

STATE OF FLORIDA
DIVISION OF LIBRARY AND INFORMATION SERVICES
DEPARTMENT OF STATE

AGENCY CLERK
DEPARTMENT OF STATE

Petition of Southwest Florida Library Network
Variance of Rule 1B-2.011(2)(c)
_____ /

Case No. DOS- 20-01

ORDER DENYING RULE WAIVER

The Department of State (“Department”), Division of Library and Information Services (“Division”), having jurisdiction over this matter pursuant to sections 257.42 & 120.542, Florida Statutes, and the rules promulgated thereunder, hereby enters this Order denying the Southwest Florida Library Network (“SWFLN”) Petition for Waiver of Rule 1B-2.011(2)(c), F.A.C., filed on April 24, 2020.

FINDING OF FACT

1. The Southwest Florida Library Network is a Multitype Library Cooperative in Florida. SWFLN serves the counties of Charlotte, Collier, DeSoto, Hendry, Lee, and Monroe. <https://swfln.org/swfln-information/>
2. SWFLN was awarded a Library Cooperative Grant (CSFA 45.018) by the Division: grant number 20-LCG-04 for the project “SWFLN Library Cooperative Grant 2019/2020,” in the amount of \$500,000.00.
3. A Grant Agreement, which is incorporated into Rule 1B-2.011(2)(c), F.A.C., between the Division and SWFLN was executed on August 26, 2019.
4. All tasks associated with the project were to be performed by September 30, 2020, which is the end of the fiscal year. *See* Grant Agreement 1.a).
5. All grant and local matching funds must be paid out by the project ending date of September 30, 2020. No costs incurred after the ending date of the project period shall be allowed unless specifically authorized by the Division. *See* Library Cooperative Grant Guidelines sections V and X.

6. On April 24, 2020, SWFLN filed a petition of waiver for Rule 1B-2.011(c), F.A.C., governed by section 257.42, Florida Statutes.
7. SWFLN states that due to the situation caused by the COVID-19 pandemic, SWFLN had to cancel many activities that benefit the community libraries and their staff.
8. SWFLN states that the rule preventing the carryover of unexpended Library Cooperative Grant funds beyond September 30th creates a substantial hardship on SWFLN as it will be unable to pay for the services previously outlined on behalf of its libraries.
9. On May 5, 2020 the Division published a Notice of SWFLN's Petition for Waiver in the *Florida Administrative Weekly*. No public comments were received.

CONCLUSIONS OF LAW

10. Pursuant to section 257.24, Florida Statutes, state funds allocated to libraries shall be expended only for library purposes in the manner prescribed by the Division of Library and Information Services.
11. Libraries under separate governances may establish nonprofit library cooperatives for the purpose of sharing resources. § 257.40, F.S.
12. Pursuant to section 257.42, Florida Statutes, an administrative unit library cooperative is eligible to receive an annual grant from the state of not more than \$400,000 for the purpose of sharing library resources.
13. In 2019, the Florida Legislature appropriated \$500,000 in nonrecurring funds from the General Revenue to the Florida Department of State in order to provide each administrative unit of a library cooperative that is eligible to receive a grant under section 257.42, Florida Statutes, an additional grant of \$100,000 for the purpose of sharing library resources. Ch. 2019-115, § 6, at 401, 3188, 1., Law of Fla.

14. The Division, pursuant to section 257.14, Florida Statutes, promulgated Rule 1B-2.011(2)(c), F.A.C., to administer the library cooperative grants. The rule incorporates by reference the Library Cooperative Grant Guidelines, Grant Application, and Grant Agreement.
15. Pursuant to Section X of the Library Cooperative Grant Guidelines, the project period begins on July 1 and ends on September 30 of the following year. The Grantee shall only obligate or expend any grant or matching funds during the project period, and all funds must be paid out by the project ending date of September 30.
16. The guideline requirement that all funds must be paid by the project ending date of September 30 is necessary in order to comply with section 216.301, Florida Statutes.
17. Pursuant to section 216.301(1)(a), Florida Statutes, the Department is required to identify in the state's financial system any incurred obligation which has not been disbursed. Any appropriation not identified shall be available for appropriation by the Legislature.
18. The incurred obligations identified in section 216.301(1)(a), Florida Statutes, shall be carried forward. The remaining incurred obligations undisbursed on September 30 shall revert to the fund from which appropriated and shall be available for reappropriation by the Legislature.
19. Section 120.542, Florida Statutes, and Rules 28-104.001 – 28.104.006, F.A.C., establish a procedure whereby those subject to regulation by administrative rule may request relief from administrative rule when strict application would lead to unreasonable, unfair, and unintended results.
20. Section 120.542(2), Florida Statutes, provides:

Variations and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

21. Section 120.542(8) requires that an agency's decision to grant a petition for waiver or variance be supported by competent substantial evidence, and that an agency should grant relief only to the extent necessary to achieve the purpose of the underlying statute.
22. The guideline requirement that all grant obligations must be paid out by September 30th ensures that state funds allocated to library cooperatives are expended prior to reappropriation by the Legislature.
23. The Department cannot waive the reappropriation of obligations that remain undisbursed after September 30th, which is set by statute.
24. SWLFN has not demonstrated the COVID-19 situation impacted them in manner that application of the grant guidelines affected them significantly different from the way it affected other similarly situated cooperatives who are subject to the rule.

ORDER DENYING PETITION FOR RULE VARIANCE

Based on the foregoing, the Department hereby denies SWFLN Petition for Waiver of Rule 1B-2.011(c), F.A.C.

DONE AND ORDERED this 16 day of July 2020.



Amy Johnson
Director
Division of Library and Information Services
Florida Department of State

NOTICE OF RIGHTS

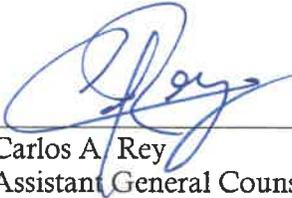
A PARTY WHO IS ADVERSLY AFFECTED BY THIS ORDER MAY PETITION FOR AN ADMINISTRATIVE HEARING PURSUANT TO SECTIONS 120.569 AND 120.57, FLORIDA STATUTES. SUCH PROCEEDINGS ARE GOVERNED BY CHAPTER 28-106, FLORIDA ADMINISTRATIVE CODE. A PETITION FOR HEARING MUST BE IN WRITING AND MUST BE RECEIVED BY THE AGENCY CLERK FOR THE DEPARTMENT OF STATE WITHIN 21 DAYS OF RECEIPT OF THIS ORDER. THE ADRESS FOR THE AGENCY CLERK IS: AGENCY CLERK, DEPARTMENT OF STATE, OFFICE OF THE GENERAL COUNSEL, 500 SOUTH BRONOUGH STREET, TALLAHASSEE, FL 32399-0250. MEDIATION IS NOT AVAILABLE AS AN ALTERNATIVE REMEDY, YOUR FAILURE TO SUBMIT A PETITION FOR HEARING WITHIN 21 DAYS FROM YOUR RECIEPT OF THIS ORDER WILL CONSTITUTE A WAIVER OF YOUR RIGHT TO AN ADMINISTRATIVE HEARING AND THIS ORDER WILL BECOME A FINAL ORDER.

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE FLORIDA DEPARTMENT OF STATE AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISCTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THRITY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this Order Denying a Rule Waiver was provided by regular U.S. mail this 6th day of July, 2020, to Lourdes M. Castro, Executive Director of the Southwest Florida Library Network, 13120 Westlinks Terrace, Unit 3, Fort Myers, FL 33913, and to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, Florida 32399-1300 by regular mail.



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