



NORTH CAROLINA
DEPARTMENT OF STATE TREASURER
STATE AND LOCAL GOVERNMENT FINANCE DIVISION
AND THE LOCAL GOVERNMENT COMMISSION

JANET COWELL
TREASURER

T. VANCE HOLLOMAN
DEPUTY TREASURER

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TO: Local Government Finance Officials and their Independent Auditors

FROM: Sharon Edmundson, Director, Fiscal Management Section

SUBJECT: Custody and Proper Safekeeping of Local Government Investments

DATE: October 29, 2012

In the fall of 2011 questions arose about asset safekeeping arrangements for North Carolina local governments. Because of changes in the banking industry we decided that our guidance needed to be updated; to assist us with that update we asked the Attorney General's office to review the information they issued in 1991. Below is a summary of the review, completed by L. McNeil Chestnut, Special Attorney General in the Department of Justice. His area of concentration is banking, particularly the North Carolina Banking Commission.

Local government assets under a legally binding safekeeping agreement are no less secure on the commercial side of the bank than they are on the trust side, provided that 1) the assets are held separate and apart from bank assets; and 2) the same can readily be identified and accounted for as local government assets. Holding safekeeping assets separate and identifying those assets as those of a particular customer is required by federal banking regulations.

Local government assets held by the bank in safekeeping are not assets of the bank; thus they are not subject to the claims of the bank's creditors. As a protection to the local government, the bank should clearly identify investments as assets of a local government unit and the investments should be held separately from assets of the bank. Separation and identification are federal banking regulatory requirements.

Holding the securities in the name of unit is the best practice; there is always inherent risk in electronic transactions. There should always be records of the transaction by way of accounting/brokerage statements with appropriate descriptions that would validate proof of ownership and should protect the interest of the local government.

In conclusion, this now stands as the AG Advisory on Custody for local governments in the State of North Carolina. Investments can be held in "safekeeping" accounts or trust accounts with commercial banks in North Carolina or with trust accounts in banks authorized to do trust work in North Carolina. Local governments should be clear on their understanding of their safekeeping agreements and protection over their assets. Specific questions about these agreements may be directed to our staff and we encourage units to consult with their legal counsel as well. Please contact Sara Shippee at (919) 807-2356 or via email at sara.shippee@nctreasurer.com or Becky Dzingeski at (919) 807-2396 or via email at becky.dzingeski@nctreasurer.com.