

Opinion No. 47**Cities and Towns—Library Funds—Library Trustees—Powers of—
Municipal Budget Law—Public Monies, Investment of**

Held: The library fund created by Section 44-301, RCM, 1947, may not be invested by the city treasurer under direction of the library trustees in bonds or securities, but must be handled in the same fashion as other public monies under Sections 16-2618 and 11-807, RCM, 1947.

January 30, 1958

Mr. R. E. Towle
State Bank Examiner
Capitol Building
Helena, Montana

Dear Mr. Towle:

You have requested my opinion whether a city library fund, established by Section 44-301, RCM, 1947, may be invested in bonds or securities of any kind, or must be used exclusively for maintenance, upkeep and purchase of books and supplies for the library.

This question is raised by certain language in Section 11-704, RCM, 1947, which provides as follows:

“Trustees of public libraries-funds, The trustees of any public library created or existing in a city or town must be appointed by the mayor, with the advice and consent of the council. The number of such trustees and their duties must be prescribed by ordinance; provided, however, that the ‘library fund’ provided for in section 44-301 of this code shall be invested by the city

treasurer under the direction of the trustees of the library; and no money shall be paid out of said fund by him except on an order or warrant from said trustees, who shall have exclusive power to make contracts and expenditures for the support and maintenance of the library, and the purchase of books and other things for a library."

Section 44-301, RCM, 1947, authorizes the expenditure of the library fund as follows:

". . . The tax so levied and collected constitutes a fund known as the 'library fund' and must be expended only for the purchase of books and other things necessary for a library, and the support and maintenance thereof."

The context in which the word "invested" is used in Section 11-704, *supra*, creates a substantial doubt whether it was intended to authorize the investment of the library fund in securities of various kinds, or was merely used as a synonym for "expended". In the light of other applicable statutes, it is apparent that the latter meaning is the one intended by the legislature.

Our Supreme Court has reiterated many times the fundamental proposition that cities have only such powers as are clearly granted to them, or necessarily implied from some clear grant. In cases of doubt the presumption is against the existence of the power. (*Dietrich vs. City of Deer Lodge*, 124 Mont. 8, 218 Pac. (2) 708, and cases cited therein). The use of the single word "invested" is the sole and entire basis from which a grant of power in this case could be implied. There are no provisions for the manner of investment, the authorized type of securities, or any of the other ancillary provisions which ordinarily accompany a grant of investment power (see Sections 11-2327, RCM, 1947, and 11-3720, RCM, 1947, for typical provisions).

Further, investment of library funds by the city treasurer under the direction of the library trustees would conflict with all of the general provisions for handling public funds and with the Municipal Budget Law (Sections 11-1401 to 11-1413, incl., RCM, 1947).

The Municipal Budget Law forbids the accumulation of funds by any city department from year to year. If a city department has an unencumbered cash balance at the end of any fiscal year, this amount must be taken into account, and used to reduce the tax levy for the upkeep of that department during the following fiscal year. Section 11-1406 (3) RCM, 1947, provides:

"(3) The council shall then determine and fix the amount to be raised for each fund, for which a tax levy is to be made, by adding together the cash balance in excess of outstanding unpaid warrants at the close of the fiscal year immediately preceding and the amount of the estimated revenues, if any, to accrue thereto during the current fiscal year, as before ascertained

and determined, and then deducting the total amount so obtained from the total amount of the appropriations and authorized expenditures from the fund as determined and fixed by the council in the budget adopted and approved, the amount remaining being the amount necessary to be raised for any fund by tax levy during the current fiscal year; . . ."

This statute effectively precludes the accumulation of any fund for the general purpose of investment.

The only other monies which might be invested under Section 11-704 would be monies on hand during the year which were not immediately needed for current expenditures. However, Sections 16-2618 (1), RCM, 1947 and 11-807 (11) RCM, 1947, require that all public monies in the possession and control of the city treasurer not needed for current expenditures be deposited in solvent banks in the city, properly secured, or, at the command of the city council, invested in obligations of the United States government payable within 180 days of the time of investment. All interest paid upon such bank deposits or investments must be credited to the general fund (see Section 16-2618 (6)). This manner of investment or deposit, at the order of the city council with interest payable to the general fund, precludes any thought that the library fund might be separately invested for its own profit by the library trustees.

All of these considerations necessitate the conclusion that the legislature did not intend to entrust the library board with the power to invest the public monies in the library fund in bonds or securities.

It is therefore my opinion that the library fund created by Section 44-301, RCM, 1947, may not be invested in bonds or securities, but must be handled in the same fashion as other public monies under Sections 16-2618 and 11-807, RCM, 1947.

Very truly yours,
FORREST H. ANDERSON
Attorney General