

STATE OF MICHIGAN
IN THE SUPREME COURT
APPEAL FROM THE COURT OF APPEALS

GEORGE H. GOLDSTONE,

Plaintiff-Appellant,

Supreme Court No. 130150
Court of Appeals No. 262831
Oakland County No. 04-060611-CZ

vs.

THE BLOOMFIELD TOWNSHIP
PUBLIC LIBRARY, by and through
Its Board of Trustees,

Defendant-Appellee.

AMICUS BRIEF OF MICHIGAN
DEPARTMENT OF HISTORY, ARTS AND LIBRARIES

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Dated: March 16, 2007



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QUESTION PRESENTED FOR REVIEW

- I. **Const 1963, art 8, § 9 requires the Legislature to establish and support public libraries that must be available to all Michigan residents under regulations adopted by the libraries' governing bodies. The Bloomfield Township Library prohibited George Goldstone, a Bloomfield Hills city resident, from borrowing books because the contract between the City and the Township providing city residents library services through the township library expired. May the township library prohibit non-township residents from borrowing books?**

INTRODUCTION

Michigan's Constitution says that public libraries must be available to all residents of the state under regulations adopted by the libraries' governing bodies. George Goldstone, a resident of the city of Bloomfield Hills, attempted to borrow books from the Bloomfield Township library and offered to pay a fee to borrow the books. The library prohibited Mr. Goldstone from borrowing the books because the contract between Bloomfield Township and the city of Bloomfield Hills, which allowed city residents to use the township library's services, had expired. Reasonable minds, the great mass of the people themselves, would have understood the words of the Constitution "public libraries . . . shall be available to all the residents of the state under regulations adopted by governing bodies thereof," to mean residents like Mr. Goldstone may borrow books from public libraries. The people would have also understood those words to mean that the township is authorized to charge a reasonable fee for nonresidents to borrow the books. But the authority to regulate library services does not include the authority to absolutely prohibit residents, like Mr. Goldstone, from borrowing books.

COUNTERSTATEMENT OF PROCEEDINGS AND FACTS

The Department of History, Arts and Libraries (HAL) is a principal department of Michigan government.¹ The Library of Michigan, which existed before Michigan gained statehood, is now housed within HAL.²

Under the Library of Michigan Act,³ the Library of Michigan has many duties, including maintaining a complete collection of the public documents issued by State officials or departments; furthering the development of effective, statewide school library services; and encouraging contractual and cooperative arrangements among all kinds of libraries for the improvement of library services to the people of Michigan.⁴ In addition, the Library of Michigan serves as the State Library Administrative Agency under the Library Services and Technology Act.⁵ Under that act, the Library of Michigan provides library services to public libraries, like the Michigan electronic library, that would otherwise cost more for local public libraries to furnish to residents in their area.

There are 388 public libraries in Michigan. Public libraries are formed at the local level. There are county libraries and regional libraries that are formed by two or more counties.⁶ District libraries are established by two or more municipalities.⁷ In addition, townships, cities, and villages may establish libraries.⁸ A cooperative library is a library or service center

¹ MCL 399.703.

² MCL 397.13.

³ 1982 PA 540, MCL 397.11 *et seq.*

⁴ MCL 397.20.

⁵ 20 USC 9121.

⁶ MCL 397.151.

⁷ MCL 397.173.

⁸ MCL 397.201 *et seq.*

designated by a cooperative board to execute services established by a cooperative plan and provided to libraries participating in the cooperative.⁹

The Legislature has enacted laws to provide funding to public libraries. Under the State Aid To Public Libraries Act,¹⁰ the Legislature provides State aid to public libraries through the Library of Michigan.¹¹ Under the Penal Fines Distribution Act,¹² county treasurers must apportion among public libraries and county libraries the proceeds from all fines for any breach of the State's penal laws collected in the county and paid to the county treasurer. The Legislature, through the Library of Michigan, appropriates money to library cooperatives through the distribution of their respective *pro rata* shares of State aid.¹³ The Legislature also appropriates money to libraries that are eligible to receive State aid and are members of a library cooperative for them to pay for cooperative library services.¹⁴ Libraries are also funded by local taxes.

Every Michigan resident lives in one of three areas related to libraries. The first area is a county, district, township, city, or village that established a library. The residents of this area support their library through local taxes and, thus, use the library services in their area without charge.

The second area is a township, city, or village that did not establish a library, but contracts with another township, city, or village that has a library. In that case, the residents without a library in their area may use the library services of the other city or township. This contract is often called a library service contract, and under it the municipality without a library

⁹ MCL 397.552(f).

¹⁰ 1977 PA 89, MCL 397.551 *et seq.*

¹¹ MCL 397.566(2); see also for example 2006 PA 345 § 107.

¹² 1964 PA 59, MCL 397.31 *et seq.*

¹³ MCL 397.566(3).

¹⁴ MCL 397.563.

assigns the money it would otherwise receive to fund a library (including State aid funds, cooperative library money, and county penal fees) to the municipality with a library. The municipality without a library may also tax its residents for use of the library services of the nearby jurisdiction's library and transfer those taxes, under the library services contract, to the city, township, or village providing the library services to the nonresidents. For example, the city of Bloomfield Hills contracted with Bloomfield Township to provide library services to city residents.

The third area is a township or city that did not establish a library and does not contract with another city or township for its residents to use the library services of that other city or township. There are 21 townships in Michigan with populations totaling approximately 17,055 that do not have a library and do not contract with another city or township for library services.

ARGUMENT

I. Residents may use library services, including borrowing books, from public libraries and libraries may contract with other local governments or charge nonresidents a reasonable fee, as determined by the Legislature, for those library services.

A. Standard of Review

This Court interprets constitutional provisions to determine the text's original meaning to the ratifiers, the people, at the time of ratification.¹⁵

B. Argument

1. "Available to all residents of the state" means residents may use library services, including borrowing books, from public libraries.

Our Constitution requires the Legislature to establish and support public libraries that must be available to all Michigan residents under regulations adopted by their governing bodies¹⁶:

The legislature shall provide by law for the establishment and support of public libraries which shall be available to all residents of the state under regulations adopted by the governing bodies thereof. All fines assessed and collected in the several counties, townships and cities for any breach of the penal laws shall be exclusively applied to the support of such public libraries, and county law libraries as provided by law.

The primary objective in interpreting a constitutional provision is to determine the text's original meaning to the ratifiers, the people, at the time of ratification.¹⁷ This rule of "common understanding" means¹⁸:

A constitution is made for the people and by the people. The interpretation that should be given it is that which reasonable minds, the great mass of the people themselves, would give it. "For as the Constitution does not derive its force from the convention which framed, but from the people who ratified it, the intent to be

¹⁵ *Wayne Co v Hathcock*, 471 Mich 445, 468; 684 NW2d 765 (2004).

¹⁶ Const 1963, art 8, § 9.

¹⁷ *Wayne Co v Hathcock*, 471 Mich at 468.

¹⁸ *Traverse City School Dist v Attorney General*, 384 Mich 390, 405; 185 NW 9 (1971), quoting Cooley's Const Lim 81.

arrived at is that of the people, and it is not to be supposed that they have looked for any dark or abstruse meaning in the words employed, but rather that they have accepted them in the sense most obvious to the common understanding, and ratified the instrument in the belief that that was the sense designed to be conveyed."

To ascertain the circumstances surrounding the adoption of a constitutional provision and the purpose sought to be accomplished by the provision, the Address to the People and the convention debates may be consulted.¹⁹

The Address to the People explained that art 8, § 9 would no longer require every city and township to establish at least one library. Instead public libraries would be available to residents without fixing where they would be organized²⁰:

This is a revision of Sec. 14, Article XI, of the present constitution which decrees that "the legislature shall provide by law for the establishment of at least one library in each township and city." This has never been adhered to as a matter of practice.

The proposed new language emphasizes that "public" libraries will be "available" to residents without fixing how or where libraries shall be organized. Reasonable rules for the use and control of their facilities may be adopted by the governing bodies of the libraries.

Penal fines for support of libraries are continued. County law libraries are also recognized. They have previously shared in penal fine collections through legislative enactment.

From this language, the ratifiers understood that the Constitution would no longer require every city and township to establish a library. The people also knew that, even if they gave up the constitutional right to have a library in their municipality, public libraries would be available to all residents of the State. That understanding of the people is reflected in the Address to the

¹⁹ *Comm for Constitutional Reform v Secretary of State*, 425 Mich 336, 341; 389 NW2d 430 (1986).

²⁰ 2 Official Record, Constitutional Convention 1961, p 3397.

People: "[t]he proposed new language emphasizes that 'public' libraries will be 'available' to residents without fixing how or where libraries shall be organized."

The Constitution of 1908 required a library in every city and township.²¹ One delegate to the 1961 Constitutional Convention said that the words, "available to all residents of the state" were added to the new Constitution because cities and townships would not be required to establish a library.²² By changing the Constitution, the people understood they would no longer have the right to library services in their own jurisdiction supported by their taxes. But they knew that, in exchange for losing that right, they would have all public libraries "available" to them.

Libraries exist to provide services. Library services include modern technology, like computer access, and fundamental services, like reading rooms and lending books. Since the people understood that public libraries would be available to all residents even if every city and township did not establish a library, the people must have understood that "available" meant they could use a public library's services including borrowing its books. The people understood that their local taxes and county penal fees supported the library services in their city or township so that if they visited the library in their city or township, they could use those services, including borrowing books. "Reasonable minds, the great mass of the people themselves," would have defined the word "available" to include all library services including borrowing books.

The people accepted the word "available" in the sense most obvious to their common understanding. At the time the people ratified our current constitution, this Court had defined "available" to mean "capable of use."²³ The Attorney General relied upon this Court's definition

²¹ Const 1908, art 11, § 14.

²² 1 Official Record, Constitutional Convention 1961, p 836.

²³ *Bay City Dredge Works v Fox*, 245 Mich 523, 525-526; 222 NW 747 (1929).

of "available," in addition to the Constitutional Convention debates, to determine that "available" meant the right to borrow books²⁴:

Clearly, under the constitutional mandate, and the Convention debates, *supra*, the right of state residents to use the facilities of any public library includes not only the right to enter a public library and read books there, but the same right to borrow books that is offered to residents of the community in which the library is established subject to reasonable regulations.

"Available to all residents of the state" were new words to the Constitution. One delegate to the Constitutional Convention said that those words were meant to be "as broad and general in scope as possible."²⁵ In response to this comment, another delegate asked the question that this Court must now decide: whether a nonresident may use a library's services including borrowing its books.²⁶ The response was that the delegates did not intend to circumscribe legislation or other rules that may be adopted by local libraries in controlling their books.²⁷ Certainly the delegates to the Constitutional Convention were concerned that "available to all residents of the state" would mean that residents of a city or township that established a library would subsidize nonresidents' use of the residents' library's services.²⁸ Since the delegates did not intend that "available" meant "for free," they added the words "under regulations adopted by the governing bodies thereof." But these words were not meant to entirely eliminate the availability of library services since the words "available to all residents of the state" were meant to be "as broad and general in scope as possible." The Constitution does not say public libraries must be available for *some* services.

2. The authority to regulate cannot abrogate the right to use library services including borrowing books.

²⁴ OAG, 1979-1980, No 5739, p 872 (July 15, 1980).

²⁵ 1 Official Record, Constitutional Convention 1961, p 835.

²⁶ 1 Official Record, Constitutional Convention 1961, p 836.

²⁷ 1 Official Record, Constitutional Convention 1961, p 836.

²⁸ See, for example, 1 Official Record, Constitutional Convention 1961, p 834.

Const 1963, art 8, § 9 says that public libraries must be available to all residents of the State under regulations adopted by their governing bodies. While the people understood they could borrow books from public libraries, the availability of books would be under regulations adopted by the governing bodies of libraries. The Address to the People said that, "[r]easonable rules for the use and control of their facilities may be adopted by the governing bodies of the libraries."²⁹

This language does not expressly say that governing bodies may set rules for the use and control of "library services." But control of "facilities" implies control of "library services" since library services are located in facilities. And by "control" the people would understand that the governing bodies would have the authority to *regulate* the availability of library services including borrowing books. For example, governing bodies regulate when books are available by setting the hours when the library is open. But control of facilities is not so broad to allow libraries to completely *deny* nonresidents the ability to borrow books. If that control were so broad, then libraries could eliminate entirely the availability of all library services to residents of the State. That notion contradicts the constitutional guarantee of public libraries being available to all residents of the State.

Although governing bodies of libraries may not pass rules that entirely eliminate providing library services to nonresidents, their control includes the right to impose fees on nonresidents to cover the cost of providing library services mandated by the Constitution. The convention debates did not clarify whether "regulations" included the right to impose fees.³⁰ But art 8, § 9 was not meant to impede the authority of libraries to enter into contracts with

²⁹ 2 Official Record, Constitutional Convention 1961, p 3397.

³⁰ OAG, 1983-1984, No 6188, p 195 (October 17, 1983).

neighboring municipalities to provide library services to their residents.³¹ The cost to a jurisdiction in providing library services to nonresidents is balanced by the right to impose fees on nonresidents to use those services. Thus, the governing body of a public library may adopt reasonable regulations imposing library service fees upon nonresident users of those services.³²

The constitutional right of availability of library services, however, is not contingent on the existence of library services contracts. In its opinion in this case, the Court of Appeals relied upon an Attorney General opinion³³ to decide that "full library services are subject to contractual agreements and that, absent such an agreement, nonresidents do not have unfettered access to library services."³⁴ But that Attorney General opinion says only that a township may provide a library for its residents and may also provide library services by contracting with any governing body to provide those services to nonresidents. The Attorney General opinion does not imply that library services to nonresidents are contingent upon a library services contract between the nonresidents' local governmental body and the municipality providing the library. The Constitution requires the availability of library services, so that, without a library service contract, the library must still provide library services to nonresidents. But the library may impose a fee for the library services upon the nonresidents.

The governing bodies of libraries may charge a reasonable fee from nonresidents for them to use a library's services. At the time OAG No 6188 was issued in 1983, no Michigan statute expressly authorized imposing fees to nonresidents for borrowing books. Since then, the Legislature authorized libraries to charge nonresident borrowing fees.³⁵ The Legislature has said

³¹ OAG No 6188.

³² OAG No 6188.

³³ OAG, 1977-1978, No 5180, p 107, (April 29, 1977).

³⁴ *Goldstone v Bloomfield Hills Twp Library*, 268 Mich App 642, 648; 708 NW2d 740 (2005).

³⁵ 1984 PA 432; MCL 397.561a.

that the fee must not exceed the costs incurred by the library in making borrowing privileges available to nonresidents. Accordingly, even without a contract between the Bloomfield Township library and the city of Bloomfield Hills, there is no "free ride" for city residents since the township library may charge city residents a fee to cover the costs incurred by the library in making borrowing privileges available to nonresidents.

Contrary to the Court of Appeals opinion in this case, allowing nonresidents to use library services while also allowing libraries to charge a reasonable fee for those services does not render sections of 1877 PA 164 a nullity. Section 13 of that Act³⁶ allows townships, villages, and cities to contract for the use of library services with adjacent townships, villages, and cities. Section 16 of the Act³⁷ allows the people of a township, village, or city that has contracted for library services with another township, village, or city to use the library services subject to the library's regulations. The Court of Appeals determined that those sections of the Act would be unnecessary if public libraries were statutorily required to provide to nonresidents full access to all their services "on an unrestricted basis."³⁸ The Court of Appeals' opinion would be reasonable *if* library services were available to nonresidents *on an unrestricted basis*. But "available to all residents of this state" does not mean that library services must be provided on an unrestricted basis since that right is "under regulations adopted by the governing bodies thereof." Sections 13 and 16 of the Act were enacted before public libraries were made "available to all residents of this state." Interpreting the Constitution to allow nonresidents to use public library services and to allow libraries to charge nonresidents a reasonable fee for those services is consistent with the rights of townships, villages, and cities under 1877 PA 164.

³⁶ MCL 397.213.

³⁷ MCL 397.216.

³⁸ *Goldstone*, 268 Mich App at 654.

3. Allowing nonresidents to use library services and allowing libraries to charge nonresidents a fee for library services ensures that public libraries will be "available to all residents of the state under regulations adopted by the governing bodies thereof."

If this Court determines that public libraries must make available their services, including lending books to all State residents, then the *status quo* of three categories of potential borrowers will continue. The first category of borrowers would be residents of communities that establish a public library. These residents would be able to borrow books from their libraries that are supported by state and local taxes. In all likelihood, the residents will not pay any fee for borrowing books from their local library.

The second category would be residents of communities that do not establish a public library, but whose local government contracts with a governmental unit that has its own library. In that case, the nonresidents living in the contractual area could use the library's services including borrowing books. Libraries could continue their current policy not to charge the nonresidents a fee to use library services.

The third category would be residents of communities that do not establish a public library and do not contract with another local government with a library. Such libraries could charge a reasonable fee to nonresidents to use library services, because, unlike group two, the nonresidents from group three have not subsidized the cost of library services through a library services contract.

Allowing nonresidents to use library services for a fee will not discourage library service contracts. Instead, allowing libraries to impose a fee for use of its services might even encourage more library service contracts. Residents from group three, upset about their higher cost relative to the cost to group two residents, may petition their municipalities to contract with the library so as to spread the cost of library services among all the taxpayers in group three's jurisdiction.

Those municipalities will be encouraged to execute library services contracts knowing that their residents will have no library services without a library service contract unless they pay a relatively large individual fee.

HAL agrees, of course, with the Michigan Libraries Association (MLA) that libraries provide valuable services. The MLA goes on to argue that if residents use library services while minimizing or avoiding paying for the services, then those services will no longer continue. But if this Court agrees with HAL that public libraries may charge a reasonable fee to nonresidents for library services, including borrowing books from public libraries, then those nonresidents will not minimize or avoid paying for those services. If nonresidents do not pay the fee for library services, then the library is not obligated to provide the services. In addition, the scenario that the MLA predicts will occur if Mr. Goldstone prevails – that services will not be available – is the scenario nonresidents now face in Bloomfield Township: the township library is not making its books available to nonresidents like Mr. Goldstone to borrow. If the Bloomfield Township Library prevails in this case so that it can deny nonresidents library services because there is no contract between the library and other local governments, then public libraries throughout the State may deny *any* library services. By allowing nonresidents like Mr. Goldstone to use library services for a fee, the township library would be complying with the constitutional requirement of making its library services available to residents of the State.

The township library and the MLA argue that library funding contracts continue to be essential so that libraries can make their services available to Michigan residents. HAL is not advocating eliminating those contracts. Indeed, those contracts should continue as an important funding source for public libraries. But if there is no contract in place between two local units of government, then the library should charge nonresidents a reasonable fee for library services. And if residents of group three find it too expensive to use library services, they may persuade

their local units of government to use its tax dollars to contract with the library so as to spread the cost of library services among all the residents in group three.

CONCLUSION

Const 1963, art 8, § 9 requires public libraries to be available to all residents of the state and allows governing bodies of public libraries to regulate library services. These constitutional guarantees must be balanced so that neither eliminates the other. For public libraries to be available to all residents of the State, the libraries must provide library services, including lending books, to residents residing outside boundaries of the library's governing body. But in providing those library services, public libraries may charge nonresidents a reasonable fee, either through library service contracts with the local governments of nonresidents or by charging nonresidents a reasonable fee to use the library services.

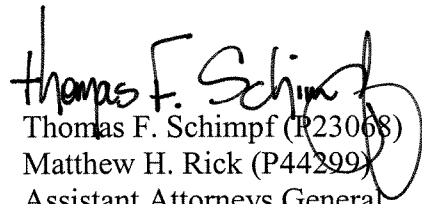
RELIEF SOUGHT

This Court should reverse the opinion of the Court of Appeals and hold that public libraries cannot deny to nonresidents the ability to borrow books, but those libraries can charge reasonable fees for their services.

Respectfully submitted,

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Date: March 16, 2007

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