Opinion 91-57

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 The opinion may no longer represent those views if, among other things, there have been subsequent court cases or statutory amendments that bear on the issues discussed in the opinion.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 -- Finances (comingling library moneys with those of municipal sponsor) -
- Public Library (comingling library moneys with those of municipal sponsor)
MUNICIPAL FUNDS -- Accounting (comingling library moneys with those of municipal sponsor)

EDUCATION LAW, §259(1): Library fund moneys of a village public library held in the custody of the village treasurer may be comingled with moneys of the village, subject to the consent of the library board. Prior inconsistent opinions superseded.

You ask whether library fund moneys of the village public library may be comingled with moneys of the village. The village treasurer has custody of the moneys of the village public library and presently maintains a separate bank account for those moneys. You indicate that the village believes that it would be more efficient if library moneys were deposited in and disbursed from the same bank account as village moneys. The treasurer would maintain separate accounting records for the library fund moneys and the library fund moneys would be disbursed only at the direction of the library board of trustees.

Section 259(1) of the Education Law requires that taxes for library purposes be levied and collected annually with general taxes of the municipality or school district which established the library. That section also provides, in part, that:

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.

Thus, where, as here, library moneys are not paid over to the library treasurer, section 259(1) expressly requires the village treasurer to retain custody of those moneys in a separate fund (see also 1987 Opns St Comp No. 87-49, p 76; 1986 Opns St Comp No. 86-54, p 86).

This Office has expressed the opinion that, where separate bank accounts are not specifically required by State or local legislation, moneys in various funds held by a municipality may be deposited in a single bank account (1981 Opns St Comp No. 81-341, p 373; 1971 Opns St Comp No. 71-291, unreported). We have also recommended generally that bank accounts be consolidated to the extent possible (Office of the State Comptroller, Financial Management Guide, Cash Management and Investment Policies and Procedures, subsection 2.0020). Therefore, since section 259 does not expressly require separate bank accounts (cf. General Municipal...
Law, §6-c[7]) or prohibit comingling of library fund moneys with moneys of the municipality (cf. Local Finance Law, §165.00[a]), it is our opinion that the requirement to keep library moneys in a "separate library fund" does not require the physical segregation of such moneys.

With respect to library moneys, however, we note that public libraries are, for most purposes, fiscally autonomous from the sponsoring municipality (see, e.g., 1983 Opns St Comp No. 83-32, p 38). Thus, the ultimate control of the use, disposition, and expenditure of those moneys is vested in the library board of trustees even if the municipal treasurer is the custodian of library moneys. (Education Law, §§226[6], 259[1]; 1987 Opns St Comp No. 87-84, p 125; see also Opn No. 87-49, supra; Opn No. 86-54, supra). In addition, it is the library board of trustees which may authorize the investment of library moneys even when the moneys are held in the custody of the municipal treasurer (Opn No. 86-54, supra). Therefore, since the library board controls the use and disposition of library fund moneys, it is our opinion that the library board must consent to any arrangement under which library fund moneys are to be comingled with moneys of the municipality.

1979 Opns St Comp No. 79-223, unreported, and other prior opinions are hereby superseded to the extent inconsistent therewith.

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