

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date September 8, 1978

William G. Blodgett, Exec. Director Dept. Maine State Retirement System
From Kay R. H. Evans, Assistant Dept. Attorney General
Subject Board of Trustee Investment Authority

Your memo of August 30, 1978, asks for an opinion on two questions raised by the Board of Trustees of the Retirement System as to its authority to take particular actions in the course of its general management of investment of Retirement System monies. Specifically, the Board wishes to know (1) whether it may make "direct and/or specific investments outside of actions taken by (its) investment managers", and, (2) whether it could "employ an investment expert for the MSRS staff and establish an in-house investment type operation."

The answer to both questions is affirmative. The Board's broad, general discretionary authority for "the proper operation of the Retirement System," 5 M.R.S.A. § 1031(1), and its specific responsibility for the investment of Retirement System funds, 5 M.R.S.A. § 1061(1), include within their scope the authority to make investments and investment decisions of these types and in these ways.

While the Board must employ a fiduciary or fiduciaries for investment purposes, it has discretion to determine the specific nature and extent of the purposes served by the fiduciary or fiduciaries. 5 M.R.S.A. § 1031(15). There is no requirement that the fiduciary or fiduciaries have responsibility for all of the investments of Retirement System funds, and the broad general authority of the Board for the operation of the Retirement System clearly permits it to make investments "outside of the actions taken by (its) investment managers." Of course, the Board must be guided by the prudent man rule in these investment decisions as in all such decisions, 5 M.R.S.A. § 1061(1), and the requirement that the "investment program" be subject to periodic approval by the Board, *Id.*, means that the Board must regularly subject its own independent investments to the same scrutiny as it does those of its outside managers, both as separate investments and as part of the overall investment program.

The statutory permission to "employ other investment counsel or advice and other expert professional or other assistants as may be necessary or appropriate to aid in carrying out its functions," 5 M.R.S.A. § 1031(15), encompasses the employment of in-house investment experts and support staff. Again, investments made by way of such an in-house operation must be in accordance with the prudent man rule and must be approved periodically by the Board in the same manner as all other aspects of the overall investment program.

Kay R. H. Evans
KAY R. H. EVANS
Assistant Attorney General

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