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 The opinion may no longer represent those views if, among other things, there have been subsequent court cases or statutory amendments that bear on the issues discussed in the opinion.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 (requirements of annual audit of by town board)

TOWN BOARDS -- Powers and Duties (authority to annually audit public library)

EDUCATION LAW, §259; TOWN LAW, §123: Neither the board of trustees nor the separate treasurer of a town public library is required pursuant to Town Law, §123 to annually account to, or submit its books for audit to, the town board.

You ask whether, pursuant to Town Law, §123, the board of trustees or the separate treasurer of a town public library is required to annually account to, and submit its books for audit to, the town board with respect to private source moneys held by the library. You state that the town supervisor is the custodian of the library fund pursuant to Education Law, §259, and that the library board of trustees has appointed a treasurer of the library who holds only private source moneys of the library.

Town Law, §123 provides that, on or before January 20, each town officer or employee who has received or disbursed any moneys in the previous fiscal year "shall account with the town board for such moneys and shall produce all supporting books, records, receipts, warrants, vouchers and cancelled checks". Pursuant to Education Law, §259, all moneys received "from taxes and other public sources" must be kept as a separate library fund by the treasurer of the sponsoring municipality as custodian for the library (1986 Opns St Comp No. 86-54, p 86), unless the library board has appointed a separate treasurer and has demanded in writing that these moneys be paid to the library treasurer.

The ultimate control of the use, disposition and expenditure of the library fund moneys is vested in the library board even when the municipal treasurer has custody (1991 Opns St Comp No. 91-57, p 158). Further, even if the treasurer of the sponsoring municipality is custodian of the library fund, the library board would have custody of private source moneys of the library (1988 Opns St Comp No. 88-76, p 145; 1980 Opns St Comp No. 80-340, p 101).

Public libraries are, for most purposes, fiscally autonomous from the sponsoring municipality (see Opn No. 91-57, supra; 1983 Opns St Comp No. 83-32, p 37; Buffalo Library v Erie County, 171 AD2d 369, 577 NYS2d 993 affd 80 NY2d 938, 591 NYS2d 131). In addition, public library officers and employees are often not considered to be officers and employees of the sponsoring municipality or school district (see, e.g., General Municipal Law, §800[5], conflicts of interest; Public Officers Law, §10, official oaths; Binghamton Public Library v City of Binghamton, 69 Misc 2d 1005, 331 NYS2d 515 and County of Erie v Board of Trustees, 62 Misc 2d 396, 308 NYS2d 515, collective bargaining negotiations). In view of the library's fiscal autonomy, it is our opinion that library trustees and the separate library
treasurer are not town officers or employees for purposes of Town Law, §123 and, therefore, are not subject to the accounting and auditing provisions of that section.

We note, however, that General Municipal Law, §30(3) requires that an annual report of financial transactions, including those involving private source moneys (Opn No. 88-76, supra), 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 the Office of the State Comptroller within 60 days after the close of the library's fiscal year (General Municipal Law, §30[5]). In addition, the Education Law contains certain requirements for public libraries to report to the State Education Department (see Education Law, §§215, 263). Finally, as noted in Opn No. 88-76, supra, the town board, in determining the amount to be raised by taxes for library purposes, may take into account a library's private source funds and, therefore, may request from the library information concerning such funds.

March 18, 1993
Michael J. Moran, Supervisor
Town of Gardiner