

**LETTER OPINION
2002-L-28**

May 10, 2002

Mr. J. Thomas Traynor Jr.
Devils Lake City Attorney
PO Box 1048
Devils Lake, ND 58301-1048

Dear Mr. Traynor:

Thank you for requesting my opinion regarding the right of the Devils Lake Library Board of Directors to control money it has acquired for the construction of a new library.

Devils Lake established the city library under N.D.C.C. ch. 40-38. Section 40-38-01 requires a city to create a public library service upon a vote of city electors and to appoint a library board of directors (Board) to manage the library service. You advise that Devils Lake and the Board have been working to build a new library. The Devils Lake City Commission (City) recently approved the site committee's recommendation for the location of a new library as required by N.D.C.C. § 40-38-05. Under N.D.C.C. § 40-38-05, the City also passed a resolution creating a library construction fund.¹ The resolution specifically directed the Board to deposit any money it had received to construct a new library into the City library construction fund. Resolution of the City dated February 19, 2002.

I understand the director of the existing city library wrote to the Board expressing concerns about the proposed new library and advised the Board that it could not be made to spend its building fund money.

You asked whether the Board is required to remit the funds it received for construction of the library for deposit in the City library construction fund. In my opinion the City does not have the authority to require the Board to deposit library funds into the City library construction fund.

¹ The City's "library construction fund" is the same as the "library building fund" under N.D.C.C. § 40-38-05.

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The City may use the library construction funds to construct, enlarge or alter a public library. N.D.C.C. § 48-38-05. The library construction fund is a specialized fund under state law. The balance of it does not revert to the library general fund or the City's general fund after a building project is complete without formal resolutions by both the Board and the City. Id.

When a governing body establishes a public library service, it is required to set up a library general fund. N.D.C.C. § 40-38-02(1). Money in this fund may be used to establish and maintain the public library service. Id. Money in the fund comes from library taxes and any other moneys received for library purposes from federal, state, county, municipal, or private sources. Id.

I assume the library general fund includes funds received by the library board for the purpose of building a facility. Regardless, the Board has exclusive control over the library fund. N.D.C.C. § 40-38-04(3). This exclusive funding control dates from territorial days. See 1887 Dak. Terr. Sess. Laws ch. 56, § 3.

This office has emphasized in the past the autonomous power of a statutorily created library board to control expenditures from a library general fund. In addressing a question concerning the amount of input and control over the operation of a county library board by county commissioners this office advised:

The powers of the board of directors of the library are found at N.D.C.C. § 40-38-04. Subsection 3 of this statute authorizes the board to control, exclusively, the expenditures of all moneys collected for or contributed to the library fund. Other powers provide the board with authority to supervise library property, to adopt such rules as are needed for the management of the library, and to employ those personnel needed to administer library services.

Obviously, the Legislature has bestowed upon the county library board broad powers over the management of the library and the library fund. Nowhere in the statute is there any mention of control or supervision over the board by the governing body. By the very words of the statute, we can only conclude that the governing body does not possess ongoing control or supervision over the decisions of the county library board as to the management of the county library services. Instead, it is the county library board that has been given the statutory responsibility to administer and supervise the manner in which county library services are to be provided.

Letter from Attorney General Nicholas Spaeth to Jeanne McLean (Aug. 18, 1987). The quote above applies to both city and county library boards because the same state laws

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under N.D.C.C. ch. 40-38 apply to city and county library boards. In another opinion concerning the fiscal administration of a county library this office explained:

Although the record keeping functions of the library fund are required to be performed by city auditors or county treasurers, the library board of directors retains exclusive authority over the moneys in the library fund. N.D.C.C. § 40-38-04(3). Thus, the city auditor or county treasurer has no authority over the fund other than record keeping functions and is required to comply with the directions of the governing body of the library.

Letter from Attorney General Nicholas Spaeth to Allen Koppy (Aug. 17, 1987). A library board's autonomy allows the board to act for the benefit of the library and its patrons without being subject to outside influence. While the Board may decide to pool its building fund money with the City library construction fund, that decision is the Board's to make and the City cannot compel it.

Based on the foregoing, it is my opinion that the Board is not required to remit to the City auditor for deposit in the City "library construction fund" all funds the library received for purposes of constructing a new library as provided in the resolution of the City.

Sincerely,

Wayne Stenehjem
Attorney General

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