

## Opinion 95 - 30

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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 The opinion may no longer represent those views if, among other things, there have been subsequent court cases or statutory amendments that bear on the issues discussed in the opinion.**

MUNICIPAL FUNDS -- Deposits and Investments (by public library)

LIBRARIES -- Investments (of moneys raised by taxes and gifts)

GENERAL MUNICIPAL LAW, §11; EDUCATION LAW, §§226, 255; ESTATES, POWERS AND TRUSTS LAW, §§11-2.2 and 11-2.3: Moneys held in the custody of the chief fiscal officer or other officer of a public library, whether obtained from public or private sources, may be invested only as prescribed in General Municipal Law, §11, except that investments of gifts, grants or bequests in the form of a true trust are subject to the "prudent investor" provisions of Estates, Powers and Trusts Law, §§11-2.2 and 11-2.3. Prior inconsistent opinions are superseded.

You inquire as to the authority for public libraries to invest moneys raised by taxes, and non-tax moneys, such as gifts.

General Municipal Law, §11, as amended by chapter 708 of the Laws of 1992, sets forth general investment authority for "local governments". The term "local government" is defined to include public libraries (General Municipal Law, §§10[1][a], 11[1]). Section 11 authorizes local governments to invest "moneys" held in the custody of the chief fiscal officer or other officer of the local government, and not required for immediate expenditure, in special time deposit accounts in, or certificates of deposit issued by, a bank or trust company located and authorized to do business in this State. Such a time deposit account or certificate of deposit must be secured in the same manner as provided for securing deposits of public funds in General Municipal Law, §10 (General Municipal Law, §11[2]; see also Banking Law, §107-a). Section 11 also authorizes investments in obligations of the United States of America, obligations guaranteed by agencies of the United States of America where principal and interest are guaranteed by the United States of America, obligations of the State of New York and, in certain circumstances, obligations of New York State local governments. Section 11 does not apply, however, to moneys, the investment of which is otherwise provided for by law (General Municipal Law, §11[2]). Thus, for example, gifts, grants or bequests in the form of a true trust would be governed by the "prudent investor" provisions of the Estates, Powers and Trusts Law (EPTL, §§11-2.2, 11-2.3).

Prior to its amendment in 1992, section 11 did not specifically mention public libraries. Similarly, section 1723-a of the Education Law, which governed investments by school districts, was silent as to the investment of the moneys of a school district public library. In addressing the authority of a public library to temporarily invest moneys in its custody prior to the 1992 amendments, this Office drew a distinction between moneys received from public sources, such as real property taxes, and moneys received from private sources, such as gifts. With respect to public source moneys, we concluded that a public library was an agency

of the sponsoring municipality or school district and could invest only in the types of investments specified in General Municipal Law, §11 or, in the case of a school district public library, Education Law, §1723-a (see e.g., 1988 Opns St Comp No. 88-76, p 145). As to private source moneys, we expressed the opinion that a public library established under section 255 of the Education Law possessed the powers of a private educational institution incorporated by the Board of Regents, as prescribed in Education Law, §226 (1979 Opns St Comp No. 79-450, p 82; see Martin v Board of Education, UFSD No. 17, 39 Misc 2d 519, 241 NYS2d 396, ). As a result, we concluded that, pursuant to the authority granted to the board of trustees under section 226(6) of the Education Law to "use and dispose of . . . property as they shall deem for the best interests of the institution", a library could invest private source moneys, other than those subject to the provisions of a true trust, in any investment vehicle deemed to be in the best interest of the library (Opn No. 79-450, supra; 1981 Opns St Comp No. 81-393, p 431; Opn No. 88-76, supra).

As noted, however, section 11 now expressly governs investments by public libraries. Further, section 11 governs the investment of "moneys", other than those the investment of which is otherwise provided for by law, held in the custody of the chief fiscal officer or other officer of the "local government", and does not prescribe a separate standard for the investment of moneys initially obtained as donations from private sources (1994 Opns St Comp No. 94-15, p 25). Since the primary purpose of the 1992 amendments to section 11 was to provide a uniform statute governing the investment of moneys held by local governments (see Office of the State Comptroller, Memorandum to the Governor for ch 708 of the Laws of 1992, July 30, 1992), we believe section 11 now takes precedence over the general authority, found in section 226(6) of the Education Law, of a public library to use and dispose of its property.

Accordingly, based on the provisions of General Municipal Law, §11, as amended by chapter 708 of the Laws of 1992, it is our opinion that moneys held in the custody of the chief fiscal officer or other officer of a public library, whether obtained from public or private sources, may be invested only as prescribed in General Municipal Law, §11, except that investments of gifts, grants or bequests in the form of a true trust are subject to the "prudent investor" provisions of Estates, Powers and Trusts Law, §§11-2.2 and 11-2.3.

Opns Nos. 79-450, 81-393, 88-76 and other prior opinions are hereby superseded to the extent inconsistent with the above.

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Ellenville Public Library