

Opinion No. 67-68

May 11, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mr. Robert G. Mead Investment Officer State Investment Council Santa Fe, New Mexico

QUESTION

QUESTION

What are the responsibilities of the State Investment Council and State Investment Officer under Chapter 176, Laws 1967?

CONCLUSION

See Analysis.

OPINION

{*100} ANALYSIS

Chapter 176, Laws 1967, enacted Section 5-5-4 and Section 5-5-4.1, N.M.S.A., 1953 Compilation. Section 5-5-4, supra, provides in pertinent part:

"The retirement board is trustee of the several funds created by the Public Employees Retirement Act, and it may invest and reinvest them in the following classes of securities and investments, **subject to the approval of the state investment council after explanation and presentation of the plan..** ." (Emphasis supplied)

Subsection D of Section 5-5-4.1 provides as follows:

"D. The retirement board shall consult with the state investment council or state investment officer and request information or advice with respect to investment of money from any fund of the association. It shall utilize the services of the state investment council and state investment officer, and act on any advice from them. The state investment council and state investment officer shall render investment services to the retirement board without expense to the retirement board. The retirement board may also employ the investment advisory services of any trust company or national bank exercising trust powers, or of an investment counseling firm which is accredited by, or a member of, the investment counsel association of America, incorporated, and may pay reasonable compensation for such services from funds of the association, but these services shall be advisory only. **In all cases, the retirement board shall retain and**

exercise its power to make all decisions relating to investment of funds of the association." (Emphasis supplied)

Subsection D, just quoted, is substantially the same as Subsection E of Section 5-5-4.1 which was repealed by Chapter 176, Laws 1967. The constitution with the Investment Council or Investment Officer was changed from permissive to mandatory.

In our opinion these sections can be read together. Subsection D has application to the preparation of **plans and programs** for investment by the Retirement Board. And, while it is mandatory for the Retirement Board to consult with either the Investment Council or Officer and to act on the advice received, it remains for the Retirement Board to determine which plans or programs will receive its approval. Once, however, the plan or program is approved by the Retirement Board, it must be submitted to the Investment Council for its approval in accordance with Section 5-5-4, supra. An investment or reinvestment unless within a **plan or program** approved by the Investment Council would be contrary to the statute.

{*101} Because of the nature of the duties of the Investment Council and the Investment Officer as authorized in Sections 11-2-8.4 through 11-2-8.19, it is also our opinion that the duty placed on the Retirement Board in Subsection D of Section 5-5-4.1 can be fulfilled by consultation with and use of the services of the Investment Officer. Basically, the Council functions through the Investment Officer and his staff. On day-to-day investments by the Retirement Board, under approved plans, consultation between the executive secretary of the Public Employees Retirement Board and the State Investment Officer is contemplated.

By: Roy G. Hill

Assistant Attorney General