

**OPINION
72-272**

September 15, 1972 (OPINION)

Mr. Richard J. Wolfert
State Librarian
North Dakota State Library
Bismarck, ND 58501

Dear Mr. Wolfert:

This is in reply to your letter of July 28, 1972, asking for clarification of library funds in the operation of public libraries.

You mention section 40-38-02 of the 1971 Supplement to the North Dakota Century Code and sections 40-38-03(3) and 40-38-06 of the North Dakota Century Code. You do not mention section 40-38-11 of the 1971 supplement to the North Dakota Century Code on which basis we assume your question does not relate to the situations covered by that statute.

You ask clarification on the following matters:

1. Must all tax money that is collected for the library fund by the governing body be held by the governing body treasurer?
- . Must all other money collected by the library, such as fines, fees, etc., be deposited with the governing body's treasurer?
- . Must all vouchers prepared by the library for payment of invoices be filed with the governing body treasurer for that treasurer to issue checks from the library funds?"

You indicate that it is the practice of some of your public libraries to prepare vouchers and to write checks directly from the library fund instead of the governing body treasurer processing the vouchers and writing the checks. You ask whether:

"'without any other audit' (as used in section 40-38-06 of the North Dakota Century Code) mean the above process of the library writing its own checks or must the checks drawn from the library fund be issued by the governing body's treasurer?"

In looking through chapter 40-38 as a whole, we note no attempt or effort to establish a separate political subdivision, for library purposes, and no indication therein that same is a corporate or similar entity. On such basis we must recognize that same is necessarily at most a department or agency of the city or county as the case may be and is in no sense of the terms an artificial "person" or otherwise having a separate "corporate" identity. In this respect, it is quite different from boards handling some other phases of government such as for example, school districts, park districts, townships, etc.

Where a later statute "conflicts" with an earlier statute, the courts will usually find the later statute to repeal by implication the earlier statute. However, the courts do not seek to find such "conflicts" between statutes, rather where reasonably possible they attempt to reconcile the provisions of all existing statutes and give complete effect to all relevant statutory provisions.

The first sentence of section 40-17-02 of the North Dakota Century Code provides:

"40-17-02. TREASURER TO RECEIVE CITY MONEY - ACCOUNTS - SETTLEMENT WITH AUDITOR. The city treasurer shall receive all moneys belonging to the city and shall keep accurate and detailed accounts thereof in suitable books prepared for that purpose in such manner as the governing body may direct from time to time. * * * "

Section 11-14-06 of the North Dakota Century Code provides:

"COUNTY TREASURER TO RECEIVE AND PAY OUT COUNTY MONEY. The county treasurer shall receive all moneys belonging to the county, from whatever source they may be derived, and all other moneys which by law are directed to be paid to him. He shall pay out moneys belonging to the county only on a properly drawn county warrant or in any other manner provided by law."

In this same respect we note that the first sentence of section 40-17-05 of the North Dakota Century Code provides:

"40-17-05. DISBURSEMENT OF MONEY - PAYMENT OF BONDS, INTEREST COUPONS. The city treasurer shall pay out or disburse money only upon the warrant of the executive officer countersigned by the city auditor, such warrant to be so drawn that when signed by the treasurer in an appropriate place it becomes a check on the city depository, except that he shall pay city bonds and interest coupons when the same are due and presented for payment if there is money available for such purpose. * * * "

On such basis, recognizing that the library board itself is not a separate corporate or political entity, we must further recognize that moneys attributable to a city or county library board are necessarily owned by the city or county. On such basis, in answer to your specific questions:

1. Tax money that is collected for the library fund by the governing body must be received by the county treasurer and paid out only on a properly drawn county warrant, in the case of a county and must be received by the city treasurer and paid out only upon the warrant of the executive officer countersigned by the city auditor, in the case of a city.
2. Other moneys collected by the library, such as fines, fees, etc., must be received by the county treasurer and paid out only on a properly drawn county warrant, in the case of the county and must be received by the city treasurer and paid out only upon the warrant of the executive officer countersigned by the city auditor, in the case of a city.

3. While, probably the county or city treasurer would transmit vouchers to the proper officers in appropriate cases, the original instrument ordering the payment of money is the "warrant" countersigned by the treasurer to transform it into a warrant check. The "warrant" generally originates with the auditor or executive and generally the auditor is the filing officer of these entities. On such basis, it might be more practical to file vouchers with the auditor rather than treasurer.

As to your last question we should call your attention to the provisions of section 40-01-13 and 11-11-08 of the North Dakota Century Code. These statutes point up that fact that generally, claims against the city or county are "audited" by the governing body prior to issuance of warrant for the payment thereof. In this context the obvious meaning of the language:

"The secretary of the board of directors may draw money from the library fund upon vouchers of the board of directors without any other audit."

of section 40-38-06 of the North Dakota Century Code, is that library board vouchers are not required to be "audited" by the governing body of the county or city prior to the issuance of warrant check to pay the claim. Presumably, the legislature assumed that the authority to "audit" these claims in this manner had in effect been delegated to the library board of directors. This language in this context does not remove the necessity for issuance of warrant, to be transformed into warrant-check, would not prevent the auditor or treasurer from noting that the library fund had been previously depleted, and, of course, would not prevent subsequent examination or "audit" of library board, city or county records with regard to library funds.

We hope the within and foregoing will be sufficient for your purposes.

Sincerely your,

Allen I. Olson

Governor