LIBRARIES -- Appropriations and Expenditures (necessity for referendum when expending reserve fund moneys) -- Finances (establishment of and expenditure from reserve funds) -- Reserve Fund (authority to establish); (necessity for referendum)

REFERENDUM -- Public Libraries (not required to expend monies from reserve fund)

EDUCATION LAW §§259, 3651: The library board of trustees of a school district public library may determine to accumulate library fund monies for capital purposes. The expenditure of such monies is not subject to referendum.

You ask whether the expenditure of monies from a "capital reserve fund" established by a school district public library is subject to referendum.

Section 259(1) of the Education Law provides, with respect to public libraries, that monies received from taxes and other public sources for library purposes shall be kept as a separate fund by the municipal or school district treasurer and expended only upon the direction of the library trustees. That statute also provides that upon written demand by the library trustees, the municipal or school district treasurer is required to pay such monies to the treasurer of the library. Thus, library funds, whether held in the custody of the library treasurer, or by the municipal or school district treasurer as custodian for the library, are under the exclusive control of the library board, separate and distinct from monies of the municipality or school district (see, e.g., 1987 Opns St Comp No. 87-49, p 76; 1986 Opns St Comp No. 86-54, p 86; see also Buffalo and Erie County Public Library v County of Erie, 171 AD2d 369, 577 NYS2d 993 aff 80 NY2d 938, 591 NYS2d 131).

This Office has previously noted that no provision of law requires that library fund monies that are not expended during a fiscal year be returned to the municipality or school district which sponsors the library (see, e.g., 1983 Opns St Comp No. 83-32, p 37; see also Opn No. 87-49, supra). Therefore, we have expressed the opinion that library fund monies remain the property of the library and surplus monies in a municipal or school district public library fund, or surplus moneys held by the library treasurer, may be carried-over from year to year, and accumulated and expended for proper library purposes as determined by the library board (see e.g., 1980 Opns St Comp No. 80-260, p 71; 1979 Opns St Comp No. 79-866, unreported; 1975 Opns St Comp No. 75-399, unreported; see also Buffalo and Erie County Public Library, supra; compare Korn v Gulotta, 72 NY2d 108, 534 NYS2d 108; but see Town Law §107[1], Village Law §5-506[1][c], County Law §355[1][g], as amended by L 2000, ch 528). Pursuant to this authority, a library board may determine to accumulate library fund monies for capital purposes (Opn No. 79-866, supra).

It is well-established that a question may not be submitted to referendum in the absence of express constitutional or statutory authority (see, e.g., McCabe v Voorhis, 243 NY 401; Citizens For An Orderly Energy Policy v County of Suffolk, 90 AD2d 522,
455 NYS2d 32 app dsmd 57 NY2d 1045, 457 NYS2d 787). We find no constitutional provision or statute requiring or authorizing a referendum on the expenditure of library fund monies accumulated for capital purposes (compare Education Law §§255[1], 259[1], 260[7], [9], [10]). In this regard, we are aware that, with certain exceptions (see Education Law §3651[1-a], [1-b], [3-a]), section 3651 of the Education Law requires voter approval for the establishment of, and expenditures from, capital reserve funds established by school authorities of any school district (Education Law §3651[1], [3]; see also General Municipal Law §§6-c[4], [8], 6-g[4], [7]). As noted, however, it is the library board, not the school district board, that determines to carry-over and accumulate library fund monies for capital purposes (cf. Opn No. 87-49, supra; Opn No. 79-866, supra). The voter approval requirements of section 3651, therefore, are not applicable to library fund monies.

Accordingly, it is our opinion that the library board of trustees of a school district public library may determine to accumulate library fund monies for capital purposes. Moreover, it is our opinion that the expenditure of such monies is not subject to referendum.

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