

# MAINE STATE LEGISLATURE

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✓  
May 28, 1965

Eben L. Elwell, State Treasurer

Treasury

George C. West, Deputy

Attorney General

I have your letter of May 27th enclosing a photostatic copy of the breakdown of the present investments of the Maine State Retirement System. You have asked whether I can assure you that all of these investments are legal.

It is not possible in the limited time available for this office to completely answer your general question. To give a complete answer to your question, it would be necessary for this office to examine each item in which an investment is made in order to determine if they come within certain limitations and conditions contained in the savings bank investment law.

The State Retirement System law, 5 M.R.S.A., section 1061, provides that the trustees have full power to invest and reinvest the Retirement System funds "subject to all the terms, conditions, limitations and restrictions imposed by the laws of this state upon savings banks in the making and disposing of their investments;"

In the savings bank investment law, 9 M.R.S.A., Chapter 51, there is a list of many securities in which savings banks may invest. Some of the items listed restrict investments as to the size, assets, and other limitations, upon the issuer of the securities; as, for example, 9 M.R.S.A., section 602, refers to Maine corporate stocks in which savings banks may invest. This section provides that it must be stock of a Maine corporation other than a banking corporation, actually conducting in this state the business for which such corporation was created. Such corporation must, for a period of 3 years next preceding the investment, have earned and received an average net income equivalent to at least 6% upon the entire outstanding issue of the stock in question. Then there is a general limitation that no more than 5% of the bank's deposits shall be invested in such corporations and not more than 1% of the deposits in a single corporation. There is a further limitation that the bank may not hold more than 1/5 of the capital stock of any corporation. Hence, in order to determine whether or not the investment of money in the stocks of Maine corporations is legal, it would be necessary to review each block of stock owned to determine if the Maine corporation qualifies under the restrictions, and if the Retirement System has exceeded its limitations.

May 28, 1965

I have, however, checked over the list of investments solely limited to the percentage of total trust funds which may be invested in the various items listed in the breakdown, assuming that the individual items come within the restrictions contained as to type of business of the issuer of the securities. I have only examined the limitation as to the percentage of the over-all trust funds which may be invested in the various types of securities.

5 M.R.S.A., section 1061, quoted above, further provides:

"Notwithstanding the foregoing, the board of trustees shall be authorized to purchase at their discretion equities in accordance with the prudent man rule, such investments to be limited to not more than 10% of the total assets of the system."

I must confess that the word "equities" is somewhat unfamiliar to me as used in this connection. I have not been able in the short time allotted for answering your question to determine exactly what this word means. I am, therefore, assuming that it refers to any securities not specifically named in the savings bank investment law, but would include "such other securities as the trustees of a bank may consider to be sound, prudent investments." (9 M.R.S.A., § 610)

Quite obviously the above-quoted sentence from 5 M.R.S.A., section 1061, establishes a limit of 10% in investments under the so-called "prudent man rule." The language of this section does not permit the construction that the trustees are allowed to use the 5% stated in 9 M.R.S.A., section 610, plus the 10% mentioned above. The statute is very clear that the trustees are limited to not more than 10% of the total assets of the system.

I construe this to mean that at any time the trustees desire to invest additional funds they cannot invest under the "prudent man rule" if the percentage invested under this rule equals or exceeds 10% of the total assets of the fund at that time. I do not believe that the law should be interpreted so strictly as to require the trustees to dispose of securities purchased under the "prudent man rule" because they have increased in book value and on some given day such investments exceed the 10%.

I trust that this satisfactorily answers your question.

GCW:H

George C. West  
Deputy Attorney General