

OPINION NO. 2010-012**Syllabus:**

2010-012

1. Pursuant to R.C. 3375.40(A) and (K), a board of trustees of a school district free public library that accepts an unrestricted gift or bequest of securities is not required to sell, or otherwise convert into money, the securities, but may instead take and maintain ownership of the securities. (1960 Op. Att’y Gen. No. 1537, p. 489, syllabus, paragraph 1, approved and followed.)
2. A board of trustees of a school district free public library that sells, or otherwise converts into money, an unrestricted gift or bequest of securities and holds the money from the sale or other disposition of the securities in an institutional fund, as defined in R.C. 1715.51(C), is required by R.C. 1715.52(E) to invest the money in the types of investments set forth in R.C. 135.01-.21.
3. A board of trustees of a school district free public library that accepts an unrestricted gift or bequest of money and holds the money in an institutional fund, as defined in R.C. 1715.51(C), is required by R.C. 1715.52(E) to invest the money in the types of investments set forth in R.C. 135.01-.21.

To: Robin N. Piper, Butler County Prosecuting Attorney, Hamilton, Ohio

By: Richard Cordray, Ohio Attorney General, May 14, 2010

You have requested an opinion concerning the authority of a board of trustees of a school district free public library to have securities in its investment portfolio. Specifically, you ask:

1. If a board of trustees of a school district free public library accepts

June 2010

an unrestricted gift or bequest of securities, is the board required to sell, or otherwise convert into money, the securities or may the board take and maintain ownership of the securities?

2. If a board of trustees of a school district free public library sells, or otherwise converts into money, an unrestricted gift or bequest of securities, is the board required to comply with R.C. Chapter 135 when investing the money from the sale or other disposition of the securities or may the board place the money in an institutional fund, as defined in R.C. 1715.51(C), and invest the money in accordance with the provisions of R.C. 1715.51-.59?
3. If a board of trustees of a school district free public library accepts an unrestricted gift or bequest of money, is the board required to comply with R.C. Chapter 135 when investing the money or may the board place the money in an institutional fund, as defined in R.C. 1715.51(C), and invest the money in accordance with the provisions of R.C. 1715.51-.59?¹

Your specific questions concern the authority of a board of trustees of a school district free public library to manage the investments of the library. As a creature of statute, a board of library trustees has only the powers expressly conferred by law, either expressly by constitutional provision or statute, or by implication as necessary to carry out a power expressly granted. 1928 Op. Att’y Gen. No. 1960, vol. II, p. 889, at 890; 1924 Op. Att’y Gen. No. 2003, vol. I, p. 652 (syllabus, paragraph 1). With regard to financial matters, the power of a board of library trustees to act must be clearly and distinctly granted, and any doubt regarding the authority to invest public moneys will be resolved against the grant of authority. *See State ex rel Locher v. Menning*, 95 Ohio St. 97, 99, 115 N.E. 571 (1916); *see also* 1937 Op. Att’y Gen. No. 995, vol. II, p. 1738 (syllabus, paragraph

¹ Your questions concern an “unrestricted” gift or bequest. In your letter, you state that, “[b]y ‘unrestricted,’ we mean that the donor did not state that the gift [or bequest] could be used only for a specific purpose or that the board was required to hold the securities, or the proceeds thereof, as an endowment or other restricted fund.” In addition, you have not indicated whether the donor has attached any other conditions to the gift or bequest. It is thus assumed, for the purpose of this opinion, that the term “unrestricted” also means that no condition connected with a gift or bequest of securities or money (1) requires, prohibits, or limits the sale or other disposition of the securities; (2) governs the investment of proceeds generated from a sale or other disposition of the securities; or (3) controls the investment of money donated to the board of trustees of a school district free public library.

Also, from the information provided to us in your letter, it appears that the unrestricted gift or bequest of securities or money is not part of an “institutional trust fund,” as defined in R.C. 5813.01(C). Therefore, for the purpose of this opinion, the provisions of R.C. Chapter 5813 (Institutional Trust Funds Act) do not apply. *See* R.C. 5813.06(B).

1). Hence, for a board of library trustees to lawfully take and maintain ownership of securities, there must be a clear grant of authority.

Ownership of Donated Securities

Let us now turn to your first question, which asks whether a board of trustees of a school district free public library that accepts an unrestricted gift or bequest of securities is required to sell, or otherwise convert into money, the securities or may the board take and maintain ownership of the securities. R.C. 3375.40(K) states that a board of library trustees may, “[b]y adoption of a resolution, accept any bequest, gift, or endowment upon the conditions connected with the bequest, gift, or endowment.” R.C. 3375.40(A) provides further that a board of library trustees may “[h]old title to and have the custody of all real and personal property of the free public library under its jurisdiction.” *See also* R.C. 3375.33; R.C. 3375.34.

Under divisions (A) and (K) of R.C. 3375.40, a board of library trustees has the authority to take and maintain ownership of personal property donated to the board. Moreover, no statute commands a board of library trustees to sell, or otherwise convert into money, personal property donated to the board. The absence of such a legislative mandate coupled with the fact that a board of library trustees is authorized under R.C. 3375.40(A) and (K) to accept and hold title to personal property donated to the board clearly evinces the General Assembly’s intent to permit a board of library trustees to take and maintain ownership of personal property donated to the board.

A security evidences a person’s or entity’s ownership rights or interest in a thing and constitutes incorporeal personal property. *Black’s Law Dictionary* 1337, 1476 (9th ed. 2009). Accordingly, pursuant to R.C. 3375.40(A) and (K), a board of library trustees that accepts an unrestricted gift or bequest of securities may take and maintain ownership of the securities.

This was the conclusion reached in an earlier opinion, 1960 Op. Att’y Gen. No. 1537, p. 489. The first syllabus paragraph of the 1960 opinion states that “[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 [R.C. 3375.40(J) (now R.C. 3375.40(K))].” In reaching this conclusion, the opinion reasoned that insofar as a board of library trustees is not statutorily required to “convert a specific bequest of stocks and bonds into money,” the board “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.” 1960 Op. Att’y Gen. No. 1537, p. 489, at 494.

Because the statutory language considered in 1960 Op. Att’y Gen. No. 1537, p. 489 remains substantially the same today, we continue to find persuasive the opinion’s conclusion that a board of library trustees that accepts an unrestricted gift or bequest of securities may take and maintain ownership of the securities. Therefore, pursuant to R.C. 3375.40(A) and (K), a board of trustees of a school district free public library that accepts an unrestricted gift or bequest of securities is not required to sell, or otherwise convert into money, the securities, but may instead

take and maintain ownership of the securities.² *Cf.* 1966 Op. Att’y Gen. No. 66-067 (syllabus) (“[a] joint township district hospital board may, pursuant to [R.C. 513.15] accept and hold a gift or bequest of stocks or bonds”).

We must still consider, however, the application of Article VIII, §§ 4 and 6 of the Ohio Constitution and R.C. Chapter 135 to an unrestricted gift or bequest of stocks or bonds held by a board of trustees of a school district free public library. Although R.C. Chapter 135 and Article VIII, §§ 4 and 6 of the Ohio Constitution prohibit certain governmental bodies from purchasing or owning stocks and bonds of private, for-profit corporations, neither R.C. Chapter 135 nor Article VIII, §§ 4 and 6 of the Ohio Constitution prohibit a board of library trustees from accepting and maintaining ownership of an unrestricted gift or bequest of stocks or bonds issued by private, for-profit corporations.

R.C. Chapter 135 lists the specific classifications of obligations in which an Ohio subdivision may invest its public moneys. *See* R.C. 135.01(A); R.C. 135.07; R.C. 135.13; R.C. 135.14; R.C. 135.144. The list set forth in R.C. Chapter 135 does not include stocks or bonds of private, for-profit corporations.

Nothing in the language of R.C. Chapter 135 or elsewhere in the Revised Code, however, bars a subdivision of this state from accepting and maintaining ownership of an unrestricted gift or bequest of stocks or bonds issued by private, for-profit corporations. Absent such language, a board of library trustees is not statutorily prohibited from accepting and maintaining ownership of an unrestricted gift or bequest of stocks or bonds issued by private, for-profit corporations. *See* 1960 Op. Att’y Gen. No. 1537, p. 489, at 493. Accordingly, R.C. Chapter 135 does not limit the authority of a board of library trustees to accept and maintain ownership of an unrestricted gift or bequest of stocks or bonds issued by private, for-profit corporations.

Under the Ohio Constitution, various governmental entities are prohibited from becoming stockholders in private enterprises, raising money for private enterprises, and lending their credit to, or in aid of, private enterprises. Article VIII, § 4 of the Ohio Constitution declares that “[t]he credit of the state shall not, in any manner, be given or loaned to, or in aid of, any individual association or corporation whatever; nor shall the state ever hereafter become a joint owner, or stockholder, in any company or association in this state, or elsewhere, formed for any purpose whatever.” This constitutional provision thus forbids the state from ever becoming the owner of securities issued by private, for-profit corporations. In addition, the constitutional provision has been construed to apply to agencies and instrumentalities of the state. *See State ex rel. Saxbe v. Brand*, 176 Ohio St. 44, 48, 197 N.E.2d 328 (1964); 1998 Op. Att’y Gen. No. 98-034 at 2-201.

Language appearing in Article VIII, § 6 of the Ohio Constitution also

² For the reasons discussed later in this opinion, investment income generated from an unrestricted gift or bequest of securities that is held by a board of library trustees constitutes public money. *See* R.C. 135.01(K). Consequently, such income must be deposited and invested as provided by law.

prohibits a “county, city, town or township” from “[becoming] a stockholder in any joint stock company, corporation, or association whatever; or [raising] money for, or [loaning] its credit to, or in aid of, any such company, corporation, or association.” Accordingly, unless another constitutional provision directs otherwise, *see, e.g.*, Ohio Const. art. VIII, §§ 13, 14, 15, and 16, neither the state nor a county, city, town, or township may become the owner of securities issued by private, for-profit corporations. *See* 1996 Op. Att’y Gen. No. 96-060 at 2-242.

A review of the laws governing a school district free public library discloses that such a library is not the state or a county, city, town, or township for purposes of Article VIII, §§ 4 and 6 of the Ohio Constitution. A school district free public library is a political subdivision that is separate and distinct from the state or a county, city, town, or township. *See* R.C. 3375.14-.18; *Miller v. Akron Pub. Library*, 60 Ohio Law Abs. 364, 96 N.E.2d 795 (C.P. Summit County 1951); 1993 Op. Att’y Gen. No. 93-031 at 2-158; *see also* 1960 Op. Att’y Gen. No. 1552, p. 520, at 521-22.

A school district free public library thus is not part of the organizational structure of the state or a county, city, town, or township. Also, as stated in *Miller v. Akron Pub. Library* at 369, a school district free public library is “separate and apart” from a board of education. *See* R.C. 3375.14-.18; R.C. 3375.33; 1993 Op. Att’y Gen. No. 93-031 at 2-158; *see also* 1960 Op. Att’y Gen. No. 1552, p. 520, at 521-22. This means that, unlike a board of education of a school district, a school district free public library is not required to comply with Article VIII, § 4 of the Ohio Constitution.³

Moreover, as a separate and distinct entity, the money of a school district free public library does not belong to the state, its agencies, or its instrumentalities or to a county, city, town, or township. Instead, such money is held by the district’s board of library trustees for the library. *See* R.C. 3375.17; R.C. 3375.33; R.C. 3375.34; R.C. 3375.40(A). Money that does not belong to the state, its agencies, or its instrumentalities or to a county, city, town, or township is not subject to any of the restrictions set forth in Article VIII, §§ 4 and 6 of the Ohio Constitution. *See* 2004 Op. Att’y Gen. No. 2004-014 at 2-108; 1999 Op. Att’y Gen. No. 99-002 at 2-13 and 2-14.

Because the money of a school district free public library does not belong to the state, its agencies, or its instrumentalities or to a county, city, town, or township, such a library is not prohibited by the provisions of Article VIII, §§ 4 and 6 of the Ohio Constitution from using its money to purchase securities issued by private,

³ Boards of education of school districts are agencies or instrumentalities of the state that are required to comply with the provisions of Article VIII, § 4 of the Ohio Constitution. 1992 Op. Att’y Gen. No. 92-016 at 2-53; 1978 Op. Att’y Gen. No. 78-040 at 2-95.

for-profit corporations.⁴ Furthermore, insofar as it is permissible under Article VIII, §§ 4 and 6 of the Ohio Constitution for a school district free public library to use its money to purchase securities issued by private, for-profit corporations, it seems logical that these constitutional provisions do not prohibit such a library from obtaining ownership of securities issued by private, for-profit corporations by way of a gift or bequest. Accordingly, a school district free public library is not prohibited by Article VIII, §§ 4 and 6 of the Ohio Constitution from accepting and maintaining ownership of an unrestricted gift or bequest of securities issued by private, for-profit corporations.

Disposition of Donated Securities by a Board of Library Trustees

Your second question asks whether a board of trustees of a school district free public library that sells, or otherwise converts into money, an unrestricted gift or bequest of securities is required to comply with R.C. Chapter 135 when investing the money derived from the sale or other disposition of the securities or may the board place the money in an institutional fund, as defined in R.C. 1715.51(C), and invest the money in accordance with the provisions of R.C. 1715.51-.59. Pursuant to R.C. 3375.33 and R.C. 3375.34, when a board of library trustees accepts an unrestricted gift or bequest of securities, the board may sell or otherwise dispose of the securities. Money derived from the sale or other disposition of the securities is public money that must be deposited in a public depository designated by the board of library trustees and invested as provided by statute. *See* R.C. 9.38; R.C. 135.01(K); R.C. 135.17; R.C. 3375.36; 1994 Op. Att’y Gen. No. 94-073 at 2-368; 1960 Op. Att’y Gen. No. 1537, p. 489, at 493; 1942 Op. Att’y Gen. No. 5427, p. 657, at 662.

Investment Authority under the Uniform Depository Act, R.C. 135.01-21

The statutory scheme governing the investment of public moneys is delineated in R.C. Chapter 135, which sets forth the Uniform Depository Act. Pursuant to R.C. 135.01-.21, a subdivision is granted limited authority to invest or deposit its public moneys.

For purposes of R.C. 135.01-.21, the public moneys of a subdivision are classified as active deposits, inactive deposits, and interim deposits. *See* R.C. 135.01(A); R.C. 135.01(E); R.C. 135.01(F); R.C. 135.01(I); R.C. 135.01(K); R.C. 135.04-.06; R.C. 135.08; R.C. 135.10. Active deposits of public moneys are deposited into commercial accounts, negotiable order of withdrawal accounts, or money market deposit accounts. *See* R.C. 135.01(A). Inactive deposits of public moneys are deposited or invested in time certificates of deposit or savings or deposit accounts. *See* R.C. 135.07; R.C. 135.13. Interim deposits, which consist of interim

⁴ As discussed later in this opinion, R.C. 135.01-.21 do not authorize a board of trustees of a school district free public library to use its public moneys to purchase securities issued by private, for-profit corporations.

moneys, *see* R.C. 135.01(F), may be invested or deposited by a subdivision in the obligations described in R.C. 135.14 and R.C. 135.144.⁵

R.C. 135.14(B) provides that, subject to the caveats set forth therein, the treasurer or governing board of a subdivision may deposit or invest the subdivision's public moneys that constitute interim moneys in certain classifications of obligations. These classifications include obligations and securities issued by the federal government, obligations of this state, the Ohio subdivision's fund, commercial paper notes issued by an entity that is defined in R.C. 1705.01(D), and bankers' acceptances of banks that are insured by the Federal Deposit Insurance Corporation.

In addition to the investment authority provided in R.C. 135.14(B), the treasurer or governing board of a subdivision is also authorized by R.C. 135.14(E) and R.C. 135.144 to invest the subdivision's interim moneys in certain types of repurchase agreements and certificates of deposit, respectively. R.C. 135.01-.21 thus authorize a subdivision to invest its public moneys in certain statutorily enumerated securities.

For purposes of R.C. 135.01-.21, a subdivision is any "district or local authority electing or appointing a treasurer, except a county." R.C. 135.01(L).⁶ Hence, if a school district free public library is a district or local authority that elects or appoints a treasurer, the library is a subdivision, as defined in R.C. 135.01(L), that is required to comply with the provisions of R.C. 135.01-.21.

R.C. 3375.14 provides for the establishment of school district free public libraries by boards of education. The service area of a school district free public library is coextensive with that of the school district that created the library. *See* R.C. 3375.14-.18. A school district free public library is managed and controlled by a board of library trustees, which is a body politic and corporate. *See* R.C. 3375.15; R.C. 3375.33; R.C. 3375.35; R.C. 3375.40.

In addition, the library's board of trustees elects a fiscal officer to serve as the library's treasurer. R.C. 3375.32; R.C. 3375.36. It is thus apparent from the provisions of R.C. Chapter 3375 that a school district free public library is a district or local authority that elects or appoints a treasurer. This means that a school district free public library is a subdivision, as defined in R.C. 135.01(L), and, as such, the library's board of trustees must comply with the provisions of R.C. 135.01-.21

⁵ R.C. 135.141 authorizes a municipal corporation to invest its interim moneys in "linked deposits as authorized by ordinance adopted pursuant to [R.C. 135.80]." In addition, R.C. 135.142 authorizes a board of education to invest its interim moneys in certain types of commercial paper notes and bankers' acceptances of banks that are members of the Federal Deposit Insurance Corporation. These statutes do not, however, apply to a school district free public library.

⁶ For certain specified purposes, the term "subdivision," as used in R.C. 135.14 and R.C. 135.181, also includes any county. *See* R.C. 135.01; R.C. 135.14(G); R.C. 135.181(A)(3).

when investing the library's public moneys. *See* 1960 Op. Att'y Gen. No. 1537, p. 489 at 493; 1942 Op. Att'y Gen. No. 5427, p. 657, at 661-62; 1937 Op. Att'y Gen. No. 995, vol. II, p. 1738 (syllabus, paragraph 1). Accordingly, a board of library trustees that sells, or otherwise converts into money, an unrestricted gift or bequest of securities is required to comply with R.C. 135.01-.21 when investing the money derived from the sale or other disposition of the securities. *See* 1960 Op. Att'y Gen. No. 1537, p. 489 (syllabus, paragraph 3).

Investment Authority under the Uniform Prudent Management of Institutional Funds Act, R.C. 1715.51-.59

In addition to R.C. 135.01-.21, the General Assembly has provided investment authority in R.C. 1715.51-.59 to certain governmental organizations. R.C. 1715.51-.59 are Ohio's version of the Uniform Prudent Management of Institutional Funds Act. Under this act, a governmental organization that qualifies as an "institution" may manage and invest an institutional fund.⁷ The authority of an institution to invest moneys in an institutional fund is set forth in R.C. 1715.52(E)(3), which states, "[e]xcept as otherwise provided by law, an institution may invest in any kind of property or type of investment consistent with this section." An institution that holds moneys derived from the sale or other disposition of an unrestricted gift or bequest of securities for charitable purposes thus may invest such moneys as an institutional fund in accordance with the conditions and requirements set forth in R.C. 1715.51-.59. *See Bd. of Trustees of the Grafton-Midview Pub. Library v. Petro*, C.A. No. 98CA007230, 2000 Ohio App. LEXIS 9, at *5 (Lorain County Jan. 5, 2000).

For purposes of R.C. 1715.51-.59, the term "institution" includes, *inter alia*, "[a] governmental organization to the extent that it holds funds exclusively for a charitable purpose." R.C. 1715.51(B)(2). While the phrase "governmental organization" is not expressly defined for purposes of R.C. 1715.51(B)(2), the common meaning of this phrase is a body of persons that constitutes the governing authority of a political entity. *See Webster's Third New International Dictionary* 983, 1590 (1993). Hence, the term "governmental organization," as used in R.C. 1715.51(B)(2), means a body of persons that constitutes the governing authority of a political entity.

A board of library trustees is a group of persons organized as a body politic and corporate. *See* R.C. 3375.15; R.C. 3375.33. The function of the board of library trustees is to manage the school district's free public library. *See* R.C. 3375.16; R.C. 3375.18; R.C. 3375.35; R.C. 3375.40. A board of library trustees thus is the body of persons that constitutes the governing authority of a free public library,

⁷ For purposes of R.C. 1715.51-.59, an "institutional fund" is one "that is held by an institution exclusively for charitable purposes. 'Institutional fund' does not include any of the following: (1) [p]rogram related assets; (2) [a] fund held for an institution by a trustee that is not an institution; [or] (3) [a] fund in which a beneficiary that is not an institution has an interest other than an interest that may arise upon a violation of or the failure of the purposes of the fund." R.C. 1715.51(C).

and, as such, a board of library trustees is a “governmental organization” for purposes of R.C. 1715.51(B)(2). *See* 2002 Op. Att’y Gen. No. 2002-026 (syllabus, paragraph 1); 2002 Op. Att’y Gen. No. 2002-016 at 2-93; 1993 Op. Att’y Gen. No. 93-031 at 2-158.

In addition, a board of library trustees expends its moneys exclusively for a “charitable purpose.” Pursuant to R.C. 1715.51(A), the term “charitable purpose” is defined for purposes of R.C. 1715.51-.59 as “any purpose the achievement of which is *beneficial to the community*, including the relief of poverty, *the advancement of education* or religion, the promotion of health, and *the promotion of a governmental purpose*.” (Emphasis added.)

It is axiomatic that the operation of a school district free public library is beneficial to the residents of that school district. The primary purpose of a library is to provide “a place in which literary, musical, artistic, or reference materials (as books, manuscripts, recordings, or films) are kept for use but not for sale.” *Merriam-Webster’s Collegiate Dictionary* 716 (11th ed. 2005); *see* 2004 Op. Att’y Gen. No. 2004-023 at 2-194. The existence of a school district free public library ensures that every pupil within its service area has free access to a multitude of materials for reading and reference. The existence of such a diverse collection of materials is essential to the dissemination and inculcation of knowledge throughout a community and plays an integral part in Ohio’s educational system. *Brown v. State ex rel. Merland*, 120 Ohio St. 297, 302-03, 166 N.E. 214 (1929).

The General Assembly, thus, in order to provide educational resources to pupils, has statutorily provided for the creation and operation of school district free public libraries. *See* R.C. 3375.14-.18. The General Assembly has also made such libraries eligible to receive public money and aid from boards of education. *See, e.g.,* R.C. 3375.14; R.C. 3375.16-.18; R.C. 5705.23; R.C. 5705.28; R.C. 5705.32; R.C. 5747.46-.48. Moreover, “*all moneys . . . credited to [a] free public library*” are to be expended “for library purposes.” R.C. 3375.40(B) (emphasis added). Accordingly, all the moneys of a school district free public library are to be used to promote the governmental purposes of establishing, maintaining, improving, and operating the library. *See* 2002 Op. Att’y Gen. No. 2002-026 at 2-172; 1993 Op. Att’y Gen. No. 93-031 at 2-158.

In light of the foregoing, it is apparent that a board of library trustees expends its moneys exclusively for the advancement of education and the promotion of a paramount governmental purpose—the establishment and operation of a free public library. Because the achievement of these objectives is beneficial to a community, it follows that a board of library trustees expends its moneys exclusively for a “charitable purpose,” as defined in R.C. 1715.51(A). *See Battelle Mem. Inst. v. Dunn*, 148 Ohio St. 53, 60, 73 N.E.2d 88 (1947); *see generally also OCLC Online Computer Library Ctr., Inc. v. Kinney*, 11 Ohio St. 3d 198, 200, 464 N.E.2d 572 (1984); *Bd. of Trustees of the Grafton-Midview Pub. Library v. Petro*, at *9.

Therefore, insofar as a board of trustees of a school district free public library is a governmental organization that holds its moneys exclusively for a

charitable purpose, the board is an “institution” for purposes of R.C. 1715.51-.59. See R.C. 1715.51(B)(2); *Bd. of Trustees of the Grafton-Midview Pub. Library v. Petro*, at *9-10. As an institution, a board of trustees of a school district free public library that sells, or otherwise converts into money, an unrestricted gift or bequest of securities may place the money from the sale or other disposition of the securities in an institutional fund, as defined in R.C. 1715.51(C), and invest the money in accordance with the provisions of R.C. 1715.51-.59.⁸

The Uniform Depository Act, R.C. 135.01-.21, Prevails Over the Uniform Prudent Management of Institutional Funds Act, R.C. 1715.51-.59

Both the Uniform Depository Act, R.C. 135.01-.21, and the Uniform Prudent Management of Institutional Funds Act, R.C. 1715.51-.59, authorize a board of library trustees to invest money derived from the sale or other disposition of an unrestricted gift or bequest of securities. The Uniform Prudent Management of Institutional Funds Act, however, authorizes a board of library trustees to invest such money in a broader range of securities than is permitted by R.C. 135.01-.21. See *Bd. of Trustees of the Grafton-Midview Pub. Library v. Petro*, at *5.

For example, the provisions of R.C. 135.01-.21 governing the investment of a subdivision’s active and inactive deposits of public moneys do not authorize the subdivision to invest these deposits in stocks and bonds of private, for-profit corporations. See R.C. 135.01(A); R.C. 135.07; R.C. 135.13. In addition, R.C. 135.14-.144 list the specific classifications of obligations that a subdivision may purchase when investing its interim moneys. Because this list does not include the purchase of stocks or bonds of private, for-profit corporations, a subdivision may not use its interim moneys to purchase these types of securities. See *Bd. of Trustees of the Grafton-Midview Pub. Library v. Petro*, at *5. R.C. 135.01-.21 thus do not authorize a subdivision to use money derived from the sale or other disposition of an unrestricted gift or bequest of securities to purchase stocks and bonds of private, for-profit corporations. See 1960 Op. Att’y Gen. No. 1537, p. 489 (syllabus, paragraph 3).

In contrast, R.C. 1715.51-.59 do not have such a limitation. R.C. 1715.51-.59 adopt the prudence standard for investment decision making. See Uniform Prudent Management of Institutional Funds Act § 3, cmt., 7A, Part. III, U.L.A. 17 (2009 Supp.). Under this standard, an institution is not specifically prohibited from investing money that is held in an institutional fund in any type of securities. Instead, the institution is directed “to act as a prudent investor would, using a portfolio approach in making investments and considering the risk and return objectives of the

⁸ If a school district free public library sells, or otherwise converts into money, an unrestricted gift or bequest of securities and does not immediately place the money from the sale or other disposition of the securities in an institutional fund for investment in accordance with the provisions of R.C. 1715.51-.59, the library is required to deposit the money in a public depository designated by the board of library trustees until its investment pursuant to R.C. 1715.51-.59. See R.C. 135.17; R.C. 3375.36; 1942 Op. Att’y Gen. No. 5427, p. 657, at 662.

fund.” *Id.* Consistent with this investment philosophy, R.C. 1715.52(E)(3), which permits an institution to invest in “any kind of property or type of investment,” authorizes an institution to invest its money in a broad range of investments, including stocks and bonds of private, for-profit corporations. *See id.* at 20. Accordingly, R.C. 1715.51-.59 authorize an institution that is also a subdivision for purposes of R.C. 135.01-.21 to invest money derived from the sale or other disposition of an unrestricted gift or bequest of securities in types of investments that are not authorized under R.C. 135.01-.21. *See Bd. of Trustees of the Grafton-Midview Pub. Library v. Petro*, at *5.

The authority conferred by R.C. 1715.51-.59 upon an institution that is also a subdivision for purposes of R.C. 135.01-.21 is not unlimited, however. One significant limitation is plainly set forth in R.C. 1715.52(E)(3).

R.C. 1715.52(E)(3) states that “[e]xcept as otherwise provided by law, an institution may invest in any kind of property or type of investment consistent with this section.” (Emphasis added.) The use of the clause “[e]xcept as otherwise provided by law” to modify the investment power granted under R.C. 1715.52(E)(3) indicates that another law may limit the investment power granted under R.C. 1715.52(E)(3). *See* Uniform Prudent Management of Institutional Funds Act § 3, cmt., 7A, Part. III, U.L.A. 20 (2009 Supp.) (“[s]ubsection (e)(3) [of section 3 of the Uniform Prudent Management of Institutional Funds Act] also provides that other law may limit the authority under this subsection”). Accordingly, pursuant to the plain language of R.C. 1715.52(E)(3), the investment authority conferred upon an institution by R.C. 1715.51-.59 is subject to the limitations and restrictions imposed by other provisions of law.

This conclusion is supported further by the language of R.C. 1715.52(E)(5), which requires an institution to comply with the requirements of R.C. 1715.52(E)(3) when it receives money derived from the sale or other disposition of an unrestricted gift or bequest of securities. R.C. 1715.52(E)(3), in turn, authorizes an institution to invest money derived from the sale or other disposition of an unrestricted gift or bequest of securities in an investment authorized under R.C. 1715.51-.59 when no law prohibits the investment. Hence, in order to comply with R.C. 1715.52(E), an institution may invest money derived from the sale or other disposition of an unrestricted gift or bequest of securities in those types of investment that are not otherwise prohibited by law.

As explained earlier, R.C. 135.01-.21 limit the investment authority of a subdivision. Accordingly, if an institution is also a subdivision for purposes of R.C. 135.01-.21, then, pursuant to R.C. 1715.52(E), the subdivision is limited by R.C. 135.01-.21 as to the types of investments it may make under R.C. 1715.51-.59.

We have previously determined that a school district free public library is a subdivision for purposes of R.C. 135.01-.21 and that its board of trustees is an institution for purposes of R.C. 1715.51-.59. Thus, pursuant to R.C. 1715.52(E), the investment power of a board of library trustees under R.C. 1715.51-.59 is subject to the limitations and requirements imposed by R.C. 135.01-.21. This means that R.C. 135.01-.21’s limitations and requirements apply when the board holds money in an

institutional fund, as defined in R.C. 1715.51(E), for investment in accordance with the provisions of R.C. 1715.51-.59. *See* 1942 Op. Att’y Gen. No. 5427, p. 657, at 662. Therefore, in response to your second question, a board of trustees of a school district free public library that sells, or otherwise converts into money, an unrestricted gift or bequest of securities and holds the money from the sale or other disposition of the securities in an institutional fund, as defined in R.C. 1715.51(C), is required by R.C. 1715.52(E) to invest the money in the types of investments set forth in R.C. 135.01-.21.

Disposition of Donated Money

Your final question asks whether a board of trustees of a school district free public library that accepts an unrestricted gift or bequest of money is required to comply with R.C. Chapter 135 when investing the money or may the board place the money in an institutional fund, as defined in R.C. 1715.51(C), and invest the money in accordance with the provisions of R.C. 1715.51-.59. The analyses and conclusions set forth with respect to your second question also apply to your third question since an unrestricted gift or bequest of money donated to a board of library trustees is treated the same as money derived from the sale or other disposition of an unrestricted gift or bequest of securities. *See* 1960 Op. Att’y Gen. No. 1537, p. 489, at 493; 1942 Op. Att’y Gen. No. 5427, p. 657, at 662-63.

Money donated directly to a board of library trustees is public money that must be deposited in the library’s public depository and invested as provided by statute. *See* R.C. 135.01(K); R.C. 135.17; R.C. 3375.36; 1942 Op. Att’y Gen. No. 5427, p. 657. Thus, for the reasons discussed above, an unrestricted gift or bequest of money donated to a board of library trustees may be invested by the board in accordance with either R.C. 135.01-.21 or R.C. 1715.51-.59. If a board of library trustees invests such money under R.C. 1715.51-.59, the board must comply with the requirements of R.C. 1715.52(E) when investing the money. This includes not investing the money in any kind of property or type of investment that is not authorized under R.C. 135.01-.21. Accordingly, a board of trustees of a school district free public library that accepts an unrestricted gift or bequest of money and holds the money in an institutional fund, as defined in R.C. 1715.51(C), is required by R.C. 1715.52(E) to invest the money in the types of investments set forth in R.C. 135.01-.21. *See* 1942 Op. Att’y Gen. No. 5427, p. 657 (syllabus).

Our answer to your third question does not agree with the Ninth District Court of Appeals’ decision in *Bd. of Trustees of the Grafton-Midview Pub. Library v. Petro*.⁹ That court found that, when a board of library trustees invests donated money pursuant to R.C. 1715.51-.59, the board is not limited to investing the

⁹ No Ohio Supreme Court case has addressed whether a board of trustees of a school district free public library that accepts an unrestricted gift or bequest of money and invests the money in accordance with R.C. 1715.51-.59 is required to invest the money in the types of investments set forth in R.C. 135.01-.21. Thus, there is no judicial interpretation of this issue that is controlling throughout Ohio. *See* Ohio Const. art. IV, §§ 2 and 3.

donated money in the types of investments set forth in R.C. 135.01-.21. Instead, the specific investment standards set forth in R.C. 1715.54 prevail over the general investment authority set forth in R.C. 135.01-.21.¹⁰

Although the analysis in *Bd. of Trustees of the Grafton-Midview Pub. Library v. Petro* utilizes the proper test for interpreting two statutory schemes when a conflict between the two schemes is irreconcilable, the case does not consider the effect of the most recent amendment to R.C. 1715.51-.59. See generally Am. H.B. 522, 127th Gen. A. (2008) (eff. Apr. 7, 2009) (title) (“adopting the Uniform Prudent Management of Institutional Funds Act by revising the Ohio Uniform Management of Institutional Funds Act”). Instead, when *Bd. of Trustees of the Grafton-Midview Pub. Library v. Petro* was decided in 2000, R.C. 1715.54 provided, in pertinent part, as follows:

(A) In addition to an investment otherwise authorized by law or by the applicable gift instrument and without restriction to investments that a fiduciary may make, the governing board of an institution, *subject to any specific limitations set forth in the applicable gift instrument or in an applicable law other than law relating to investments by a fiduciary*, may do all of the following:

(1) Invest and reinvest an institutional fund in any real or personal property considered advisable by the governing board, whether or not it produces a current return, including mortgages, stocks, bonds, debentures, and other securities of profit or nonprofit corporations, shares in or obligations of associations, partnerships, or individuals, and obligations of any government or political subdivision or instrumentality thereof[.] (Emphasis added.)

1995-1996 Ohio Laws, Part III, 4541, 4546 (Sub. H.B. 391, eff. Oct. 1, 1996) (setting forth the version of R.C. 1715.54 in effect in 2000).

Under former R.C. 1715.54, the investment authority of a board of library trustees was made “subject to any specific limitations set forth in the applicable gift instrument or in an applicable law other than law relating to investments by a fiduciary.” The language of former R.C. 1715.54 thus allowed a board of library trustees to invest donated money in securities “considered advisable by the . . . board,” provided no law “*other than law relating to investments by a fiduciary*” prohibited the investment. (Emphasis added.) In other words, former R.C. 1715.54 authorized a board of library trustees to invest donated money that was held in an institutional fund, as defined in R.C. 1715.51(C), in all types of securities authorized under R.C. 1715.51-.59 even though another Ohio “law relating to investments by a fiduciary” may have limited the board’s authority to invest in securities.

Insofar as the Uniform Depository Act, R.C. 135.01-.21, may be construed

¹⁰ The investment standards of R.C. 1715.54 cited to by the court in *Bd. of Trustees of the Grafton-Midview Pub. Library v. Petro* are now set forth in R.C. 1715.52. See Am. H.B. 522, 127th Gen. A. (2008) (eff. Apr. 7, 2009).

as a “law relating to investments by a fiduciary,” one could conclude that former R.C. 1715.54 prevailed over the provisions of the Uniform Depository Act. This would mean that former R.C. 1715.54 authorized a board of library trustees to invest donated money that was held in an institutional fund, as defined in R.C. 1715.51(C), in any type of security permitted under R.C. 1715.51-.59 even though R.C. 135.01-.21 limited the board’s authority to invest in securities.

Consequently, at the time that the court in *Bd. of Trustees of the Grafton-Midview Pub. Library v. Petro* construed the investment authority of a board of library trustees under R.C. 1715.51-.59 and R.C. 135.01-.21, no provision of in R.C. 1715.51-.59 required the board to comply with R.C. 135.01-.21 when investing donated money pursuant to R.C. 1715.51-.59. Instead, former R.C. 1715.54 indicated that the investment restrictions of R.C. 135.01-.21 were not to be applied when a board of library trustees invested donated money pursuant to R.C. 1715.51-.59.

In 2009, the General Assembly repealed former R.C. 1715.54 and enacted R.C. 1715.52 in its stead. Am. H.B. 522. R.C. 1715.52(E)(3) states, in relevant part, that “[e]xcept as otherwise provided by law, an institution may invest in any kind of property or type of investment consistent with this section.” (Emphasis added.)

As explained previously, the use of the clause “[e]xcept as otherwise provided by law” in R.C. 1715.52(E)(3) to modify the investment power granted to a board of library trustees under R.C. 1715.51-.59 indicates that the board is required to invest donated money that is held in an institutional fund, as defined in R.C. 1715.51(C), in accordance with the provisions of R.C. 135.01-.21. Thus, unlike former R.C. 1715.54, newly enacted R.C. 1715.52(E)(3) requires a board of library trustees to comply with R.C. 135.01-.21 when investing donated money pursuant to R.C. 1715.51-.59.

Because the statutory language construed by the court in *Bd. of Trustees of the Grafton-Midview Pub. Library v. Petro* has been significantly changed, we are not constrained to follow the court’s interpretation of the provisions of law governing the investment authority of a board of trustees of a school district free public library under R.C. 1715.51-.59. Therefore, a board of trustees of a school district free public library that accepts an unrestricted gift or bequest of money and holds the money in an institutional fund, as defined in R.C. 1715.51(C), is required by R.C. 1715.52(E) to invest the money in the types of investments set forth in R.C. 135.01-.21.

Conclusions

On the basis of the foregoing, it is my opinion, and you are hereby advised as follows:

1. Pursuant to R.C. 3375.40(A) and (K), a board of trustees of a school district free public library that accepts an unrestricted gift or bequest of securities is not required to sell, or otherwise convert into money, the securities, but may instead take and maintain ownership of the securities. (1960 Op. Att’y Gen. No. 1537, p. 489, syllabus, paragraph 1, approved and followed.)

2. A board of trustees of a school district free public library that sells, or otherwise converts into money, an unrestricted gift or bequest of securities and holds the money from the sale or other disposition of the securities in an institutional fund, as defined in R.C. 1715.51(C), is required by R.C. 1715.52(E) to invest the money in the types of investments set forth in R.C. 135.01-.21.
3. A board of trustees of a school district free public library that accepts an unrestricted gift or bequest of money and holds the money in an institutional fund, as defined in R.C. 1715.51(C), is required by R.C. 1715.52(E) to invest the money in the types of investments set forth in R.C. 135.01-.21.