

## **Library Board Control and Custody of Funds**

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### **Who controls the library's money—the library board or the municipality?**

The library board. Wisconsin Statutes Sec 43.51(1) states that the board has: "exclusive control of the expenditure of all moneys collected, donated or appropriated for the library fund"

### **So, we can withdraw all of the library's money from the city's account and open our own checking account?**

No. While the board has control of library expenditures the municipality has custody of the funds. Statutes specify that the board is to "audit and approve all expenditures" before forwarding bills to the municipal financial officer or clerk, who shall pay them.

### **What funds can we hold ourselves and what has to be kept with the municipality?**

Wisconsin library law provides that library boards have exclusive *control* of all funds collected, donated or appropriated for the library fund; however, library boards only have the legal authority to maintain *custody* of gift, bequest, devise, and endowment funds. Your municipal appropriation and any funding you get from your county, adjacent counties, or other government entities, as well as any fines and fees collected, must be deposited with your municipality. Funds received through gift, bequest, devise and endowment may be held by the library board.

### **What about rental income?**

Fees for use of a library meeting room must be deposited with the municipality. If the library owns rental property—if, for example, the library has bought property for a future building project and is renting the property until ready to build—the answer may be different.

If the library board buys property with donation funds it would be reasonable for them to control the rental proceeds, which could be used for maintaining the property and for the future building project. If, however, the municipality has purchased property for a future building project and has issued bonds for the purchase it would not be inappropriate for the municipality to control the property and use the rent to help offset retirement of the bonds.

### **What options does the board have for holding funds?**

Section 43.58(7) of statutes provides five alternatives for the handling of gift, bequest, devise, or endowment funds provided to the library:

1. You may transfer the funds to your municipal treasurer.
2. You may deposit the funds with a public depository.
3. You may transfer the funds to a charitable organization exempt from federal income tax under the Internal Revenue Code (a “501c3” organization), provided the organization's purpose is to provide support for the public library. Examples of such organizations are Friends of the Library and library foundations.
4. You may transfer the funds to a community foundation for investment.
5. You may entrust the funds to a financial secretary (a trustee elected annually by the library board to serve in this capacity) who may invest the funds. If you choose this option, the financial secretary must be bonded for at least the value of the funds or property held.

Whichever option you choose, this should be done by board resolution.

### **What’s a public depository?**

Public Depositories are defined in Sec 34 of Statutes as “a federal or state credit union, federal or state savings and loan association, state bank, savings and trust company, federal or state savings bank, or national bank in this state which receives or holds any public deposits or the local government pooled-investment fund.”

### **Can the library open up its own Local Government Investment Pool (LGIP) account with the state or does the library have to keep its funds in the municipal account?**

Either is allowable. Municipal boards, committees, and subunits, such as the library, are eligible to participate in the LGIP and can open up their own account. Alternatively, the library board could choose to have a separate account under the umbrella of the municipality’s main account, or to have the library’s money comingled with the municipality’s in one account.

More information on the LGIP are on the Wisconsin Department of Revenue website at

<http://doa.wi.gov/index.asp?locid=170>.

**Are there any restrictions on how library funds may be invested?**

Yes. Sections 66.0603 and 112.11 list permissible investments. In general this allows libraries to invest funds in timed deposits (Certificates of Deposit) in public depositories and in certain types of bonds and securities. If you are considering investing in something not specifically listed you should check with your municipal attorney.

**Does the library board's Treasurer have to be bonded?**

Only if you've turned over gift funds to the Treasurer (Statutes call this person the "Financial Secretary") for investment. See Section 43.58(7)(c) of statutes.

**Is there anything else we should know if we transfer the funds to the friends of the Library, a community foundation, or another organization?**

Yes. You must have a written agreement with the organization stating that

- Funds will be disbursed only on written authorization of the library board.
- The library board retains control over the manner in which the funds will be used.
- The funds must be returned to the board upon request.
- Use of funds must be consistent with the donor's intent, if this was stipulated when the funds were given to the library.

**We didn't spend our whole appropriation last year. Should the unspent funds go back to the municipality's general fund or can we use it this year?**

In 2006 the Attorney General's office issued an opinion stating that because Sec. 43.52(1) states that municipal funds appropriated for the library fund must "be used exclusively to maintain the public library." and because Sec. 43.58(1) gives library boards "exclusive control" over library expenditures, any unspent funds must remain under the library board's control and be used for library purposes.

The opinion goes on to state that unspent funds may not be placed into a generic "funds on hand" account but must be rebudgeted for library operations the following year. It would probably be permissible to hold the money in the library fund if it is earmarked for a specific future expense, such as roof replacement or a planned building project.

**Anything else I should know?**

This information applies to funds held by the library. Funds received by a library foundation or Friends group are not covered by these restrictions.

**Where can I find more information?**

- Trustee Essential 9: Managing the Library's Money  
<https://dpi.wi.gov/sites/default/files/imce/pld/pdf/TE09.pdf>
- Trustee Essential 24: Library Friends and Library Foundations  
<https://dpi.wi.gov/sites/default/files/imce/pld/pdf/TE24.pdf>
- Wisconsin Local Government Investment Pool  
<https://doa.wi.gov/Pages/StateFinances/LGIP.aspx>

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### Statutory Language

43.58 (1) The library board shall have exclusive control of the expenditure of all moneys collected, donated or appropriated for the library fund, and of the purchase of a site and the erection of the library building whenever authorized. The library board also shall have exclusive charge, control and custody of all lands, buildings, money or other property devised, bequeathed, given or granted to, or otherwise acquired or leased by, the municipality for library purposes.

(2)

(a) The library board shall audit and approve all expenditures of the public library and forward the bills or vouchers covering the expenditures, setting forth the name of each claimant or payee, the amount of each expenditure, and the purpose for which it was expended, to the appropriate municipal or county financial officer or, in the case of a school district, the school district clerk. The library board shall include a statement, signed by the library board secretary or other designee of the library board, that the expenditure has been incurred and that the library board has audited and approved the expenditure. The appropriate municipal, county, or school district official shall then pay the bill as others are paid.

(b) Notwithstanding par. (a), regular wages or salary or other recurring payments, authorized by the library board and verified by the appropriate library official, may be paid by the appropriate municipal, county, or school district official by the date due or, in the case of salaries, by the regular pay day. The library board shall audit and approve any such payment at its next regular meeting.

(3) Any person having a claim or demand against the municipality or county growing out of any act or omission of the library board shall file with the library board a written statement thereof. If the claim or demand or any part thereof is disallowed, the claimant may bring an action against the municipality or county.

(4) Notwithstanding ss. [59.17 \(2\) \(br\)](#) and [59.18 \(2\) \(b\)](#), the library board shall supervise the administration of the public library and shall appoint a librarian, who shall appoint such other assistants and employees as the library board deems necessary, and prescribe their duties and compensation.

(5) The library board may employ competent persons to deliver lectures upon scientific, literary, historical or educational subjects; and may cooperate with the University of Wisconsin System, technical

college district boards, the historical society, the department, cooperative educational service agencies, school boards and other educational institutions to secure such lectures or to foster and encourage by other means the wider use of books and other resource, reference and educational materials upon scientific, historical, economic, literary, educational and other useful subjects.

(6)

(a) Within 60 days after the conclusion of the fiscal year of the municipality or county in which the public library is located, the library board shall make a report to the division and to its governing body. The report shall state the condition of the library board's trust and the various sums of money received for the use of the public library during the year, specifying separately the amounts received from appropriations, from the income of trust funds, from rentals and other revenues of the public library and from other sources. The report shall state the condition of all funds in the library board's control and shall state in detail the disbursements on account of the public library during that fiscal year.

(b) The report to the division shall include data concerning library materials, facilities, personnel, operations and such other information as the division requests.

(c) The report to the division shall contain a statement by the library board indicating whether the public library system in which the library participated during the year of the report did or did not provide effective leadership and adequately meet the needs of the library and an explanation of why the library board believes so. The division shall design the form of the statement so that it may be removed from the report and forwarded to the division before it is sent to the public library system.

(7) The library board may receive, manage and dispose of gifts and donations as follows:

(a) All persons wishing to make donations of property for the benefit of a public library may vest the title thereto in the library board, to be held and controlled by the board, when accepted, according to the terms of the deed of gift, devise or bequest. As to such property the board shall be deemed special trustees.

(b)

1. In this paragraph, "community foundation" means a charitable organization, described in section [501](#) (c) (3) of the Internal Revenue Code and exempt from federal income tax under section [501](#) (a) of the Internal Revenue Code, dedicated to encouraging and assisting charitable activities and enterprises in a designated community in this state and having expertise in finance, fund development, and grantmaking.

2. If a gift, bequest, or endowment is made to any public library, the library board may pay or transfer the gift, bequest, or endowment, or its proceeds, to the treasurer of the municipality or county in which the public library is situated; may entrust the gift, bequest, or endowment to a public depository under ch. [34](#); may pay or transfer the gift, bequest, or endowment to the library board's financial secretary; or may, subject to subd. [3](#), pay or transfer the gift, bequest, or endowment to a charitable organization, described in section [501](#) (c) (3) of the Internal Revenue Code and exempt from federal income tax under section [501](#) (a) of the Internal Revenue Code, the purpose of which is providing financial or material support to the public library or to a community foundation. A payment or transfer of a gift, bequest, or endowment by a library board to a charitable

organization described in this paragraph made prior to March 19, 2008, is not invalid as lacking statutory authority to make the payment or transfer. If the library board pays or transfers the gift, bequest, or endowment to the financial secretary, the financial secretary may invest the gift, bequest, or endowment as permitted under s. [66.0603 \(1m\)](#) or [112.11 \(3\)](#); or may delegate investment authority for the gift, bequest, or endowment as permitted under s. [66.0603 \(2\)](#) or [112.11 \(5\)](#). The financial secretary shall hold office only during membership on the library board and shall be elected annually at the same time and in the same manner as the other officers of the library board.

3. A library board may pay or transfer a gift, bequest, or endowment to a charitable organization described in subd. [2.](#) or to a community foundation only if the library board and the charitable organization or the community foundation agree, in writing and at the time of the payment or transfer of the gift, bequest, or endowment, to each of the following:

- a. The charitable organization or the community foundation agrees to make disbursements from and of the gift, bequest, or endowment to the library board upon the written request of the library board.
- b. Subject to subd. [3. bm.](#), the library board retains control over the manner in which any disbursement made under subd. [3. a.](#) is used.
- bm. The library board's use of any disbursement made under subd. [3. a.](#) shall be consistent with the intent of the donor of the gift, bequest, or endowment and with the agreement between the library board and the charitable organization or community foundation.
- c. The library board exercises its rights over the use of each disbursement made under subd. [3. a.](#) in accordance with the law applicable to trust investments and the provisions of this chapter.

(c) If any such treasurer or financial secretary holds any property belonging to the public library, the library board shall require a bond from the treasurer or financial secretary to the library board in such sum, not less than the amount of such property so held by him or her, and with such sureties as the library board requires. The bond shall be conditioned in substantially the same form as the ordinary bond required from the treasurer of the municipality or county, with the necessary changes.

(d) The treasurer or financial secretary shall make an annual report to the library board showing in detail the amount, investment, income and disbursements from the trust funds in his or her charge. Such report shall also be appended to the annual report of the library board under s. [43.58 \(6\)](#).

(e) In the case of a gift for a library building, the library board of the municipality shall have the exclusive right to select and contract for the purchase of a site.