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BOARD OF LIBRARY TRUSTEES MAY ACCEPT COMMON AND OR PREFERRED STOCKS AND FOR BONDS AS A SPECIFIC REQUEST UNDER—A TESTATOR OR DONOR MAY ATTACH A CONDITION TO A SPECIFIC BEQUEST, GIFT OR ENDOWMENT—THE INVESTING OF MONEYS DERIVED FROM SALE OF ABOVE BY THE CLERK OF A BOARD OF LIBRARY TRUSTEES. SECURITIES—§§3375.40 (J), 135.01 *et seq.* R.C.—OAG NO. 3052—1953, P. 439.

SYLLABUS:

1. A board of library trustees may accept common and/or preferred stocks and/or bonds as a specific bequest upon the conditions connected with such bequest under the provisions of Section 3375.40 (J), Revised Code.
2. A testator or donor may attach a condition to a specific bequest, gift, or endowment of stocks or bonds permitting a board of library trustees as legatee or donee, at its discretion, to sell such stocks or bonds and invest the proceeds in other securities on a continuing investment basis.
3. Moneys coming into the hands of the clerk of a board of library trustees derived from the sale of gifts or bequests of stocks or bonds may not, unless permitted by the terms of the gift or bequest, be invested in securities other than as provided for in Section 135.01, *et seq.*, Revised Code. (Paragraph two of the syllabus in Opinion No. 3052, Opinions of the Attorney General for 1953, page 439, overruled.)

Columbus, Ohio, July 7, 1960

Hon. James A. Rhodes, Auditor of State
State House, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“A recent audit report covering the financial transactions of the Granville Public Library disclosed the investment of said

library to be carried in preferred stock, common stock and bonds of a type bought and sold on the stock market, such stock being identified as of June 26, 1959, as follows:—

A. T. & T. Coupon Bonds 101-197 to 201—

5 @ 1,000.00 Cost \$ 4,899.27
Preferred Stock:

Burlington Mills	..... 25 Shares	\$2,271.55
Continental Banking	... 56 "	5,766.93
Ohio Power	..... 25 "	2,623.75
R. C. A.	..... 50 "	3,864.25
Toledo-Edison	..... 50 "	4,826.90

Total \$19,363.38

Common Stock:

Allis Chalmers	..... 50 "	3,336.87
Columbia Gas	..... 115 "	1,852.83
Lone Star Gas	..... 200 "	4,374.33
J. J. Newberry	..... 100 "	3,031.25
Ohio Oil Company	... 100 "	3,528.55
Home Insur. Co.	..... 100 "	3,063.13
Boston Fund	..... 328 "	3,188.73
Massachusetts Inv. Tr.	..995 "	5,153.00

Grand Total \$27,528.69

“Section 3375.40 (J) of the Revised Code, Powers of Boards of Library Trustees, provides:—

“(J) By the adoption of a resolution accept any bequest, gift, or endowment upon the conditions connected with such bequest, gift, or endowment; provided no such bequest, gift, or endowment shall be accepted by such board if the conditions thereof remove any portion of the free public library under its jurisdiction from the control of 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 counties in which such library is located;”

“Section 135.12 of the Revised Code covering the Uniform Depository Act provides generally for the investment of inactive deposits and provides that such moneys are restricted to certain types of securities, as follows:—

“If, after compliance with Sections 135.01 to 135.23, inclusive, of the Revised Code, requiring the deposit of public moneys in public depositories, the amount of public moneys of the state or of a subdivision is in excess of the aggregate amount of such deposits, and the board finds that such excess cannot be deposited in public depositories because of the limitations of such

sections, such board may order the treasurer to invest any part of such excess in bonds, notes, certificates of indebtedness, treasury bills, or other securities, issued by and constituting direct obligations of the United States, provided that only such obligations as will mature or are redeemable at the option of the holder within two years from the date of purchase shall be eligible securities for such investments. Any order of the board directing the treasurer to invest public moneys shall specifically state the amount of public moneys to be invested and shall specifically describe the securities to be acquired.* * *

“The Clerk of the Granville Public Library explains the stocks as follows:—

“In 1933 a bequest of 200 shares of Lone Star Gas Company stock was made to the Granville Public Library for endowment. Later on Lone Star Gas made a distribution of 22 shares of Northern Natural Gas Company stock to the Granville Public Library. The 22 shares were sold and the proceeds invested in other stocks.

“The Lone Star Gas Company shares are still held in our portfolio and subsequent additions of preferred and common stocks have been made from funds which were bequeaths to the Library and also from the sale of real estate which had been bequeathed to the Library.

“Our records show that no preferred or common stocks were purchased with funds derived from Intangible Taxes, or any other public funds.’

“Under the provisions of Section 3375.40 (J) of the Revised Code, the library would have authority to accept bequests, gifts, or endowments upon the conditions connected with such bequest, gift or endowment giving consideration to certain limitations.

“In view of the limitations as to the types of investments which may be purchased from public funds under the provisions of Section 135.12 of the Revised Code, a question arises whether a library board may accept stocks and bonds in trust and continue to sell and reinvest such stocks and bonds in common and preferred bonds normally listed on the stock market. If the stocks and bonds were given to the library as a donation or bequest in trust, we do not believe, based on the present statutory authority that it would be necessary to transfer or reinvest such common and preferred stocks into investments of the kind and type authorized by Section 135.12 of the Revised Code, as long as the stocks and bonds remain of a type and kind of the original bequest.

“On the other hand, if the stocks, both common and preferred, as originally bequeathed to the library are changed by sale and reinvestment into similar common and preferred stocks sub-

ject to fluctuation on the stock market, there is an immediate question as to the statutory authority of the board of library trustees so to do.

“Giving consideration to the foregoing, will you please advise on the following questions:—

“1. May a board of library trustees accept common and/or preferred stocks and bonds as a bequest under the provisions of Section 3375.40 (J), Revised Code?

“2. If a board of library trustees may accept common and/or preferred stocks and bonds under the provisions of Section 3375.40 (J), Revised Code, may the bequest, gift, or endowment be conditioned so as to permit the reinvestment of such common and preferred stocks and/or bonds on a continuing investment basis, or in case of a change in the statutes or the form of bequest, must the board of library trustees invest such moneys in securities outlined and authorized under the provisions of Section 135.12, Revised Code?

“A formal opinion is respectfully requested at your earliest convenience.”

A “bequest” is a disposition of personal property by will (*In re Hauge’s Estate*, 9 P. (2d), 1065), although a bequest, if so intended in a will, can pass real estate. *Wyman v. Woodbury*, 33 N. Y., 217. A bequest of personal property may include bonds, *Nash, Exr. v. Hamilton*, 8 Ohio App., 66, or shares of stock, either preferred or common. *In re Morphy’s Will*, 70 N. Y. S., 2d, 167. Since, under the provisions of Section 3375.40 (J), Revised Code, which you have quoted in your request, a board of library trustees may by the adoption of a resolution accept any bequest, under certain circumstances, it follows that such board may accept common and/or preferred stocks and/or bonds as a “specific bequest.” A bequest is specific when it is the intention of the testator that the legatee shall have the very thing bequeathed and not merely a corresponding amount in value. *Huntington Nat. Bank v. Roan*, 43 N.E. 2d, 769.

Section 3375.40 (J), *supra*, expressly authorizes the board to accept any bequest, gift, or endowment *upon the conditions connected with such bequest, gift, or endowment*. A testator has the unquestioned right to attach any condition to his gift which is not in violation of law or public policy. 41 Ohio Jurisprudence, 835. A condition attached to a specific bequest of stocks or bonds permitting the legatee at his discretion to sell such stocks or bonds and invest the proceeds in other securities on a continuing investment basis is not in violation of existing law or public policy. Such

a condition, therefore, may be attached to a bequest, gift, or endowment of stocks or bonds. It is, of course, conceivable that the existing law might be changed. On the other hand, it may never be changed. Under the circumstances, therefore, it seems advisable to leave the question about a change in the statutes to such time as a change, if any, is made.

In regard to your question about a change in the form of bequest, it is possible for a testator to change the form of a bequest before he dies but not afterwards, because a bequest becomes effective at his death. At the time of a testator's death, therefore, the form of bequest will be either conditioned or unconditioned. Since we have already discussed the right of a testator to attach a condition to his bequest, the following discussion will be limited to unconditioned bequests.

Although a board of library trustees is authorized under the provisions of Section 3375.40 (J), *supra*, to accept any bequest, be it stocks and bonds or money, the treasurer of such board is only required under the provisions of Section 3375.36, Revised Code, to place *moneys received by him* in a depository. The Uniform Depository Act, Section 135.01, *et seq.*, Revised Code, also refers only to *moneys* in the treasury or *moneys* coming lawfully into the possession or custody of the treasurer. Stocks and bonds are obviously not money. If, however, the board sells such stocks and bonds for money and such money is received by the treasurer of the board, then he must place the money in a depository. Section 3375.36, *supra*. The syllabus of Opinion No. 3052, Opinions of the Attorney General for 1953, page 439, reads as follows :

"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."

Although I am in accord with the conclusion reached in the first paragraph of the syllabus of Opinion No. 3052, *supra*, I do not entirely agree with the

conclusion reached in the second paragraph of such syllabus. Undoubtedly, a testator may attach a condition to his bequest of stocks or bonds restricting their reinvestment, but it does not follow that, unless restricted, the board may sell such stocks or bonds and invest the money derived from such sale in other securities. As previously pointed out, money received by the board from any source whatsoever must be placed in a depository. Once money has been placed in a depository, I can find no authority for withdrawing it for investment in securities other than as provided for in Section 135.01, *et seq.*, *supra*. There is no statutory requirement, however, that the board convert a specific bequest of stocks and bonds into money. The board, therefore, in the exercise of a sound discretion may determine not to convert such stocks and bonds into money, in which case they may keep the stocks and bonds as originally bequeathed to them or, when authorized as in your question, trade them in the market for other securities.

Accordingly, it is my opinion and you are advised :

1. A board of library trustees may accept common and/or preferred stocks and/or bonds as a specific bequest upon the conditions connected with such bequest under the provisions of Section 3375.40 (J), Revised Code.
2. A testator or donor may attach a condition to a specific bequest, gift, or endowment of stocks or bonds permitting a board of library trustees as legatee or donee, at its discretion, to sell such stocks or bonds and invest the proceeds in other securities on a continuing investment basis.
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Respectfully,

MARK McELROY

Attorney General