

# Opinion 88-76

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 [osc.state.ny.us/legal/1988/op88-76.htm](http://osc.state.ny.us/legal/1988/op88-76.htm)

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**This opinion represents the views of the Office of the State Comptroller at the time it was rendered. The opinion may no longer represent those views if, among other things, there have been subsequent court cases or statutory amendments that bear on the issues discussed in the opinion.**

LIBRARIES -- Investments (of private moneys) -- Private Moneys (accounting for); (investment of) -- Taxes (applying private source moneys to reduce)

EDUCATION LAW, §259(1); GENERAL MUNICIPAL LAW, §11: Interest earned on the investment of public moneys appropriated by a village to a village public library must be credited to the library fund and not to the village general fund.

EDUCATION LAW, §§226(6), 255(1); GENERAL MUNICIPAL LAW, §11: Moneys donated by private persons to a village public library may be invested by the library trustees in investments which they deem to be for the best interests of the library, and need not be invested in the manner specified in General Municipal Law, §11.

EDUCATION LAW, §259(1); GENERAL MUNICIPAL LAW, §30(3): The annual report of financial transactions which a public library treasurer must file with the State Comptroller should include information both on public moneys and private source moneys.

This is in reply to your letter concerning the public and private source moneys of a village public library. You ask whether interest earned on the investment of moneys appropriated by the village for library purposes is credited to the library fund. You also ask whether private source revenues may be retained by the library board and expended by board resolution at a public meeting. Finally, you ask whether the library must make an annual accounting of expenditures of private source moneys and whether such moneys must be applied to reduce the annual appropriation of village moneys for library purposes.

Education Law, §259(1) requires that taxes for library purposes be levied and collected annually with general taxes of the municipality or school district which established the library. Such section further provides, in pertinent part, as follows:

"1. \* \* \* All moneys received from taxes or other public sources shall be kept as a separate library fund by the treasurer of the municipality or district making the appropriation and shall be expended only under direction of the library trustees on properly authenticated vouchers, except that moneys received from taxes and other public sources for the support of a public library ... shall be paid over to the treasurer of such library ... upon the written demand of its trustees." [Emphasis added]

Based on the above language, this Office, in 1986 Opns St Comp No. 86-54, p 86, expressed the opinion that the municipal treasurer, as custodian of the library fund, is responsible for maintaining bank accounts for the deposit of moneys received from taxes or other public sources. However, since ultimate control of the use, disposition and expenditure of library fund moneys is vested in the library board of trustees (Education Law, §§226[6], 259[1]), the library board is authorized to direct which depositories are to be utilized. In addition, we stated that the library board may authorize the municipal or school district treasurer, as custodian, to invest library fund moneys in the same manner and to the same extent as provided in General Municipal Law, §11 or Education Law, §1723-a, as the case may be (see also 1974 Opns St Comp No. 74-361, unreported). Therefore, since the municipal treasurer holds library fund moneys as custodian for the library and invests such moneys upon authorization of the library board, it is clear that interest earned on such investments must be credited to the library fund and not to the general fund of the municipality.

With regard to private source moneys, we have expressed the opinion that the library board would have custody and control of, and may maintain a separate account for, these funds (1979 Opns St Comp No. 79-25, unreported). These funds may be expended in the same manner as public source moneys, upon authorization of the library board, for any lawful library purpose (1985 Opns St Comp No. 85-40, p 54; 1980 Opns St Comp No. 80-340, p 101). With respect to the investment of private source moneys, we have expressed the opinion that, while a public library may invest public funds (e.g., moneys raised by taxes) only in the types of investments authorized by General Municipal Law, §11 or Education Law, §1723-a, moneys received entirely from private sources are not subject to the restrictions contained in those sections of law and, subject to the terms of the gift, may be invested in a manner which the library trustees deem to be in the best interests of the library (1979 Opns St Comp No. 79-450, p 82; see also EPTL 11-2.2, which relates to the investment of trust property; 1981 Opns St Comp No. 81-393, p 431).

As a general rule, when a statute commits the decision of a matter to a governing board and is silent as to the mode of its exercise, the governing board expresses its will by the adoption of a resolution (McQuillin, *Municipal Corporations*, §15.06; Reese v Lombard, 47 AD2d 493, 366 NYS2d 493). Accordingly, it is our opinion that the library board would authorize the deposit, investment or expenditure of these funds by board resolution. As to

whether any such action may be taken at other than a public meeting, we suggest you contact the Committee on Open Government since that body is authorized to issue advisory opinions interpreting the provisions of the Open Meetings Law (Public Officers Law, §109).

We are aware of no statutory requirement that private source moneys be applied to reduce the amount levied for library purposes by the sponsoring municipality (1981 Opns St Comp No. 81-393, p 431; see Martin v Board of Education, 39 Misc 2d 519, 241 NYS2d 396). On the other hand, there is nothing which would preclude a municipal governing board from taking into consideration a library's private source funds when determining the amount to be raised as tax revenues for library purposes.

Finally, with regard to an annual accounting of the receipt and expenditure of private source moneys, we note that General Municipal Law, §30(3) requires that an "annual report of financial transactions shall be made by the treasurer of each public library ..." The report must be certified by the officer making the same and, unless an extension of time is granted, must be filed with this Office within sixty days after the close of the fiscal year (General Municipal Law, §30[5]). Since the term "financial transactions" as used in section 30(3) is not limited to those transactions involving public source moneys, the report should include information both on public and private source moneys.

In addition to the report required by General Municipal Law, §30, the Education Law provides for reporting to the State Education Department (see Education Law, §§215, 263). We suggest you contact the State Education Department directly with regard to the requirements of reports submitted to that agency.

April 12, 1988  
Village of Tarrytown

# Opinion 90-63

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 [osc.state.ny.us/legal/1990/legalop/op90-63.htm](https://osc.state.ny.us/legal/1990/legalop/op90-63.htm)

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**This opinion represents the views of the Office of the State Comptroller at the time it was rendered. The opinion may no longer represent those views if, among other things, there have been subsequent court cases or statutory amendments that bear on the issues discussed in the opinion.**

LIBRARIES -- Appropriations and Expenditures (recognition dinner for volunteers); (holding party for senior citizens)

MUNICIPAL FUNDS -- Appropriations and Expenditures (in recognition of municipal service - dinner for volunteer library workers); (miscellaneous expenses - holiday party for senior citizens)

VOLUNTEERS -- Compensation (authority to hold recognition dinners or give awards to volunteers)

EDUCATION LAW, §§255(1), 259(1): A public library may sponsor a recognition dinner for volunteer library workers, but may not sponsor a party for the senior citizens of the sponsor municipality or school district.

You ask whether a public library may fund a holiday party either for a group of senior citizens who provide volunteer services to the library or for all the senior citizens of the sponsoring municipality or school district.

Education Law, §255(1) authorizes municipalities and school districts to establish a public library and to appropriate moneys raised by tax or otherwise "to equip and maintain such library or libraries or to provide a building or rooms for its or their use". All moneys received from taxes or other public sources for "library purposes" must be kept as a separate library fund and expended under the direction of the library trustees on properly authenticated vouchers (Education Law, §259[1]). The trustees of public libraries are also authorized to accept gifts, absolutely or "in trust", when such gifts will further a proper public purpose of the library (Education Law, §§226[5], 260; 1985 Opns St Comp No. 85-40, p 54). Based on these statutory provisions, we believe that public library moneys may be expended only for a proper public library purpose (see, e.g., Opn No. 85-40, supra).

We have previously concluded that a public library may hold an annual luncheon to recognize the services provided by volunteer library workers, provided that only the volunteers' meals are paid for and the cost of those meals is reasonable (1982 Opns St

Comp No. 82-66, p 82; see also 1982 Opns St Comp No. 82-263, p 330; 1980 Opns St Comp Nos. 80-282, p 83 and 80-775, p 212). An expenditure for this purpose is proper because it is in furtherance of the proper library purpose of encouraging individuals to volunteer their services to the library (see, e.g., Opn No. 82-66, supra; see also Opn No. 82-263, supra). Similarly, a public library may expend a reasonable sum to provide refreshments to the general public at public meetings and other official functions as an incident to its authority to hold such meetings and functions (1979 Opns St Comp No. 79-904, 212).

There does not appear to be any authority, however, for a public library to sponsor an event which is primarily of a social nature (cf. 28 Opns St Comp, 1972, p 105, in which we concluded that a public library may sponsor special programs of an intellectual or cultural nature, such as public concerts, films and discussion groups). In the absence of such authority, we believe that sponsoring a party for the senior citizens of the sponsoring municipality or school district is not a proper library purpose and that an expenditure of public library moneys for such a party would be improper (cf. General Municipal Law, §95-a, which authorizes municipalities and school districts to establish, maintain, operate and fund programs devoted in whole or in part to the welfare of the aging).

Therefore, we conclude that a public library may sponsor a recognition dinner for volunteer library workers, but may not sponsor a party for the senior citizens of the sponsor municipality or school district.

May 15, 1990  
Stanley L. Itkin, Director  
Hillside Public Library

# Opinion 91-57

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[osc.state.ny.us/legal/1991/legalop/op91-57.htm](http://osc.state.ny.us/legal/1991/legalop/op91-57.htm)

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**This opinion represents the views of the Office of the State Comptroller at the time it was rendered. The opinion may no longer represent those views if, among other things, there have been subsequent court cases or statutory amendments that bear on the issues discussed in the opinion.**

LIBRARIES -- Finances (comingling library moneys with those of municipal sponsor) -- Public Library (comingling library moneys with those of municipal sponsor)

MUNICIPAL FUNDS -- Accounting (comingling library moneys with those of municipal sponsor)

EDUCATION LAW, §259(1): Library fund moneys of a village public library held in the custody of the village treasurer may be comingled with moneys of the village, subject to the consent of the library board. Prior inconsistent opinions superseded.

You ask whether library fund moneys of the village public library may be comingled with moneys of the village. The village treasurer has custody of the moneys of the village public library and presently maintains a separate bank account for those moneys. You indicate that the village believes that it would be more efficient if library moneys were deposited in and disbursed from the same bank account as village moneys. The treasurer would maintain separate accounting records for the library fund moneys and the library fund moneys would be disbursed only at the direction of the library board of trustees.

Section 259(1) of the Education Law requires that taxes for library purposes be levied and collected annually with general taxes of the municipality or school district which established the library. That section also provides, in part, that:

All moneys received from taxes or other public sources shall be kept as a separate library fund by the treasurer of the municipality or district making the appropriation and shall be expended only under direction of the library trustees on properly authenticated vouchers, except that moneys received from taxes and other public sources for the support of a public library ... shall be paid over to the treasurer of such library ... upon the written demand of its trustees.

Thus, where, as here, library moneys are not paid over to the library treasurer, section 259(1) expressly requires the village treasurer to retain custody of those moneys in a separate fund (see also 1987 Opns St Comp No. 87-49, p 76; 1986 Opns St Comp No. 86-54, p 86).

This Office has expressed the opinion that, where separate bank accounts are not specifically required by State or local legislation, moneys in various funds held by a municipality may be deposited in a single bank account (1981 Opns St Comp No. 81-341, p 373; 1971 Opns St Comp No. 71-291, unreported). We have also recommended generally that bank accounts be consolidated to the extent possible (Office of the State Comptroller, Financial Management Guide, Cash Management and Investment Policies and Procedures, subsection 2.0020). Therefore, since section 259 does not expressly require separate bank accounts (*cf.* General Municipal Law, §6-c[7]) or prohibit comingling of library fund moneys with moneys of the municipality (*cf.* Local Finance Law, §165.00[a]), it is our opinion that the requirement to keep library moneys in a "separate library fund" does not require the physical segregation of such moneys.

With respect to library moneys, however, we note that public libraries are, for most purposes, fiscally autonomous from the sponsoring municipality (see, e.g., 1983 Opns St Comp No. 83-32, p 38). Thus, the ultimate control of the use, disposition, and expenditure of those moneys is vested in the library board of trustees even if the municipal treasurer is the custodian of library moneys. (Education Law, §§226[6], 259[1]; 1987 Opns St Comp No. 87-84, p 125; see also Opn No. 87-49, *supra*; Opn No. 86-54, *supra*). In addition, it is the library board of trustees which may authorize the investment of library moneys even when the moneys are held in the custody of the municipal treasurer (Opn No. 86-54, *supra*). Therefore, since the library board controls the use and disposition of library fund moneys, it is our opinion that the library board must consent to any arrangement under which library fund moneys are to be comingled with moneys of the municipality.

1979 Opns St Comp No. 79-223, unreported, and other prior opinions are hereby superseded to the extent inconsistent therewith.

January 7, 1992  
Gerard Fishberg, Esq., Village Attorney  
Village of Garden City

# Opinion 91-57

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**This opinion represents the views of the Office of the State Comptroller at the time it was rendered. The opinion may no longer represent those views if, among other things, there have been subsequent court cases or statutory amendments that bear on the issues discussed in the opinion.**

LIBRARIES -- Finances (comingling library moneys with those of municipal sponsor) -- Public Library (comingling library moneys with those of municipal sponsor)

MUNICIPAL FUNDS -- Accounting (comingling library moneys with those of municipal sponsor)

EDUCATION LAW, §259(1): Library fund moneys of a village public library held in the custody of the village treasurer may be comingled with moneys of the village, subject to the consent of the library board. Prior inconsistent opinions superseded.

You ask whether library fund moneys of the village public library may be comingled with moneys of the village. The village treasurer has custody of the moneys of the village public library and presently maintains a separate bank account for those moneys. You indicate that the village believes that it would be more efficient if library moneys were deposited in and disbursed from the same bank account as village moneys. The treasurer would maintain separate accounting records for the library fund moneys and the library fund moneys would be disbursed only at the direction of the library board of trustees.

Section 259(1) of the Education Law requires that taxes for library purposes be levied and collected annually with general taxes of the municipality or school district which established the library. That section also provides, in part, that:

All moneys received from taxes or other public sources shall be kept as a separate library fund by the treasurer of the municipality or district making the appropriation and shall be expended only under direction of the library trustees on properly authenticated vouchers, except that moneys received from taxes and other public sources for the support of a public library ... shall be paid over to the treasurer of such library ... upon the written demand of its trustees.

Thus, where, as here, library moneys are not paid over to the library treasurer, section 259(1) expressly requires the village treasurer to retain custody of those moneys in a separate fund (see also 1987 Opns St Comp No. 87-49, p 76; 1986 Opns St Comp No. 86-54, p 86).

This Office has expressed the opinion that, where separate bank accounts are not specifically required by State or local legislation, moneys in various funds held by a municipality may be deposited in a single bank account (1981 Opns St Comp No. 81-341, p 373; 1971 Opns St Comp No. 71-291, unreported). We have also recommended generally that bank accounts be consolidated to the extent possible (Office of the State Comptroller, Financial Management Guide, Cash Management and Investment Policies and Procedures, subsection 2.0020). Therefore, since section 259 does not expressly require separate bank accounts (*cf.* General Municipal Law, §6-c[7]) or prohibit comingling of library fund moneys with moneys of the municipality (*cf.* Local Finance Law, §165.00[a]), it is our opinion that the requirement to keep library moneys in a "separate library fund" does not require the physical segregation of such moneys.

With respect to library moneys, however, we note that public libraries are, for most purposes, fiscally autonomous from the sponsoring municipality (see, e.g., 1983 Opns St Comp No. 83-32, p 38). Thus, the ultimate control of the use, disposition, and expenditure of those moneys is vested in the library board of trustees even if the municipal treasurer is the custodian of library moneys. (Education Law, §§226[6], 259[1]; 1987 Opns St Comp No. 87-84, p 125; see also Opn No. 87-49, *supra*; Opn No. 86-54, *supra*). In addition, it is the library board of trustees which may authorize the investment of library moneys even when the moneys are held in the custody of the municipal treasurer (Opn No. 86-54, *supra*). Therefore, since the library board controls the use and disposition of library fund moneys, it is our opinion that the library board must consent to any arrangement under which library fund moneys are to be comingled with moneys of the municipality.

1979 Opns St Comp No. 79-223, unreported, and other prior opinions are hereby superseded to the extent inconsistent therewith.

January 7, 1992  
Gerard Fishberg, Esq., Village Attorney  
Village of Garden City

# Opinion 92-28

[osc.state.ny.us/legal/1992/legalop/op92-28.htm](http://osc.state.ny.us/legal/1992/legalop/op92-28.htm)

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BONDS AND NOTES -- Tax Anticipation Notes (payment of proceeds to a public library); (payment of interest for notes issued for library taxes)

LIBRARIES -- Finances (issuance and payment of proceeds of tax anticipation notes); (payment of interest on tax anticipation notes) -- Investments (interest earned on) -- Taxes (time for payment over by school district)

SCHOOL DISTRICTS -- Library Appropriation (disposition of interest on investment of library fund); (time for payment over); (issuance of tax anticipation notes for library taxes)

EDUCATION LAW, §259(1); LOCAL FINANCE LAW, §24.00; REAL PROPERTY TAX LAW, §§1322, 1324: (1) Interest earned on the investment of library fund moneys is credited to the library fund. (2) A school district should pay over to the library fund or the library treasurer, as the case may be, those taxes which are specifically earmarked for library purposes as soon as practicable after their receipt. (3) If a school district has issued tax anticipation notes in anticipation of taxes levied for library purposes, the proceeds should be paid to the library fund or to the library treasurer, as the case may be, as soon as practicable after receipt. (4) Interest on such tax anticipation notes is a charge for which the school district, and not the library, is liable. However, it is permissible for the library, in its discretion, to reimburse the school district for interest costs with respect to such notes. (5) If a school district chooses not to issue tax anticipation notes but has other moneys available, it should pay a portion of these funds, if not needed for school district purposes, to the library to assure the library's ability to operate until tax revenues are received. 1962 Opns St Comp No. 62-978, unreported, is superseded to the extent inconsistent.

You ask the following questions concerning the relationship between a city school district and a city school district public library in connection with moneys for the support of the library:

1. Is interest earned on the investment of library fund moneys credited to the library fund?
2. Must the school district, immediately upon receipt, place tax moneys collected for library purposes in a separate library fund or, if the library board of trustees has demanded in writing payment of taxes, pay the moneys to the library treasurer?
3. May the school district make a partial payment if it has received an amount sufficient to pay the entire amount to the library?
4. Is the school district required to advance either general fund moneys or the proceeds of tax anticipation notes to the library to provide operating revenues for that period of the library's fiscal year prior to the collection of library taxes?
5. If tax anticipation notes are issued to fund this period, when should the school district pay proceeds to the library?
6. If tax anticipation notes are issued by the school district to fund this period, is the library required or authorized to pay interest on these notes?

Education Law, §259 relates to taxes voted for library purposes and provides in subdivision 1 thereof as follows:

1. Taxes, in addition to those otherwise authorized, may be voted for library purposes by any authority named in section two hundred fifty-five of this chapter and shall, unless otherwise directed by such vote, be considered as annual appropriations therefor until changed by further vote and shall be levied and collected yearly, or as directed, as are other general taxes. In the case of a school district the appropriation for library purposes shall be submitted to the voters of the district in a separate resolution and shall not be submitted as a part of the appropriation of the necessary funds to meet the estimated expenditures of the school district. All moneys received from taxes or other public sources for library purposes shall be kept as a separate library fund by the treasurer of the municipality or district making the appropriation and shall be expended only under direction of the library trustees on properly authenticated vouchers, except that money received from taxes and other public sources for the support of a public library or a free association library or a cooperative library system shall be paid over to the treasurer of such library or cooperative library system upon the written demand of its trustees.

Thus, pursuant to section 259(1), taxes voted for library purposes are considered to be an annual appropriation unless and until changed by further vote and must be levied and collected in the same manner as other general taxes. Further, all moneys received from

taxes or other public sources for library purposes must be kept in a separate library fund by the municipality or school district treasurer or, upon written demand of the library trustees, paid over to the treasurer of the library. Since the treasurer of the sponsoring municipality or school district holds library fund money as custodian for the library and invests the moneys, upon authority of the library board, we have concluded that interest earned on such investment must be credited to the library fund and not to the general fund of the sponsor (1986 Opns St Comp No. 86-54, p 86; see also Buffalo Library v Erie County, 171 AD2d 369, 527 NYS2d 993).

Section 259(1) does not prescribe a specific date on or before which library tax moneys must be placed in the library fund or paid over to the library treasurer by the sponsoring municipality or school district. In the case of school district public libraries, however, pursuant to Real Property Tax Law, §§1322 and 1324, the amount of the taxes attributable to library purposes must be separately stated on each statement of taxes. Thus, it is clear that tax receipts are expressly earmarked for library purposes. Accordingly, consistent with this statutory scheme, we believe the school district should pay over to the library fund or library treasurer, as the case may be, those taxes which are specifically earmarked for library purposes, as soon as practicable after their receipt.

With respect to the time prior to the receipt of taxes, we note initially that public libraries are not authorized to issue indebtedness in anticipation of the receipt of tax revenues (1962 Opns St Comp No. 62-978, unreported; Local Finance Law, §24.00). The sponsoring municipality or school district, however, is authorized, but not required, to issue tax anticipation notes in anticipation of the collection of taxes, including those levied for library purposes (*id.*; 9 Opns St Comp, 1953, p 52). Since the tax anticipation notes are issued in contemplation of the collection of taxes (see Local Finance Law, §24.00[a][1]), we believe they should be treated, in substance, the same as tax receipts with respect to payments for library purposes. Therefore, if the school district has issued tax anticipation notes in anticipation of taxes including those levied for library purposes, a proportionate share of the proceeds should be paid, as soon as practicable after receipt, into the library fund or, if demand has been made, to the library treasurer. Since tax anticipation notes are obligations of the school district, however, interest thereon is a charge for which the school district, and not the library, is liable (Opn No. 62-978, *supra*). We are aware of no authority for the school district to charge to the library a portion of the interest expense (*id.*). However, inasmuch as the proceeds of tax anticipation notes issued in anticipation of taxes levied for the library may only be expensed for library purposes, we believe it would be permissible and in furtherance of a proper library purpose for the library, in its discretion, to reimburse the school district for interest costs incurred with respect to such tax anticipation notes (see Education Law, §§226[6], 255[1], 259[1], 260). If the school district chooses not to issue tax anticipation notes but has other moneys available (see, e.g., Education Law, §2021[21]; Real Property Tax Law, §1318), it should, consistent with the statutory obligation to fund the

library appropriation, pay a portion of these funds, if not needed for school district purposes, to the library to assure its ability to operate until tax revenues are received (1977 Opns St Comp No. 77-770, unreported).

Opn No. 62-978, supra, is superseded to the extent it concludes that a school district public library may not, in its discretion, reimburse the school district for interest costs on tax anticipation notes issued in anticipation of taxes levied for library purposes.

September 30, 1992

David S. Shaw, Esq., City School District Attorney  
Beacon City School District

Stephen J. Wing, Esq., Attorney for Howland Public Library

Howland Public Library