

MAINE STATE LEGISLATURE

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May 30, 1974

W. G. Blodgett, Executive Director

Maine State Retirement System

Charles R. Larouche, Assistant

Attorney General

Retirement System Investment Objectives and Guidelines; Prudent Man Rule

This replies to your memo of May 20, 1974, concerning the subject.

You ask:

"Do the Investment Guidelines as adopted by the Board of Trustees on May 9, 1974, meet the standards of the 'prudent man rule' set forth in 18 M.R.S.A., Section 4054 and imposed upon the Board of Trustees by 5 M.R.S.A., Section 1061?"

I cannot give you a categorical answer to that question.

In pertinent part, the Rule states:

"In acquiring, investing, reinvesting, exchanging, retaining, selling and managing property for the benefit of another, a fiduciary shall exercise the judgment and care under the circumstances then prevailing, which men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital." 18 M.R.S.A. § 4054.

As you can see, the Rule requires one to "exercise the judgment and care under the circumstances." For me to give you a categorical answer would require the submission by you of an exhaustive statement of all the relevant circumstances, with particular regard to the prevailing situation in the investment market. The answer would then be only as reliable as the accuracy and completeness of the statement of the prevailing circumstances and it would endure only as long as the relevant circumstances did not change.

With regard to the statement of the prescribed method of portfolio diversification, I see nothing alarming in its provisions. However, I am not an expert in the field of investment counselling. It would seem to me that a prudent Board of Trustees ought to obtain expert guidance in this matter from several independent investment counsellors with outstanding reputation, and it ought to obtain continuing guidance, and it should make repeated reappraisals of its portfolio policy in light of the ever changing circumstances.

AN INFORMAL OPINION

With regard to the statement of "objectives and goal" and "investment policy," I am somewhat disturbed by the tone of those statements. For example, it seems to me that a statement of a goal of "10% to 20% greater than the Standard & Poor's 500 Index," when coupled with the statement that, "it may be necessary to accept some losses," may convey the notion to some persons that the Board is adopting a philosophy of "speculation." That would not be consistent with the Prudent Man Rule. However, this does not seem to be the intent of the Board, since it includes in that statement a reference to the Prudent Man Rule. It would seem to be appropriate for the Board to consult investment experts in order to ascertain how they would interpret such a statement of objectives, goal and policy. It would also seem to be appropriate for the Board, in any event, to consider modifying the language somewhat to insure that the Board's statement of policy is not interpreted as a declaration of willingness to speculate, in spite of its stated disclaimer thereof by its reference to the Prudent Man Rule.

Finally, it must be noted that the stated investment policy must be evaluated in light of the prevailing circumstances, which are unstated and ever changing, and the Board must constantly seek pertinent information and expert investment advice, and it should reappraise and restate its policy as appropriate.

If I can be of any further aid to you in this matter, please advise me.

CHARLES R. LAROUCHE
Assistant Attorney General

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AN INFORMAL OPINION