

Opinion No. 62-143

December 4, 1962

BY: OPINION OF EARL E. HARTLEY, Attorney General Boston E. Witt, First Assistant Attorney General

TO: Dr. Edmund H. Kase, Investment Officer, State Investment Council, Santa Fe, New Mexico

QUESTION

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May the State Investment Council combine for the purpose of investing the funds of the various beneficiary trusts?

CONCLUSION

Yes.

OPINION

ANALYSIS

The first consideration in analyzing this problem is whether the Enabling Act of this State which governs these trust funds permits such combining. Section 10 of the Enabling Act as originally written required that a separate fund and a separate account procedure be established for each of the grants under that enactment. 36 Stats. 564. However, Congress in 1957 specifically deleted the seventh paragraph of Section 10 of said Enabling Act, which paragraph contained the requirement that the funds be kept separate. 71 Stats. 457. Article XII, Section 7 of the Constitution of New Mexico was amended in 1958 and voted on by the people and duly passed to bring our Constitution into conformity with this Enabling Act amendment. This in our judgment removed any objection to this procedure on the basis of the enabling act.

In addition while there is admittedly a split of authority on the question, the weight of authority and the better reasoned view is to the effect that the mere combining of funds from several trusts for investment does not violate the intermingling rule. This is stated by the Restatement of Trusts, Volume 1, at page 650 as follows:

"The mere fact that trust funds are combined with funds not held in trust or with funds of other trusts does not make the investments improper, provided that the investments are in other respects proper."

See also in this connection **First National Bank v. Basham**, 238 Ala. 500, 191 So. 873, 125 ALR 656; **Finley v. Exchange Trust Co.**, 183 Okla. 167, 80 P. 2d 296; **Lima First American Trust Co. et al. v. Graham et al.**, 54 Ohio App. 85, 6 N.W. 2d 33.