numerous public acts that amended these laws did not provide any guidance on these particular issues. For the most part, the bills that served as the enabling legislation were multi-faceted revisions containing numerous changes in these laws. Therefore, absent a court ruling or an opinion of the Attorney General, the State

agency affected by the legislation has the duty to interpret legislative intent. The purpose of this correspondence to examine the sentence construction and the use of "operative" words that must be weighed in the overall context of the intent of the General Assembly.

Both Acts permit a library board to charge a nonresident fee to persons who are not residents of a municipality or library district. Also stated in both laws is that the nonresident must purchase the library card at the closest public library. Further, both Acts specifically state "the nonresident cards shall allow for borrowing privileges at all participating libraries in the regional library system". The language that follows this statement is the cause of contention. While there is a minor difference in the construction of these sentences, their intent appears clear and consistent with one another.

Specifically in the Illinois Local Library Act, the phrase in the sentence that reads "the nonresident fee shall not apply to privilege and use provided in a library system under the terms of the library's membership in a library system operating under provisions of the Illinois Library System Act...". (The remainder of the sentence deals with reciprocal agreements and nonresident property owners which are discussed later in this memorandum). We must note the use of the word "fee" in this sentence and not the word "card". As noted, the previous sentence entitles the "card" of the nonresident to borrowing privileges. Had the General Assembly wanted to limit the use of the "card" then the limitations would have been listed in that sentence or an immediate subsequent sentence.

In the subsequent sentence, the General Assembly specifically used the word "fee" by stating that the "fee" does not apply to certain specified situations. In the sentence construction, this use of the word "fee" complements the use of the word "library's" in the context of the library having "privilege and use" of a library system if the terms of the membership in the library system are met. The criteria for the "privilege and use" of a library system by a library is contained in Section 3030.35 of the Secretary of State's Administrative Rules for both developmental membership and full membership. A developmental library is one that is in the process of meeting the requirements of for full membership. The rule requires developmental libraries to meet certain conditions. One of those conditions is to qualify for the per capita grant made available under Section 8.1 of the Library System Act (75 ILCS 10/8.1). The per capita grant is just that, a grant awarded to libraries based upon the population of the area served by the library. Therefore, the context of the sentence must be construed to read that the meaning is to prevent the non-resident "fee" to be used for the per capita calculation for the making the grant award and other criteria that can only be applied to a library as an institution and not to individuals.

The next phrase in the sentence, as modified by the beginning phrase: "The nonresident fee shall not apply", reads "under the terms of any reciprocal agreement with a public or private corporation or entity providing library service". The Illinois Local Library Act does not define the term "reciprocal agreement". However, the term is defined in the Public Library District Act. That definition reads: "reciprocal agreement means an agreement between a library and a library agency for the provision of library services as needed by either party". The term "library agency" is not defined by the Act or in the Illinois Local Library Act. The term "agency" can take on the traditional definition of "an establishment engaged in doing business for another or an administrative division (of a government). Since both the provisions in question in both Acts are virtually identical, the assumption can be made that the intent of the General Assembly is for the phrase to mean that the "fee" does not apply to any library or territory for which library service is provided. Library service under these reciprocal arrangements traditionally involves the recipient agency to pay for the service. This payment is either by a tax or fee imposed upon all of the residents of the recipient territory regardless of individual library usage or in the case of a private

corporation, a voluntary fee paid by residents of a defined area. Therefore, the intent of the language is to ensure that the "fee" is not to be imposed upon the residents of those who are paying for library service through an "agency". The nonresident fee in this case would be a double payment for library service. In that context the phrase in question does prohibit a library from imposing a nonresident fee upon a resident of such a territory.

Continuing on with the analysis of the sentence in question is the last phrase in the sentence that refers to the nonresident taxpayer who is entitled to a library card based upon the fact these individuals are paying taxes to support the library. In both laws the language is very specific that the nonresident "fee" is not to be imposed upon these taxpayers. This prohibition prevents the imposition of a fee that would in essence be unfair to the nonresident taxpayer since they are already paying for library service through taxation.

So in summary, for the sentence of both laws that begins with the phrase "the nonresident fee shall not apply ..." the State Library interprets that the phrase does not apply to the usage of the cards, but rather to the application of specific instances mentioned as noted.

Perhaps the most compelling argument in favor of nonresidents receiving both Inter Library Loan and reciprocal borrowing privileges is that of fairness. The nonresident is required to pay a fee equal to that of a resident. They are not paying for pro-rated service or for specific services. The law does not address those types of issues. But the law does imply a fairness due to the sentence that states "The nonresident cards shall allow for borrowing privileges at all participating public libraries in the regional library system."

In brief, a nonresident card avails the purchaser to the same rights and responsibilities of a resident cardholder.

Sincerely,

Mike Ragen
Chief Deputy Director
Illinois State Library

CC: Illinois Library System Directors