Opinion 92-28

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 The opinion may no longer represent those views if, among other things, there have been subsequent court cases or statutory amendments that bear on the issues discussed in the opinion.

BONDS AND NOTES -- Tax Anticipation Notes (payment of proceeds to a public library); (payment of interest for notes issued for library taxes)
LIBRARIES -- Finances (issuance and payment of proceeds of tax anticipation notes); (payment of interest on tax anticipation notes) -- Investments (interest earned on)
- Taxes (time for payment over by school district)
SCHOOL DISTRICTS -- Library Appropriation (disposition of interest on investment of library fund); (time for payment over); (issuance of tax anticipation notes for library taxes)

EDUCATION LAW, §259(1); LOCAL FINANCE LAW, §24.00; REAL PROPERTY TAX LAW, §§1322, 1324: (1) Interest earned on the investment of library fund moneys is credited to the library fund. (2) A school district should pay over to the library fund or the library treasurer, as the case may be, those taxes which are specifically earmarked for library purposes as soon as practicable after their receipt. (3) If a school district has issued tax anticipation notes in anticipation of taxes levied for library purposes, the proceeds should be paid to the library fund or to the library treasurer, as the case may be, as soon as practicable after receipt. (4) Interest on such tax anticipation notes is a charge for which the school district, and not the library, is liable. However, it is permissible for the library, in its discretion, to reimburse the school district for interest costs with respect to such notes. (5) If a school district chooses not to issue tax anticipation notes but has other moneys available, it should pay a portion of these funds, if not needed for school district purposes, to the library to assure the library's ability to operate until tax revenues are received. 1962 Opns St Comp No. 62-978, unreported, is superseded to the extent inconsistent.

You ask the following questions concerning the relationship between a city school district and a city school district public library in connection with moneys for the support of the library:

1. Is interest earned on the investment of library fund moneys credited to the library fund?

2. Must the school district, immediately upon receipt, place tax moneys collected for library purposes in a separate library fund or, if the library board of trustees has demanded in writing payment of taxes, pay the moneys to the library treasurer?

3. May the school district make a partial payment if it has received an amount sufficient to pay the entire amount to the library?
4. Is the school district required to advance either general fund moneys or the proceeds of tax anticipation notes to the library to provide operating revenues for that period of the library's fiscal year prior to the collection of library taxes?

5. If tax anticipation notes are issued to fund this period, when should the school district pay proceeds to the library?

6. If tax anticipation notes are issued by the school district to fund this period, is the library required or authorized to pay interest on these notes?

Education Law, §259 relates to taxes voted for library purposes and provides in subdivision 1 thereof as follows:

1. Taxes, in addition to those otherwise authorized, may be voted for library purposes by any authority named in section two hundred fifty-five of this chapter and shall, unless otherwise directed by such vote, be considered as annual appropriations therefor until changed by further vote and shall be levied and collected yearly, or as directed, as are other general taxes. In the case of a school district the appropriation for library purposes shall be submitted to the voters of the district in a separate resolution and shall not be submitted as a part of the appropriation of the necessary funds to meet the estimated expenditures of the school district. All moneys received from taxes or other public sources for library purposes shall be kept as a separate library fund by the treasurer of the municipality or school district making the appropriation and shall be expended only under direction of the library trustees on properly authenticated vouchers, except that money received from taxes and other public sources for the support of a public library or a free association library or a cooperative library system shall be paid over to the treasurer of such library or cooperative library system upon the written demand of its trustees.

Thus, pursuant to section 259(1), taxes voted for library purposes are considered to be an annual appropriation unless and until changed by further vote and must be levied and collected in the same manner as other general taxes. Further, all moneys received from taxes or other public sources for library purposes must be kept in a separate library fund by the municipality or school district treasurer or, upon written demand of the library trustees, paid over to the treasurer of the library. Since the treasurer of the sponsoring municipality or school district holds library fund money as custodian for the library and invests the moneys, upon authority of the library board, we have concluded that interest earned on such investment must be credited to the library fund and not to the general fund of the sponsor (1986 Opns St Comp No. 86-54, p 86; see also Buffalo Library v Erie County, 171 AD2d 369, 527 NYS2d 993.

Section 259(1) does not prescribe a specific date on or before which library tax moneys must be placed in the library fund or paid over to the library treasurer by the sponsoring municipality or school district. In the case of school district public libraries, however, pursuant to Real Property Tax Law, §§1322 and 1324, the amount of the taxes attributable to library purposes must be separately stated on each statement of taxes. Thus, it is clear that tax receipts are expressly earmarked for library purposes. Accordingly, consistent with this statutory scheme, we believe the school district should pay over to the library fund or library treasurer, as the case may be, those taxes which are specifically earmarked for library purposes, as soon as practicable after their receipt.
With respect to the time prior to the receipt of taxes, we note initially that public libraries are not authorized to issue indebtedness in anticipation of the receipt of tax revenues (1962 Opns St Comp No. 62-978, unreported; Local Finance Law, §24.00). The sponsoring municipality or school district, however, is authorized, but not required, to issue tax anticipation notes in anticipation of the collection of taxes, including those levied for library purposes (id.; 9 Opns St Comp, 1953, p 52). Since the tax anticipation notes are issued in contemplation of the collection of taxes (see Local Finance Law, §24.00[a][1]), we believe they should be treated, in substance, the same as tax receipts with respect to payments for library purposes. Therefore, if the school district has issued tax anticipation notes in anticipation of taxes including those levied for library purposes, a proportionate share of the proceeds should be paid, as soon as practicable after receipt, into the library fund or, if demand has been made, to the library treasurer. Since tax anticipation notes are obligations of the school district, however, interest thereon is a charge for which the school district, and not the library, is liable (Opn No. 62-978, supra). We are aware of no authority for the school district to charge to the library a portion of the interest expense (id.). However, inasmuch as the proceeds of tax anticipation notes issued in anticipation of taxes levied for the library may only be expensed for library purposes, we believe it would be permissible and in furtherance of a proper library purpose for the library, in its discretion, to reimburse the school district for interest costs incurred with respect to such tax anticipation notes (see Education Law, §§226[6], 255[1], 259[1], 260).

If the school district chooses not to issue tax anticipation notes but has other moneys available (see, e.g., Education Law, §2021[21]; Real Property Tax Law, §1318), it should, consistent with the statutory obligation to fund the library appropriation, pay a portion of these funds, if not needed for school district purposes, to the library to assure its ability to operate until tax revenues are received (1977 Opns St Comp No. 77-770, unreported).

Opn No. 62-978, supra, is superseded to the extent it concludes that a school district public library may not, in its discretion, reimburse the school district for interest costs on tax anticipation notes issued in anticipation of taxes levied for library purposes.

September 30, 1992
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