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LIBRARY, PUBLIC SCHOOL—BOARD OF TRUSTEES—REQUIRED TO DEPOSIT ALL FUNDS, BEQUESTS OR OTHERWISE, IN ACCORDANCE WITH UNIFORM DEPOSITORY ACT—MAY INVEST FUNDS, BEQUEATHED, IN SECURITIES TO COMPLY WITH TERMS OF BEQUEST—SECTION 2296-1 ET. SEQ., G.C.

SYLLABUS:

The Board of Library Trustees of a public school library is required to deposit all funds coming into its hands, whether from bequests or otherwise, in accordance with the Uniform Depository Act, Section 2296-1 et seq., G. C., unless by the terms of the bequest said board is authorized to invest the same, in which case it may invest the funds so bequeathed in such securities as are authorized by the terms of the bequest.

Columbus, Ohio, September 3, 1942.

Hon. William G. Batchelder, Jr., Prosecuting Attorney,
Medina, Ohio.

Dear Sir:

I have your request for opinion which reads as follows:

“The Board of Library Trustees of the Medina Village School District Public Library have approximately \$19,000.00 on deposit pursuant to the Uniform Depository Act — Sec. 2296-1 O.G.C. et seq. This sum of money represents divers bequests to said library some of which sum was bequeathed in trust to invest the Corpus, the income to be used for library purposes. The remainder of the aforesaid sum of money was bequeathed outright without restrictions as to the spending of corpus.

The Library Board wishes to invest the total amount in United States Defense Bonds — series F and G. Is the intended investment lawful or do Sections 2296-1 O.G.C., et seq., apply and especially 2296-22 O.G.C., which reads as follows:

‘The provisions of this act shall supersede those of any and all prior acts relative to the deposit of public moneys as herein defined, the payment of interest thereon or the giving of security therefor. *All public moneys* shall be deposited pursuant to the provisions of this act and not otherwise, anything to the contrary in such other prior laws notwithstanding.’

I will appreciate your early opinion in the foregoing matter.”

I note the provisions of the General Code relating to the organization and management of public school libraries, found in Section 7635, et. seq., of the General Code.

Section 7635 provides for the establishment and control of such library and reads as follows:

“The board of education of any city, village or rural school district, by resolution, may provide for the establishment, control and maintenance in such district, of a public library, free to all the inhabitants thereof. It shall provide for the management and control of such library by a board of trustees to be elected by it as herein provided, which board shall hold title to all such library property.

Such boards of education shall also have the power for such purpose or purposes to purchase, erect, construct, enlarge, extend or improve a building or buildings for library purposes, including a site or sites therefor, and equipping and furnishing the same.”

Section 7637 reads:

“In its own name, such library board shall hold the title to and have the custody, and control of all libraries, branches, stations, reading rooms, of all library property, real and personal, of such school district, and of the expenditure of all moneys collected or received from any source for library purposes for such district. It may employ a librarian and assistant, but previous to such employment their compensation shall be fixed.”

Section 7638 outlines the powers of the library board, including the right to purchase or appropriate land and dispose of the same when no longer needed, and this section provides further as follows:

“ * * * It may accept any gift, devise or bequest for the benefit of such library. * * * ”

Section 7638-1 provides for the election by the board of officers, including the treasurer, who is required to give bond in such amount and form as the library trustees may prescribe. The pertinent part of this section reads as follows:

“For the transaction of its business the board of library trustees shall elect a president, vice-president, secretary and treasurer, and such other officers as shall be deemed expedient or necessary, and with the exception of the offices of president and vice-president, may repose the duties of such officers, who need not be members or member of the board, in one person, provided, however, that the treasurer of said library board shall be required to give bond in such amount and form as the library trustees may prescribe, to secure such funds in his custody, *as may not be otherwise prescribed by law.* * * * ”

(Emphasis mine.)

Section 7639 provides for a tax levy by the board of education for the support of the library, based upon a requisition by the board of library trustees. This levy is to be in addition to all of the levies by law and subject to no limitations upon the tax rates “except as herein provided”.

Section 7640 reads as follows:

“The proceeds of the tax levy for school district public library purposes shall be paid over by the county treasurer when collected by him as provided by law, to the treasurer of

the board of library trustees, or other officer designated by such board to receive such funds, and shall constitute a fund to be known and designated as the library fund. Payments therefrom shall be made only upon the warrant of the library board of trustees, when signed by the president and secretary thereof and issued for lawful purposes.”

It would appear from the above quoted sections of the General Code that the board of library trustees is endowed with very complete control of the public school library, including its buildings, property and funds, and that the treasurer is the custodian of all moneys received by the board, from whatever source they come. I call especial attention to the provisions of Section 7638, authorizing the library board to accept gifts, devises and bequests. This provision is quite similar to that contained in Section 18, General Code, relative to other public bodies, including the state, counties, townships and municipal corporations, and “educational, penal or reformatory institutions” under the control of the state. It is provided in that section that these public bodies “may receive by gift, devise or bequest, moneys, lands or other properties, for their benefit or the benefit of any of those under their charge, and hold and apply the same according to the terms and conditions of the gift, devise or bequest.”

The language of Section 7638, above quoted, is not so explicit as Section 18, General Code, above referred to, in regard to the administration of money or property given or bequeathed. It is my opinion, however, that it would be within the implied power and also the duty of the trustees of the public library to so administer a bequest so as to carry out the express conditions or purposes attached thereto by the donor, as long as they are not unlawful.

In *Rockwell v. Blaney*, 9 N.P. (N.S.) 495, it was held:

“A bequest to a board of education for school purposes is a trust for charity, and should be liberally construed to the end that the intention of the donor may be carried out.”

To like effect, see *Christy v. Commissioners*, 41 O.S. 711.

The fact that the library board is given broad powers and full control of the property and funds in its hands does not relieve it from obligations imposed by the statutes as to the handling and safe-keeping of public moneys which come into its possession.

This brings us to a consideration of the so-called "Uniform Depository Act", found in Sections 2296-1 to 2296-24 of the General Code. Section 2296-1 defines public moneys as follows:

" 'Public moneys' means all moneys in the treasury of the state, or any subdivisions 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."

The word "subdivision", as used in this act, is defined in the same section as follows:

" 'Subdivision' means any county, school district, municipal corporation * * * or other district or local authority electing or appointing a treasurer in this state."

The board of library trustees plainly falls within the class described as "other district or local authority electing a treasurer in this state", and with the possible exception which I will later discuss, the moneys in its hands are certainly "public moneys" as defined in the act.

Section 2296-15 provides:

"Each treasurer may at all times keep in the vaults of his office such amount, as a cash reserve, as may be prescribed by the proper governing board, which such amount shall not be required to be deposited pursuant to the provisions of this act. Each treasurer *shall deposit all the remaining public moneys* in his possession at the commencement of each period of award in the public depository or depositories designated by the proper governing board, excepting to the extent that provision has been lawfully made for the investment of such public moneys in lieu of their being deposited in a depository or depositories."
(Emphasis mine.)

Section 2296-16 requires all moneys subsequently received to be deposited in like manner.

Section 2296-22 reads as follows:

"The provisions of this act shall supersede those of any and all prior acts relative to the deposits of public moneys as

herein defined, the payment of interest thereon or the giving of security therefor. All public moneys shall be deposited pursuant to the provisions of this act and not otherwise, anything to the contrary in any such prior laws notwithstanding."

The language of the sections above quoted as contained in the "Uniform Depository Act" seems to leave no doubt that every public agency in Ohio coming within its terms and into whose possession "public moneys" come, are to keep such moneys on deposit in a depository selected in accordance with the provisions of said act, unless provisions are made by the law for their investment or other disposition. The language of the sections above quoted gives the act a strictly mandatory character. Even if the subdivision in question is authorized by statute to invest such funds, nevertheless their custody should be in the public depository chosen in accordance with said act until the time comes for proper investment.

In an opinion rendered by one of my predecessors in 1937, Opinions Attorney General, p. 1378, it was held: "The Uniform Depository Act has to do with the safeguarding of public moneys and must be construed strictly."

It will be observed that the depository act makes provision (Sec. 2296-15) that the treasurer may keep in the vaults of his office such amount of cash reserve as may be prescribed by the proper governing board. With that exception, he is required to deposit all of the remaining public moneys in his possession.

In view of the many provisions of the statutes authorizing certain funds in the hands of public bodies to be invested, and of the explicit provisions as to securities in which they may be invested, it would seem beyond question that no implied power can be found for the investment of any public funds not so authorized. Instances of the express authority given by the statutes for the investment of funds may be found in the laws relating to the investment of funds by the Industrial Commission (G.C. Sec. 1465-58), the Teachers Retirement System (G.C. Sec. 7896-16a) and the Public Employees Retirement System (G.C. Sec. 486-41); also in the statutes relating to the investment of moneys coming into the various sinking funds.

It follows conclusively that lacking explicit statutory authority

to invest funds in the hands of the board of library trustees, the board would have no such authority but would be obliged to deposit them under the provisions of the Uniform Depository Act regardless of whether such funds were received from taxation or by gift or bequest, unless the terms of a given bequest or gift expressly authorize or require the board to invest such funds in a stipulated manner, in which case the gift or bequest is in the nature of a trust, and it would be the right and duty of the board to carry out the wishes of the donor, provided the purposes of the donor are in no way illegal.

Specifically answering your question, it is my opinion that the Board of Library Trustees of the Medina Village School District Public Library is required to deposit, in accordance with the Uniform Depository Act, Section 2296-1, et seq., General Code, all moneys that come into its hands, but that it may withdraw from such deposit and invest any moneys that have come to it by bequest, where the terms of such bequest specifically authorize or require such investment, and may invest the same in United States Defense Bonds, provided the terms of such bequest, either expressly or by inclusive terms, authorize such investment.

Respectfully,

THOMAS J. HERBERT
Attorney General.