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 The opinion may no longer represent those views if, among other things, there have been subsequent court cases or statutory amendments that bear on the issues discussed in the opinion.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 -- Contracts (by school district with cooperative library system)

SCHOOL DISTRICTS -- Library Appropriation (authority to contract with cooperative library system) -- Powers and Duties (authority to contract with cooperative library system)

EDUCATION LAW, §§255, 256, 259: A school district may enter into a contract pursuant to section 256(1) of the Education Law with a cooperative library system under which library services will be provided to residents of the school district by the member libraries of the cooperative library system. The amount stated in the contract and approved as an appropriation for library purposes by the voters of the school district must be paid to the treasurer of the cooperative library system. 24 Opns St Comp, 1968, p 914; 23 Opns St Comp, 1967, p 731; and 23 Opns St Comp, 1967, p 387, superseded to the extent inconsistent.

This is in response to your inquiry concerning a proposed contract for library services between a school district and a cooperative library system. You indicate that the school district is not currently served by a library and is contemplating a contract with a cooperative library system under which library services would be provided to residents of the school district by the member libraries of the cooperative library system. Amounts payable to the cooperative library system under the contract would be made available from an annual appropriation by the school district, subject to approval by the voters of the school district, and paid to the treasurer of the cooperative library system. You ask whether the provisions of section 256 of the Education Law authorize the school district to enter into such a contract, assuming the voters of the school district approve the annual appropriation. [1]

Section 256(1) of the Education Law provides that:

[an]y authority named in section two hundred fifty-five . . . may, individually or jointly with another municipal or district body or tribal government, contract with the trustees of a free association library registered by the regents, or with any municipal or district body having control of such a library, or with the trustees of the cooperative library system, or with the trustees of a public library registered by the regents to furnish library services to the people of the municipality, district or reservation for whose benefit the contract is made, under such terms and conditions as may be stated in such contract. The amount agreed to be paid for such services under such contract shall be a charge upon the municipal or district bodies . . . which agree to make payment and shall be paid directly to the treasurer . . . of the cooperative library system. (Emphasis added).

We have previously expressed the opinion that, pursuant to section 256(1), the authorities named in section 255 of the Education Law, which include municipalities
and school districts (see Education Law, §255[1]), may contract with a cooperative library system for the provision of library services by member libraries of the cooperative library system if the member libraries that are to serve the municipality or school district are reasonably accessible to the residents and if the services would represent an improvement in library services (26 Opns St Comp, 1972, p 62). The amount paid under the contract, as required by section 256, must be paid directly to the treasurer of the cooperative library system (ibid.). There have been no statutory amendments or judicial decisions that cause us to alter our view. Therefore, we hereby reconfirm that conclusion. As noted in your inquiry, the appropriation for library purposes in the school district would be subject to voter approval, as required by Education Law, §259(1).

In reconfirming this opinion, we note that certain of this Office's opinions rendered prior to 28 Opns St Comp, 1972, p 62, supra, concluded that the authority to contract with cooperative library systems did not encompass the provision of library services by member libraries. Several of these opinions were rendered prior to 1967. At that time, section 256(1) did not include cooperative library systems among the entities with which the authorities named in section 255 could contract, and the opinions of this Office concluded that such contracts were unauthorized (see 22 Opns St Comp, 1966, p 511; 22 Opns St Comp, 1966, p 302). Section 256(1) was amended by chapter 136 of the Laws of 1967 to include cooperative library systems and expressly authorize contracts with cooperative library systems for "library privileges". Despite this amendment, some subsequent opinions of this Office continued to conclude that a contract with a cooperative library system could encompass only access to facilities, such as bookmobiles, owned by the cooperative library system, rather than the facilities of the member libraries (24 Opns St Comp, 1968, p 914; 23 Opns St Comp, 1967, p 731; 23 Opns St Comp, 1967, p 387).

A review of the legislative history of the amendment to section 256 by L 1967, ch 136, however, supports the conclusion that contracts with cooperative library systems are not required to be so limited in scope. In a memorandum in support of the bill that was enacted as chapter 136 of the Laws of 1967, the Counsel to the State Education Department stated:

This is a Department bill which amends section 256 of the Education Law to include cooperative library systems in the express language under which political subdivisions are authorized to make grants and to share in the cost of maintaining public libraries which are registered and approved by the Department. Cooperative library systems, of course, are combinations of public libraries within a county or sometimes even larger area. They are chartered by the Board of Regents and through these library systems much better library service can be provided to the residents of the area served. It is, therefore, very desirable that there be no ambiguity about the authority of the political subdivisions involved to give direct support to the library systems as well as to the individual public libraries (see memorandum from Charles A. Brind, Counsel, State Education Department, in support of Senate Bill No. 1500; emphasis added).

Thus, it appears that one intent of this amendment was to provide clear authority for political subdivisions to support the provision of library services to their residents directly through cooperative library systems, as "combinations" of member libraries, in addition to the authority to support those libraries individually.
A subsequent amendment to section 256 also supports this conclusion. Chapter 364 of the Laws of 1972 further amended section 256 to specifically authorize the authorities named in section 255, individually or jointly, to support the cost of the maintenance of and capital improvements to libraries and cooperative library systems. Chapter 364 also amended section 256 to make reference to contracts to furnish library "services", rather than library "privileges". The legislative history of this amendment indicates that it was intended to clarify the authority of individual municipalities and school districts to provide funds to support a cooperative library system (Memorandum of the State Education Department in support of A. 8707 of 1972) and to obtain library services "by contract with one or more public libraries and/or cooperative library systems" (Memorandum of the New York Library Association to the Governor, May 8, 1972).

Given this legislative history, we continue to believe, as we stated in 1972 Opns St Comp, p 62, supra, that an entity authorized to contract for library services pursuant to section 256 of the Education Law may contract with a cooperative library system for the provision of library services by member libraries of the cooperative library system. 1967 Opns St Comp, p 387, supra, 1967 Opns St Comp, p 731, supra, 1968 Opns St Comp, p 914, supra, and any other prior opinions are hereby superseded to the extent they are inconsistent with the views expressed herein.

Accordingly, a school district may enter into a contract pursuant to section 256(1) of the Education Law with a cooperative library system under which library services will be provided to residents of the school district by the member libraries of the cooperative library system. The amount stated in the contract and approved as an appropriation for library purposes by the voters of the school district must be paid to the treasurer of the cooperative library system.

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1. Although the propriety of the structure of the arrangement between the member libraries and the cooperative library system is beyond the scope of this opinion, it is our understanding that the participation by member libraries would be pursuant to the terms of the plan of library service submitted by the cooperative library system and approved by the Commissioner of Education under section 272(1) of the Education Law (see also 8 NYCRR §90.3).