Opinion 88-76

This opinion represents the views of the Office of the State Comptroller at the time it was rendered. The opinion may no longer represent those views if, among other things, there have been subsequent court cases or statutory amendments that bear on the issues discussed in the opinion.

LIBRARIES -- Investments (of private moneys) -- Private Moneys (accounting for); (investment of) -- Taxes (applying private source moneys to reduce)

EDUCATION LAW, §259(1); GENERAL MUNICIPAL LAW, §11: Interest earned on the investment of public moneys appropriated by a village to a village public library must be credited to the library fund and not to the village general fund.

EDUCATION LAW, §§226(6), 255(1); GENERAL MUNICIPAL LAW, §11: Moneys donated by private persons to a village public library may be invested by the library trustees in investments which they deem to be for the best interests of the library, and need not be invested in the manner specified in General Municipal Law, §11.

EDUCATION LAW, §259(1); GENERAL MUNICIPAL LAW, §30(3): The annual report of financial transactions which a public library treasurer must file with the State Comptroller should include information both on public moneys and private source moneys.

This is in reply to your letter concerning the public and private source moneys of a village public library. You ask whether interest earned on the investment of moneys appropriated by the village for library purposes is credited to the library fund. You also ask whether private source revenues may be retained by the library board and expended by board resolution at a public meeting. Finally, you ask whether the library must make an annual accounting of expenditures of private source moneys and whether such moneys must be applied to reduce the annual appropriation of village moneys for library purposes.

Education Law, §259(1) requires that taxes for library purposes be levied and collected annually with general taxes of the municipality or school district which established the library. Such section further provides, in pertinent part, as follows:

"1. * * * All moneys received from taxes or other public sources shall be kept as a separate library fund by the treasurer of the municipality or district making the appropriation and shall be expended only under direction of the library trustees on properly authenticated vouchers, except that moneys received from taxes and other public sources for the support of a public library ... shall be paid over to the treasurer of such library ... upon the written demand of its trustees." [Emphasis added]

Based on the above language, this Office, in 1986 Opns St Comp No. 86-54, p 86, expressed the opinion that the municipal treasurer, as custodian of the library fund, is responsible for maintaining bank accounts for the deposit of moneys received from taxes or other public sources. However, since ultimate control of the use, disposition and expenditure of library fund moneys is vested in the library board of trustees (Education Law, §§226(6), 259[1]), the library board is authorized to direct which
depositories are to be utilized. In addition, we stated that the library board may authorize the municipal or school district treasurer, as custodian, to invest library fund moneys in the same manner and to the same extent as provided in General Municipal Law, §11 or Education Law, §1723-a, as the case may be (see also 1974 Opns St Comp No. 74-361, unreported). Therefore, since the municipal treasurer holds library fund moneys as custodian for the library and invests such moneys upon authorization of the library board, it is clear that interest earned on such investments must be credited to the library fund and not to the general fund of the municipality.

With regard to private source moneys, we have expressed the opinion that the library board would have custody and control of, and may maintain a separate account for, these funds (1979 Opns St Comp No. 79-25, unreported). These funds may be expended in the same manner as public source moneys, upon authorization of the library board, for any lawful library purpose (1985 Opns St Comp No. 85-40, p 54; 1980 Opns St Comp No. 80-340, p 101). With respect to the investment of private source moneys, we have expressed the opinion that, while a public library may invest public funds (e.g., moneys raised by taxes) only in the types of investments authorized by General Municipal Law, §11 or Education Law, §1723-a, moneys received entirely from private sources are not subject to the restrictions contained in those sections of law and, subject to the terms of the gift, may be invested in a manner which the library trustees deem to be in the best interests of the library (1979 Opns St Comp No. 79-450, p 82; see also EPTL 11-2.2, which relates to the investment of trust property; 1981 Opns St Comp No. 81-393, p 431).

As a general rule, when a statute commits the decision of a matter to a governing board and is silent as to the mode of its exercise, the governing board expresses its will by the adoption of a resolution (McQuillin, Municipal Corporations, §15.06; Reese v Lombard, 47 AD2d 493, 366 NYS2d 493). Accordingly, it is our opinion that the library board would authorize the deposit, investment or expenditure of these funds by board resolution. As to whether any such action may be taken at other than a public meeting, we suggest you contact the Committee on Open Government since that body is authorized to issue advisory opinions interpreting the provisions of the Open Meetings Law (Public Officers Law, §109).

We are aware of no statutory requirement that private source moneys be applied to reduce the amount levied for library purposes by the sponsoring municipality (1981 Opns St Comp No. 81-393, p 431; see Martin v Board of Education, 39 Misc 2d 519, 241 NYS2d 396). On the other hand, there is nothing which would preclude a municipal governing board from taking into consideration a library's private source funds when determining the amount to be raised as tax revenues for library purposes.

Finally, with regard to an annual accounting of the receipt and expenditure of private source moneys, we note that General Municipal Law, §30(3) requires that an "annual report of financial transactions shall be made by the treasurer of each public library ..." The report must be certified by the officer making the same and, unless an extension of time is granted, must be filed with this Office within sixty days after the close of the fiscal year (General Municipal Law, §30[5]). Since the term "financial transactions" as used in section 30(3) is not limited to those transactions involving public source moneys, the report should include information both on public and private source moneys.
In addition to the report required by General Municipal Law, §30, the Education Law provides for reporting to the State Education Department (see Education Law, §§215, 263). We suggest you contact the State Education Department directly with regard to the requirements of reports submitted to that agency.

April 12, 1988
Village of Tarrytown