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FUND — TRUST—ENDOWMENT — DEPOSIT — INVESTMENT
— UNIFORM DEPOSITORY ACT — LIBRARY FUND — HARE
CHARITY FUND — JEFFREY ENDOWMENT FUND —
COLUMBUS.

SYLLABUS:

Principles applicable to the investment of the Library Fund, the Hare Charity Fund and the Jeffrey Endowment Fund of the City of Columbus discussed.

Columbus, Ohio, May 15, 1943.

Bureau of Inspection and Supervision of Public Offices,
Columbus, Ohio.

Gentlemen:

Your request for my opinion reads:

“We are submitting herewith a letter received from our City of Columbus Examiner, in which advice is sought concerning the investment of certain trust funds under the control of various officials of the said City.

A search of our files fails to disclose any decisions by the courts, or opinions of Attorneys General, by which we could properly answer the Examiner's questions; therefore, may we request that you examine the inclosure and give us your opinion in answer to the following question:

May the Board of Library Trustees, or other boards and officers of a city, who are charged with the investment of private trust funds, other than cemetery endowment funds, invest such funds in Participating Certificates of Deposit and Savings Share Account Books, issued by Building and Loan Associations in this State?"

Although your letter contains a request for my opinion with respect to any so-called trust fund other than a cemetery endowment fund which may be under the control of a board or officer of a city an examination of the letter of your Columbus examiner, which accompanies your communication, discloses that only three funds are actually involved, viz., the Library Fund, the Hare Charity Fund, and the Jeffrey Endowment Fund. I shall therefore confine my opinion to a consideration of the legal principles applicable to the specific funds involved.

The letter of your Columbus examiner shows that the funds in question arose from gifts, bequests or devises. It does not appear either from your letter or that of your examiner what, if any, conditions with respect to the deposit or investment of such funds were made by the various donors, settlors or testators. If any such conditions were contained in the instruments establishing such trust funds, the provisions of Section 18, General Code, and Section 131 of the Charter of the City of Columbus in so far as the Library Fund is concerned, require compliance with such conditions. Section 18, General Code, provides:

"The state, a county, a township or cemetery association, the commissioners or trustees thereof, a municipal corporation, the council, a board or other officers thereof, a benevolent, educational, penal or reformatory institution, wholly or in part under the control of the state, the board of directors, trustees or other officers thereof, 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. Such gifts or devises of real estate may be in fee simple or of any lesser estate, and may be subject to any reasonable reservation. This section shall not affect the statutory provisions as to devises or bequests for such purposes."

Section 131 of the Charter of the City of Columbus, in so far as applicable to your question, provides:

"The board of library trustees shall establish, maintain and regulate the public library and branches and stations thereof, and may receive donations and bequests of money or property therefor, in trust or otherwise. The board of library trustees, by its

treasurer, shall be the custodian of all trust funds now held by it, or which may hereafter be received by gift, devise, in trust, or otherwise for the public library of Columbus, Ohio, and of all other funds acquired for or by reason of the operation and extension of the public library system except funds appropriated by council for library purposes. Said treasurer and his successor in office shall carefully preserve, control, and invest the said trust funds as required by the deeds of trust, and shall disburse the income of the same as they shall be directed by the board of library trustees in accordance with and subject to the terms and conditions of said deeds of trust. Disbursements from all other funds in the custody of said treasurer shall be made only as the board of library trustees shall direct. Said treasurer shall execute to the board of library trustees, for the use and benefit of said city, a good and sufficient bond in such amount and with such surety or sureties as the said trustees may require, conditioned for the faithful performance of his duties as the custodian of said funds, and the premium, if any, shall be paid from the library funds."

If, however, no conditions with respect to the deposit or investment of such funds were contained in such instruments, neither Section 18, General Code, nor the provision of the Charter would apply and it would be necessary to resort to such other provisions of law as might be applicable with respect to the disposition to be made of such funds.

Section 2296-1, et seq., General Code, known as the Uniform Depository Act, provide for the deposit of public moneys as such term is defined in the act. Paragraph (a) of Section 2296-1, General Code, provides in part:

" '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."

The term "subdivision" as used in the act is defined in paragraph (b) of Section 2296-1, General Code, as follows:

" '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."

Although the Board of Library Trustees of the City of Columbus

elects a treasurer (see Section 130 of the Charter of the City of Columbus), I nevertheless believe that such Board is not subject to the Uniform Depository Act. The Board of Library Trustees is a part of the City of Columbus and it will be noted that paragraph (b) of Section 2296-1, General Code, exempts from the operation of the Uniform Depository Act a municipal corporation which has adopted a charter having special provisions respecting the deposit of public moneys of such municipal corporation. Section 93 of the Charter of the City of Columbus provides:

“Council shall provide by ordinance for the deposit of all public moneys coming into the hands of the treasurer in such bank or banks, or building and loan or savings associations or companies, situated within the county, as offer, at competitive bidding, the highest rate of interest and give good and sufficient security.”

The provisions of the Uniform Depository Act are therefore not applicable to the City of Columbus or any of its departments or boards.

Although the Board of Library Trustees is exempt from the operation of the Uniform Depository Act by reason of the provisions of the Charter of the City of Columbus just quoted, the Council of such city has not seen fit to provide as to the disposition to be made of funds belonging to such Board of Library Trustees by way of deposit or investment and we are therefore relegated to the principles enunciated in judicial decisions.

In *State v. Buttles*, 3 O. S., 309, it was held as follows:

“The policy of this State, in view of all our statutes regulating the collection, safe-keeping 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.”

Although the language just quoted would indicate that it is illegal to deposit or invest public money unless specific authorization therefor is contained in some statute, I believe that this statement has no application to funds of the board of library trustees. The statement of the court was a broad generality and to generalize is often to mislead. Institutions such as libraries are oftentimes recipients of gifts and bequests in such large amounts that it is neither practicable nor feasible to expend all of such gift within a short time after receipt thereof. Some disposition must be made of such funds and it could hardly be intended by our lawmakers

that they lie idle and produce no income. In this respect, the funds of the library trustees differ from funds derived from taxation, all or most of which must ordinarily be used to meet the current operating expenses of government during the ensuing fiscal year.

I find no provision of statute law with respect to the investment or deposit of library funds of the nature in question, and, in view of what has been said, it would seem that the ordinary principles applicable to trustees would govern in such case.

In 40 O. Jur., 364, it is said :

“In the administration of the trust, the trustee owes the beneficiary the duty to exercise that degree of care and skill which an ordinarily prudent man would exercise in dealing with his own property. Unusual ability and extraordinary care are not required.”

In the same work at pages 393 and 394, it is said :

“It is often necessary for the trustee temporarily to hold the funds of the trust in his hands awaiting suitable investment. Obviously, he is not expected to keep such sums of money on his person, nor in his house, and if he should do this he would be responsible for any loss that might arise. Nor should he be required to keep same in a safe-deposit box. He is under a duty properly to deposit such funds for safekeeping. ‘Where a trustee, acting in good faith and without negligence, deposits trust funds in a reputable banking house to his credit, as trustee, and not mingled with his own funds, he is not liable if they are lost by a failure of the bank.’ It is the duty of the trustee to make the deposit in the name of the trust and not in his personal account. If this duty is not observed the trustee will be liable for any loss. Such a deposit, made properly, must not, however, continue too long. Ordinary deposits are not a proper investment, but really loans without security. The permanent investment must be made within a reasonable time, and as yet, general deposits in commercial banks are not considered proper permanent investments, hence the deposit can only continue a reasonable time.”

It is also said at page 378 of the same volume :

“The trustee is under a duty, and has the corresponding authority, to make investments of trust moneys which come into his hands. The authority may be derived from the trust instrument itself, or it may be implied from general power or management which the trustee possesses. Such investment must be made within a reasonable time and the guiding principles in making investments are the safety of the principal, the securing of as

large an income as possible, compatible with safety, for the cestui que trust, and the protection of the interests of the remainderman."

From what has been said, it is obvious that the question propounded by you is one which cannot be answered categorically, but you will no doubt be able to determine from the principles announced herein whether the Board of Library Trustees has properly carried out its trust in this respect.

I do not have before me the will of Jacob Hare, deceased, I am unable to determine whether the funds comprising the Hare Orphans' Home Fund are funds in the Treasury of the City of Columbus or not, but a reading of the provisions of Section 1004 of the Codified Ordinances of such City indicates that such Fund is a part of the City Treasury. As has been above pointed out, the provisions of the Uniform Depository Act do not apply to the City of Columbus. The Council of such City, pursuant to the provisions of Section 93 of the Charter thereof, has enacted Sections 16 to 26, inclusive, of the Codified Ordinances of such City which provide an elaborate and detailed system for the deposit of public moneys in the City Treasury. These provisions of the Codified Ordinances authorize the public funds of the City in its Treasury to be deposited in building and loan associations situated in Franklin County. If the provisions of the applicable ordinances were followed, there would seem to be therefore nothing illegal in depositing moneys of the Hare Orphans' Home Fund in such a building and loan association.

If, on the other hand, such funds are not properly money in the City Treasury and no provision is made in the will of Jacob Hare with respect to their investment, it would seem that the ordinary principles of deposits and investments by trustees, hereinbefore set forth, would be applicable. What has been said with respect to the Hare Orphans' Home Fund is equally applicable to the Jeffrey Endowment Fund.

As I have stated heretofore, it is impossible to answer your questions categorically, but I believe that this discussion will be of assistance to you and your examiners.

Respectfully,

THOMAS J. HERBERT,
Attorney General.