

## Opinion No. 67-83

June 21, 1967

**BY:** OPINION OF BOSTON E. WITT, Attorney General

**TO:** Mr. Leonard T. Valdes Executive-Secretary Public Employees' Retirement Association 113 Washington Avenue Santa Fe, New Mexico

### QUESTION

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Based on Section 5-5-4.2, N.M.S.A., 1953 Compilation, under what category of the Portfolio of the Public Employees' Retirement Association does the investment in the land and the Public Employees' Retirement Association building have to be placed?

#### CONCLUSION

In a category all by itself.

### OPINION

#### {\*120} ANALYSIS

First, it should be noted that Section 5-5-4.2, N.M.S.A., 1953 Compilation was declared to be unconstitutional in the case of {\*121} **State of New Mexico, ex rel., Attorney General v. Capitol Buildings Improvement Commission**, Cause No. 32045, Santa Fe County. The decision was not appealed and it is final. Therefore, we can completely ignore any discussion of Section 5-5-4.2, supra.

Furthermore, this is not an investment under any of the categories of Section 5-5-4.1, N.M.S.A., 1953 Compilation. There are no stocks, bonds, notes or debentures involved. This is a separate investment authorized by Section 1 of Chapter 21, Laws 1964 (1st S.S.) as amended by Laws 1965, Chapter 210, Section 1 and reads as follows:

"Section 1. The public employees' retirement board of the public employees' retirement association of New Mexico, with the prior approval of the capitol buildings improvement commission as to site, location and design, and the prior approval of the state board of finance as to cost and feasibility, is authorized in the name of the public employees' retirement association to purchase or acquire land adjacent to the state capitol grounds and build thereon a building to house and public employees' retirement association and its employees. In the event there is additional office space available in the building after the board and its employees have been housed, the board may rent or lease the additional space to any public agency or private person, provided that leasing shall be to public first priority for the rental or agencies. For the purpose of purchasing or

acquiring land and building a building the public employees' retirement board may use funds from the 'income fund' and any other funds controlled by the public employees' retirement board the use of which for such purpose is not prohibited by law."

Thus in specific answer to your question, this investment (and it is such) is to be carried in a category separate and distinct from all others in the portfolio.

By: Oliver E. Payne

Deputy Attorney General