

Cooper, Bob

From: Carrie Terrell [cterrell@mtlib.org]
Sent: Thursday, March 27, 2003 2:31 PM
To: bocoooper@state.mt.us
Subject: Question

Bob:

Could you answer this for me? We have this money coming in from a bequeath to our library through the foundation. It will be the interest and the Foundation wants to funnel that money right on to the library. Can we (the library) then set up our own accounts (building fund, computer fund, etc.) for this or do we need to put it in our account through the City (which we really don't want to do). The Foundation does not want to have the money sitting in their account either I guess for tax purposes. Also we have two CDs (that we purchased from previous donations) that we have with the city. We just found out that the city has them listed as Town of Plains-Breitenstein Fund. No mention that it belongs to the Library and none of the Board or myself are listed on the signature card. Can we legally put the CD in the library's name with the Board Chair and me on the signature card? Thanks for all the help.

*City
Fiscal
Agent*

*Could Be
Own
Fund*

Carrie Terrell

Carrie Terrell
Plains Public Library
cterrell@mtlib.org

*Board CAN
Ask For Report
Audio Record*

*New Legislation
Shaw*

113 Reports

Library or Report

*Bank concerning
Trust*

donations
monetary
gifts

STATE OF MONTANA
DEPARTMENT OF JUSTICE
AGENCY LEGAL SERVICES BUREAU
444-2026

MEMORANDUM

CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGED

TO: SHEILA CATES
Coordinator of Library Development
Montana State Library

FROM: JIM SCHEIER JS
Assistant Attorney General

RE: Your Memo Dated January 17, 1992

DATE: January 24, 1992

In your recent memo you asked me whether a public library may invest donations and monetary gifts it receives in a CD, rather than depositing the funds in a savings and loan. As I understand your question, the library currently deposits such funds in "Trust and Agency Funds" (whatever that is), and then deposits them in a local savings and loan.

The question can be answered by examining the statutes governing free public libraries in Montana, as well as several other statutory provisions, and the Montana Constitution.

Section 22-1-309(8), MCA, provides:

. . . The library board of trustees of every public library shall:

. . .

(8) have the power to accept gifts, grants, donations, devises, or bequests of property, real or personal, from whatever source and to expend or hold, work, and improve the same for the specific purpose of the gift, grant, donation, devise, or bequest. These gifts, grants, donations, devises, and bequests shall be kept separate from regular library funds and are not subject to reversion at the end of the fiscal year.

Section 22-1-305, MCA, authorizes a local governing body in which a public library has been established to set up a library depreciation reserve fund. Section 22-1-306, MCA, provides:

Moneys for the library depreciation reserve fund are those funds which have been allocated to the library in any year but which have not been expended by the end of the year. Such moneys include but are not limited to city or county or city-county appropriations, federal revenue sharing funds, and public and private grants. [Emphasis added].

Section 22-1-307, MCA, provides that money held in the library depreciation reserve fund "may be invested as provided by law."

These statutes, read together, establish that a library board of trustees has the power to accept gifts, donations, grants, etc. of money or property from public or private sources. If the local governing body (in this case I assume it is a city) exercises the discretion granted to it in section 22-1-305, MCA, by setting up a library depreciation reserve fund, then any money received by the library board as a gift, donation or grant that is not expended by the end of the year must be deposited into the library depreciation reserve fund. § 22-1-306, MCA. Moneys in the fund may be invested "as provided by law". § 22-1-307, MCA.

If the local governing body has not established a library depreciation reserve fund, the question then arises whether the board is free to invest money received as gifts, donations or grants without limitation. Article VIII, Section 12, Montana Constitution, provides:

Strict accountability. The legislature shall by law insure strict accountability of all revenue received and money spent by the state and counties, cities, towns and all other local governmental entities.

While this provision does not by its terms apply to public libraries, it does arguably indicate an intent that public funds of any type be subject to strict accountability. Article VIII, Section 13, Montana Constitution, requires the Legislature to provide for a uniform investment program for public funds.

Sections 7-6-201 through 7-6-213, MCA, govern the deposit and investment of public funds, but by their terms apply only to "local governing bodies", which in my opinion does not include boards of trustees of public libraries. Section 17-6-204, MCA, permits cities, counties, school districts, and other "local government units" to remit funds to the state Board of Investments for investment by that body. Again, however, in my opinion the statute does not apply to boards of public libraries. Other than the statutes cited, I can find no statutes which concern deposit or investment by library boards of funds received through gift, donation or grant.

The Attorney General has noted that, where no mode or manner of exercise of an express power is provided, a governing body may adopt any reasonable method of discharging its powers. 37 Op. Att'y Gen. No. 153 (1978), at 635. Although a library board is not a governing body, I think the same reasoning applies. The statutes do not appear to limit the library boards in the method by which they may exercise the power conferred by section 22-1-309(8), MCA, other than that the money received be expended or held, worked, or improved "for the specific purpose of the gift, grant, donation, devise or bequest". Thus, in the case where a library depreciation reserve fund has not been established, if the gift, grant or donation does not specify that it may not be invested in a CD, in my opinion the library board is free to do so. ✓

Give me a call if you have any questions.