

**Note from the Attorney General's Office:**

1953 Op. Att'y Gen. No. 53-3052 was overruled in part by 1960 Op. Att'y Gen. No. 60-1537 and 1966 Op. Att'y Gen. No. 66-067.

3052

1. MUNICIPAL LIBRARY DISTRICT—DUTY OF CLERK TO DEPOSIT MONEYS OF LIBRARY DISTRICT, RECEIVED FROM ANY SOURCE, IN A DESIGNATED DEPOSITORY—BOARD OF TRUSTEES OF LIBRARY DISTRICT — UNIFORM DEPOSITORY LAW — SECTIONS 2296-1 ET SEQ., 7627-1, GC—SECTIONS 135.01, 3375.32 RC.
2. MONEYS DERIVED FROM GIFTS OR BEQUESTS—UNLESS RESTRICTED BY DONOR, MAY BE INVESTED AS ENDOWMENTS — SECURITIES — CLERK, MUNICIPAL LIBRARY DISTRICT—TRUSTEES—MUST EXERCISE SOUND DISCRETION TO DETERMINE TYPE OF INVESTMENT.

## SYLLABUS:

1. Under the terms of Section 7627-1 General Code, Section 3375.32, Revised Code, it is the duty of the clerk of a municipal library district to deposit the moneys of such library district received from any source whatsoever, in a depository designated by the board of trustees of such district, and it is the duty of such board of trustees to designate such depository in accordance with the provisions of the Uniform Depository Law, as set forth in Section 2296-1, et seq. of the General Code, Section 135.01, Revised Code.

2. Moneys coming into the hands of the clerk of a municipal library district, derived from gifts or bequests, may, unless restricted by the donor, be invested as endowments in such securities as the trustees of said library district, in the exercise of a sound discretion, may determine.

Columbus, Ohio, September 18, 1953

Hon. Charles W. Ayers, Prosecuting Attorney  
Knox County, Mount Vernon, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows:

“We have in the City of Mount Vernon, Ohio, a municipal library created under Ohio General Code Section 4004. The question has arisen concerning investments which can be made by the board of library trustees.

“Ohio General Code Section 7627-1 provides that the clerk shall place all monies in a depository designated by the board of library trustees. However, this does not inform the trustees as to the types of investments which they can make. Are the trustees bound by the so-called ‘legal investments’ of the statutes in the Probate Code or can the trustees invest funds in their sound discretion?”

“Your opinion concerning this matter at your earliest convenience will be greatly appreciated.”

Section 4004, General Code, Section 3375.12, Revised Code, provides for the appointment by the mayor of a board of trustees of a municipal library; provides that such board shall organize, in accordance with the provisions of Section 7627 of the General Code; and provides further, that in the exercise of its powers it shall be governed by the provisions of Sections 7627-1 through 7630-1, General Code.

Section 7627, General Code, Section 3375.32, Revised Code, provides that such board of trustees shall organize in January of each year by electing a president, vice president and secretary. It is further provided:

“\* \* \* At the same meeting they shall elect and fix the compensation of a clerk, who may be a member of the board, and who shall serve for a term of one year. The clerk, before entering upon his duties, shall execute a bond in an amount and with surety to be approved by the board of library trustees, payable to the board of library trustees, conditioned for the faithful performance of all the official duties required of him.”

Section 7627-1, General Code, reads as follows:

“The clerk of the board of library trustees of a free public library shall be the treasurer of the library funds. All monies received by such clerk for library purposes, from any source whatsoever, shall be immediately placed by him in a depository designated by the board of library trustees. Such clerk shall keep an account of the funds credited to said board upon such forms as may be prescribed and approved by the bureau of inspection and supervision of public offices. Such clerk shall render a statement to the board of library trustees monthly showing the revenues and receipts from whatever sources derived, the disbursements and the purposes thereof and the assets and liabilities of the board. At the end of each fiscal year the clerk shall submit to the board of library trustees a complete financial statement showing the receipts and expenditures in detail for the entire fiscal year.”

Section 7630, General Code, sets out the powers of such board of trustees, which include, among others, the acquisition and ownership of real property, the construction of library buildings and the control and operation of such library.

Section 7628, General Code, provides :

“The boards of library trustees appointed pursuant to the provisions of sections 2454-1, 3405, 4004, 4840-1 and 7643-2 of the General Code shall be bodies politic and corporate, and, as such, capable of suing and being sued, contracting and being contracted with, acquiring, holding, possessing, and disposing of real and personal property and of exercising such other powers and privileges as are conferred upon them by law.”

All of the above sections are part of an act of the Legislature, effective September 4, 1947, and found in 122 Ohio Laws, page 166.

Referring to Section 7628, *supra*, it was held by the Common Pleas Court of Summit County, in *Miller v. Akron Public Library*, 60 Ohio Law Abs., 364 :

“Under Section 7628, General Code, the legislature made all the various library boards bodies politic and corporate, and as such capable of suing and being sued, contracting and being contracted with, acquiring, holding, possessing and disposing of real and personal property, and of exercising such other powers and privileges as are conferred upon them by law thus making them separate and distinct entities or bodies politic and corporate, separate and apart from the municipality, the county, the school board, etc., and not agents of said bodies politic.”

It is manifest that the new law governing all these libraries has worked radical changes in the status of public libraries, and in their financial processes. It will be noted that the treasurer of a municipality, who is regularly the custodian of all public moneys of the municipality, no longer has custody of the funds of the library. This responsibility clearly devolves on the clerk of the library board. See Opinion No. 2549, Opinions of the Attorney General for 1947, page 639.

However, the municipal library district does not cease to be a public body, nor do the moneys of such library district cease to be public funds. Accordingly, we look to the statutes governing the deposit of public funds.

The Uniform Depository Act set out in Section 2296-1, et seq. of the General Code (Section 135.01, Revised Code), provides for the deposit in certain depositories of public moneys generally. Section 2296-1 defines the scope of the law. It reads in part:

“\* \* \* (a) ‘Public moneys’ means all moneys in the treasury of the state, or any subdivision thereof, or coming lawfully into the possession or custody of the treasurer of state, or of the treasurer of any such subdivision. ‘Public moneys of the state’ includes all such moneys coming lawfully into the possession of the treasurer of state; and ‘public moneys of a subdivision’ includes all such moneys coming lawfully into the possession of the treasurer of the subdivision.

“(b) ‘*Subdivision*’ means any county, school district, municipal corporation (excepting a municipal corporation or a county which has adopted a charter under the provisions of article XVIII or article X of the Constitution of Ohio having special provisions respecting the deposit of the public moneys of such municipal corporation or county), township, municipal or school district sinking fund, special taxing or assessment district or other district or local authority electing or appointing a treasurer in this state.  
\* \* \*

“(g) ‘Treasurer’ includes the treasurer of state and the treasurer, or other officer exercising the functions of a treasurer, of any subdivision \* \* \*.

“(i) ‘Governing board’ means \* \* \* in the case of any other subdivision electing or appointing a treasurer, the directors, trustees, or other similar officers of such subdivision. \* \* \*”

(Emphasis added.)

It seems clear that the General Assembly undertook to make this law all inclusive, so as to include every body or agency which handles public money. It broadened the usual definition of “subdivision” so as to include not only the usual political or taxing subdivisions, but every “local authority electing or appointing a treasurer in this state.” It broadened the normal definition of public moneys by including “all such monies coming lawfully into the *possession* of the treasurer.”

It appears, therefore, that the funds of a municipal library district are “public moneys,” that the board of trustees are the “governing body” and that the clerk of such district is the “treasurer,” all within the purview of Section 2296-1, et seq. of the General Code, and that the deposit of

the funds of such library district required by Section 7627-1, *supra*, and the designation of a depository will be governed by the provisions of Section 2296-1, *et seq.*, General Code.

Section 2296-7, General Code, and the sections which follow, outline the duties and procedure of the governing board in designating depositories, and prescribe the qualifications of financial institutions which may be so designated.

Recurring to Section 7627-1, *supra*, it is to be noted that the duty placed upon the clerk relative to the deposit of funds, is not limited to monies which are derived from taxes. On the contrary, the statute requires that "all monies received by such clerk for library purposes, *from any source whatsoever*, shall be immediately placed by him in a depository designated by the board of library trustees."

I recognize a distinction between monies that may be considered strictly as public monies, and monies which may come into the hands of the trustees by gifts or legacies to be used for the benefit of the library. It appears clear, however, that the depository statute is designed to provide for the immediate safekeeping of *all monies* which come into the hands of the clerk, whatever their character or purpose. Of course, they are subject to withdrawal for proper expenditure.

Having been placed in the depository, the question arises as to what if any of these monies may be "invested" by the trustees. It has long been the settled doctrine of the State that strictly public money cannot, in the absence of specific authority in the law, be loaned or invested by the officers in charge thereof. Thus, it was held in the case of *State of Ohio v. Buttles*, 3 Ohio St., 309:

"The policy of this State, in view of all our statutes regulating the collection, safekeeping and disbursement of the public money, has always been to prohibit its officers and agents from loaning or dealing in its funds, on public or private account; a few exceptions where officers have been authorized by special statutes to loan or otherwise improve particular funds, only make the general rule the more manifest."

"Public money" would certainly embrace all monies raised by legal processes, such as levy of taxes, and sale of bonds. It is said in 42 *American Jurisprudence*, 718:

“Public funds are monies belonging to the United States or a corporate agency of the Federal Government, a state or subdivision thereof, or a municipal corporation. They represent moneys raised by operation of law for the support of the government or for the discharge of its obligations. \* \* \*”

Accordingly, as to such money, there is no right in the board of trustees of a library to invest the same in any form of security unless specifically authorized by the statute. Upon careful examination of the statutes, I do not find that any such authority has been granted.

The trustees of a public library, however, may and frequently do receive gifts or bequests which may be either unlimited as to their use or expressly designated as endowment funds. As to gifts or bequests, Section 7630, General Code, expressly gives the trustees of any library the authority to receive them and to use the same in accordance with the conditions set out by the donor. Section 7630, General Code, Section 3375.40, Revised Code, provides in part:

“The boards of library trustees appointed pursuant to the provisions of sections 2454-1, 3405, 4004, 4840-1 and 7643-2 of the General Code shall have the following powers to wit: \* \* \*

“10. By the adoption of a resolution accept any bequest, gift or endowment upon the conditions and stipulations connected with such bequest, gift or endowment; provided, however, no such bequest, gift or endowment shall be accepted by such boards if the conditions thereof shall remove any portion of the free public library under their jurisdiction from the control or such board or if such conditions, in any manner, limit the free use of such library or any part thereof by the residents of the county or counties in which such library is located. \* \* \*”

Here, it will be noted, library boards are authorized to accept bequests, gifts and *endowments*, upon the conditions and stipulations prescribed by the donor. If the gift or bequest is designated as an endowment, the principal to be held without diminution and the interest or income to be used for the benefit of the library, then it would appear that the library board would hold the same as a trust, and in the absence of specific directions by the donor, as to the form of investment, should invest it in such manner as to produce the largest return consistent with safety. If such gift or bequest is wholly unrestricted as to the use of either the corpus or the income therefrom, the board would have the right either to apply

it directly to the maintenance or improvement of the library, or to invest it as other endowment funds are handled.

Accordingly, in specific answer to your question, it is my opinion and you are advised:

1. Under the terms of Section 7627-1, General Code, Section 3375.32, Revised Code, it is the duty of the clerk of a municipal library district to deposit the moneys of such library district received from any source whatsoever, in a depository designated by the board of trustees of such district, and it is the duty of such board of trustees to designate such depository in accordance with the provisions of the Uniform Depository Law, as set forth in Section 2296-1, et seq. of the General Code, Section 135.01 Revised Code.

2. Moneys coming into the hands of the clerk of a municipal library district, derived from gifts or bequests, may, unless restricted by the donor, be invested as endowments in such securities as the trustees of said library district, in the exercise of a sound discretion, may determine.

Respectfully,

C. WILLIAM O'NEILL  
Attorney General