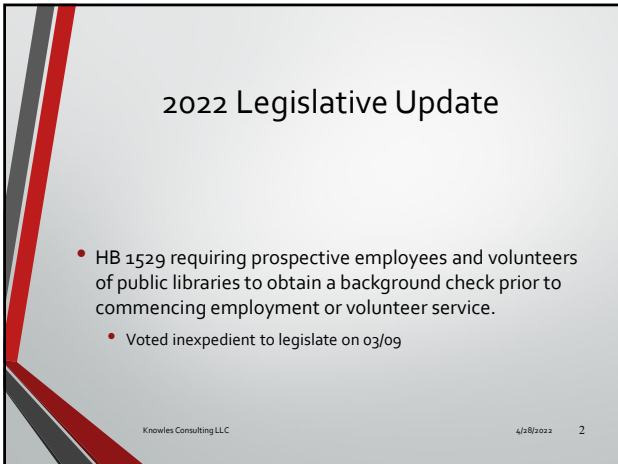
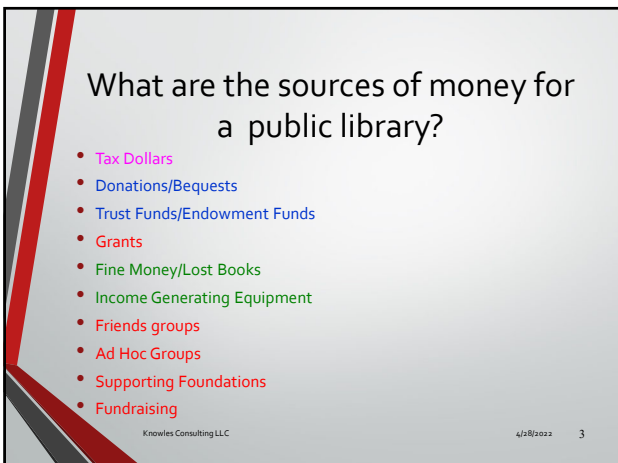


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Knowing the Difference

<p>Public Money</p> <ul style="list-style-type: none"> •Tax Appropriation •Expendable Trusts •Capital Reserve Funds 	<p>Private Money</p> <ul style="list-style-type: none"> •Donations •Bequests •Trust Funds •Endowment Funds
Money Types	
<p>Outside Sources of Money</p> <ul style="list-style-type: none"> •Friends Groups •Ad Hoc Groups •Supporting Foundations •Grants •Fundraising 	<p>Other Money</p> <ul style="list-style-type: none"> •Fine Money/Lost Books •Income Generating Equipment

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Private Money vs. Public Money

- **Private Money** comes from individual donors, wills, trusts, grants, endowments, and other sources as defined by the New Hampshire Statutes.
- **Public Money** is taxpayer money raised and appropriated by the taxpayers at town meeting.

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Categories of Public/Taxpayer Money:

Appropriations (RSA 32)
 General Fund Trusts (RSA 31:19-a)
 Capital Reserve Funds (RSA 35)

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Public Money: Budgeting for the library

- **202-A:11 Powers and Duties.** – Except in those cities where other provision has been made by general or special act of the legislature, the library trustees of every public library in the state shall:

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Public Money: Budgeting for the library

- II. Prepare an annual budget indicating what support and maintenance of the free public library will be required *out of public funds* for submission to the appropriate agency of the municipality. A separate budget request shall be submitted for new construction, capital improvements of existing library property. (Emphasis added)

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Public Money: Budgeting for the library

- **RSA 32:5 III:** All appropriations recommended shall be stipulated on a "gross" basis, showing anticipated revenues from all sources, including grants, gifts, bequests, and bond issues, which shall be shown as offsetting revenues to appropriations affected.

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What does this mean?

- In preparing a budget to be submitted to the Selectmen and/or the Budget Committee Library Trustees must calculate the *total cost* of operating the library regardless of the source of funding.
- Example: If the Town of Graniteville needs \$100,000 to operate the library and \$20,000 is coming from trust fund income the Library Trustees must still ask the voters to raise and appropriate the sum of \$100,000.

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Does this mean the taxpayers have to pay for the \$100,000 from tax revenue?

- **NO.** Before the town or city sets the tax rate it has already sent forms to the Department of Revenue Administration (DRA) listing all sources of offsetting revenue.
- In my example DRA will be aware of the \$20,000 coming from private money and will therefore set the tax rate based on the \$80,000 net figure.

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Taxpayer Money:
Must a town fund its public library?

- Yes. Whether the library was built with taxpayer dollars or given to and accepted by the town/city by a donor it must be funded.
- Obligation to fund the public library:
- 202-A:4 Maintenance. – Any city or town having a public library shall annually raise and appropriate a sum of money sufficient to provide and maintain adequate public library service therein or to supplement funds otherwise provided.

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Who Spends Taxpayer Money?

- **202-A:11 Powers and Duties.** – Except in those cities where other provision has been made by general or special act of the legislature, **the library trustees** of every public library in the state shall:
 - III. **Expend all moneys raised and appropriated by the town or city for library purposes** and shall direct that such moneys be paid over by the town or city treasurer pursuant to a payment schedule as agreed to by the library trustees and the selectmen or city council.

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Lapse of Appropriation

- If any **taxpayer** money remains unspent at the close of the accounting year it will lapse to the town's general fund unless it has been encumbered to pay a legally-enforceable obligation or is part of a statutorily-defined non-lapsing fund. *Examples: capital reserve funds, fine money, lost book money.*
 - **RSA 32:7**

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How do we pay our bills after lapse?

- **32:13 II.** This subdivision shall not be construed to affect the authority of the local governing body, in towns with a March annual meeting and a January through December fiscal year, to make expenditures between January 1 and the date a budget is adopted which are reasonable in light of prior year's appropriations and expenditures for the same purposes during the same time period. (Emphasis added)

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Expendable Trusts:
Public Money with a twist
 RSA 31:19-a

- "A town may at any annual or special meeting grant and vote such sums of money as it deems necessary to create trust funds for the maintenance and operation of the town; and any other public purpose that is not foreign to the town's institution or incompatible with the objects of its organization.
- The town may appoint agents to expend any funds in the trust for the purposes of the trust."

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RSA 31:19-a Trust Funds Created by Towns (continued)

- "The local legislative body may authorize the acceptance of **privately** donated gifts, legacies, and devises to be utilized for the same purposes as a trust fund created under this section; provided, however, that such gifts, legacies, or devises shall be invested and accounted for **separately from, and not commingled with,** amounts appropriated under paragraph I, and shall be subject to the custody and investment provisions applicable to trust funds accepted under RSA 31:19."

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RSA 31:19-a Trust Funds Created by Towns (continued)

- Trust funds created pursuant to this section shall be **revocable** by majority vote of the legal voters present and voting at any annual meeting, unless the vote creating the trust expressly provides that the trust shall be **irrevocable**, and upon revocation the trustees of trust funds holding the account for said trust shall pay all the moneys in such fund to the town treasurer.
 If the town creates a trust fund under RSA 31:19-a it is held and administered by the **Trustees of Trust Funds**

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Irrevocable Expendable Trusts

- If the town meeting votes to create an **irrevocable** expendable trust under the provisions of RSA 31:19-a the only way to discontinue the fund, even if it has a zero balance, is to file a petition with the probate court.
- Town of Moultonborough Petition for Instructions and Request for Relief (2006)

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Income Generating Equipment

- Libraries wishing to retain funds produced by the income generating equipment must obtain permission from the voters pursuant to RSA 202-A:11-b.
- Once permission is granted by the town via a warrant article no public hearing is required to accept revenues from income generating equipment.

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Income Generating Equipment

RSA 202-A:11-a All money received from a library's income generating equipment shall be retained by the library in a non-lapsing fund and use for repairs and upgrading and for the purchase of books, supplies and income generating equipment if approved by the town or city in which the library is located.

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Revenue from **Income Generating Equipment**

- Money from income generating equipment shall be in addition to the appropriation.

RSA 202-A:11 III

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**Fine Money
Lost or Damaged Books**

RSA 202-A:11 III Library Trustees Shall Expend all money received from fines and payments for lost or damaged books or for the support of a library in another city or town. . . shall be used for general repairs and upgrading and for the purchase of books, supplies, and income-generating equipment and shall be held in a separate non-lapsing fund and shall be in addition to the appropriation.

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Public Money:
Capital Reserve Funds RSA 35

- **Taxpayer money** appropriated for a specific capital improvement or item of equipment.
- Withdrawals from capital reserve funds take place in one of two ways:
 - **Vote of town meeting**
 - **Authorization of Agents to Expend appointed by the voters through a warrant article**

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Private Money

- Donations
- Bequests
- Unrestricted Funds
- Donor Restricted Funds

Library Trustees are required to carry out the directives of the donor when administering and expending private money and so it is important to have a copy of the will, trust, or other instrument signed by the donor.

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How do Towns and Library Trustees

- Accept and expend Gifts of Private Money and Personal Property?
- Administer Trust Funds?
- Draft and adopt investment policies if required?

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Accepting Gifts of Money and Personal Property

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Accepting Trust Funds – Legislative Body Decision
Option #1

- RSA 31:19 – “Towns may take and hold in trust gifts, legacies, and devises made to them for the establishment, maintenance, and care of libraries, reading-rooms, schools, and other educational facilities, parks, cemeteries, and burial lots, the planting and care of shade and ornamental trees upon their highways and other public places.”
- The voters at the annual town meeting or at a special town meeting accept, in the name of the town, through a warrant article all gifts, legacies, and devises given to the town in the previous year.

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Accepting Gifts, Donations, Bequests: Delegation of Authority
Option #2

- The town meeting adopts, by warrant article
- RSA 31:19 II which permits the **Selectmen** to accept gifts, donations, and bequests without further action of town meeting.
- RSA 31:95-b permits the **Selectmen** to accept unanticipated funds from the state, federal or other governmental unit or a private source which becomes available during the fiscal year. This vote is permanent unless rescinded by the voters at a subsequent town meeting.

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What are “unanticipated funds”?

- Unanticipated funds represent funds from a non-tax source that are not anticipated or known at the time of budget preparation.
 - Examples: a bequest under a will, a check received from a citizen for patriotic purposes, donations received in response to a special fundraising event, a successful grant application, Covid money, etc.

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**RSA 31:95-b
Public Notice - Selectboard**

- **III. (a) For unanticipated moneys in the amount of \$10,000* or more, the selectmen or board of commissioners shall hold a prior public hearing on the action to be taken.**
- **Notice of the time, place, and subject of such hearing shall be published in a newspaper of general circulation in the relevant municipality at least 7 days before the hearing is held.**

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RSA 31:95-b (continued)

- **(b) The board of selectmen *may* establish the amount of unanticipated funds required for notice under this subparagraph, provided such amount is less than \$10,000*.**
- **For unanticipated moneys in an amount less than such amount, the board of selectmen *shall* post notice of the funds in the agenda and *shall* include notice in the minutes of the board of selectmen meeting in which such moneys are discussed.**
*amount raised from \$5,000 to \$10,000 in 2014 Legislative Session

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RSA 31:95-b and the Municipal Budget Act

- **The acceptance of unanticipated moneys under this subparagraph shall be made in public session of any regular board of selectmen meeting.**
- **IV. Action to be taken under this section shall:**
 - (a) **Not require the expenditure of other town or village district funds except those funds lawfully appropriated for the same purpose; and**
 - (b) **Be exempt from all provisions of RSA 32 relative to limitation and expenditure of town or village district moneys.**

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Accepting Gifts, Donations, Bequests and Personal Property
The Library Option!

- The Town Meeting may adopt by warrant article:
 - RSA 202-A:4-c which permits Library Trustees to accept gifts, bequests, and devises made to the library specifically.
 - RSA 202-A:4-d which permits Library Trustees to accept gifts of personal property other than money

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RSA 202-A:4-c

- Warrant article wording found in section I (a): "Shall the town accept the provisions of RSA 202-A:4-c. . authorizing indefinitely the public library trustees to apply for, accept and expend, without further action of town meeting, unanticipated money from a state, federal or other governmental unit or a private source which becomes available during the fiscal year?" (Emphasis added)

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RSA 202-A:4-c (continued)

- Once the voters have adopted RSA 202-A:4-c it is permanent unless rescinded by a subsequent vote of town meeting.
- Such money shall be used only for legal purposes for which a town may appropriate money.
- Be exempt from all provisions of RSA 32, relative to limitations and expenditures of town moneys.

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Procedure for Accepting Gifts under the Library Option

- The law has two types of acceptance procedures: one for gifts of less than \$5,000 and one for gifts of more than \$5,000

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Procedure for Accepting Gifts of less than \$5,000

- **RSA 202-A:4-c III (b): The public library trustees may establish the amount of unanticipated funds required for notice under this subparagraph, provided such amount is less than \$5,000.**

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Procedure for Accepting Gifts of less than \$5,000

- **For unanticipated moneys in an amount less than \$5,000, the public library trustees**
 - shall post notice of the moneys in the agenda, if any, and
 - shall include notice in the minutes of the public library trustees meeting in which such moneys are discussed.

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Procedure (cont.)

- The acceptance of unanticipated moneys under this subparagraph shall be made in public session of any regular public library trustees meeting.

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Procedure for Accepting Gifts of over \$5,000.00

- Publication requirement:
- RSA 202-A:4-c III (a) "For unanticipated moneys in the amount of \$5,000 or more the public library trustees shall hold a prior public hearing on the action to be taken. Notice of the time, place, and subject of such hearing shall be published in a newspaper of general circulation in the relevant municipality at least 7 days before the hearing is held." (Emphasis added)

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Remember

- The Library Trustees may spend unanticipated money without including it in the budget as long as the money is expended in the same budget year it is received.
- Any unanticipated money not expended in that year must be carried over and included in the budgeting process before it can be expended.

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Authority to Accept Gifts of Personal Property

- RSA 202-A:4-d The voters must pass a warrant article authorizing the library trustees to accept gifts of personal property, *however*, the voters may decide whether or not to require a public hearing for personal property valued at over \$5,000.
- If the original warrant article does not specify the \$5,000 provision *no public hearing is required to accept personal property.*

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Limitations

- When accepting funds, the Library Trustees may not require the expenditure of any other town funds
- When accepting personal property, the Library Trustees may not bind the town to raise, appropriate, or expend any public funds for the operation, maintenance, repair, or replacement of such personal property

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Administering Donor Restricted Trust Funds

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Statutory Authority

- **202-A:11 Powers and Duties.** – Except in those cities where other provision has been made by general or special act of the legislature, the library trustees of every public library in the state shall:
 - IV. Expend income from all trust funds for library purposes for the support and maintenance of the public library in said town or city *in accordance with the conditions of each donation or bequest* accepted by the town or city;

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Statutory Authority

- **202-A:22 Custody and Control of Trust Funds.** – Trust funds given to towns and cities for the use of a public library shall be held in the custody and under the management of the trustees of trust funds. The entire income from such funds shall be paid over to the library trustees. Payment of such income shall be made by the trustees of trust funds to the library trustees as the same is received.

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Statutory Authority

- **202-A:23 Exceptions.** Nothing in this chapter shall preclude the library trustees from accepting, receiving, investing, and administering directly any **trust funds and donations** when so specified by the donor. Library trustees administering and investing such special funds shall be governed by the provisions of RSA 31:25, RSA 31:25-d, and RSA 41:6. (Amended in 2014 to give Library Trustees additional investment authority)

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Authority (cont.)

- Library Trustees holding and administering trust funds directly are required to draft and submit an investment policy to the Attorney General annually pursuant to RSA 31:25.

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Outside Sources
of Private Money

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Outside Sources of Money

- Ad Hoc Groups
- Grants
- Fundraising by Friends and Foundations

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Are Donations to the Library Tax Deductible?

- Yes. As long as the donation is for a public and not a private purpose.
- Gifts (donations) to the United States, a state, city, town, or Indian tribal government are deductible as an itemized deduction on Federal income tax.

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Recommendation

- Library Trustees should adopt a Gift Acceptance Policy and an Accessioning/Deaccessioning Policy
- The Gift Acceptance Property establishes parameters for donations offered to the library
- The Accessioning/Deaccessioning Policy can be helpful when books or personal property have outlived their usefulness and need to be removed from the Library's holdings

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Ad Hoc Groups

- What is an Ad Hoc Group?
 - Groups of individuals who want to raise funds for library purposes but do not want to start a nonprofit organization
 - Individuals who ask for donations to a memorial fund in honor of a beloved community member who has passed away

What should Library Trustees watch out for?

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Ad Hoc Groups

- Library Trustees should consider
 - Providing written authorization to raise money in the name of the library
 - The use of town or city's EIN
 - Oversight of the Group's activities
 - Accountability including periodic reports
 - Custody and control of donations

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Grants

- Library Trustees often apply for grants from private and federal sources.
- Grants awarded are subject to the acceptance process.
- Funds received through grants must be administered in accordance with the grant award documentation whether from a government or private source.

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Fundraising for the Library by Friends and Foundations

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Friends Groups

- Are generally recognized by the IRS as 501(c)(3) public charities
- Are separate from the town
- Are not subject to the right to know law
- May fundraise on behalf of the public library
- *Any funds received by the Library from a Friends Group are subject to the publication and public hearing requirement if over \$5,000*

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Supporting Foundations

- Generally speaking, Friends groups run fundraising activities to meet the immediate needs of the library: books, periodicals, DVDs, etc.
- Foundations are created to meet the future needs of the library through a capital campaign and/or the establishment of an endowment fund
- Both may qualify for 501(c)(3) status with the IRS.

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Things to Consider before Establishing a Supporting Foundation

- Is there a need to raise large sums of money for the Library?
- Under the GASB accounting rules (Statement No. 39) the assets of outside charities may be reported in the town or city's audit and can be confusing to voters.
- Are the board members of the foundation and the Library Trustees' vision for the Library compatible?

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Differences in Administration: Public Charities (Friends) vs. Private Foundations

- Public charities (Friends groups) may receive and retain as much money as the board deems to be prudent or necessary and will not incur federal taxes or penalties as a result
- Private foundations are bound by the "5% rule" and must distribute at least 5% of the fair market of the foundation's assets each year.

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Keeping the Record Straight

- Because the types of money that fund a library may come from a number of sources it is important to keep detailed records on the source of each and any restrictions on how the funds are spent.
- Taxpayer money should be held separately from all other money due to the lapse provision of RSA 32. Remember: private money never lapses to the general fund.
- Spreadsheet programs can capture the financial information and generate necessary reports.

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