

# MAINE STATE LEGISLATURE

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JAMES E. TIERNEY  
ATTORNEY GENERAL

STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
STATE HOUSE STATION 6  
AUGUSTA, MAINE 04333

March 21, 1988

Claude R. Perrier  
Executive Director  
Maine State Retirement System  
State House Station #46  
Augusta, Maine 04333

Dear Claude:

Last Thursday, March 17, 1988, the Maine Legislature enacted Legislative Document 2008, "AN ACT Concerning Investment of State Funds in Corporations Doing Business in Northern Ireland" and sent it to the Governor for his approval. The legislation requires the Board of Trustees of the Maine State Retirement System to urge corporations doing business in Northern Ireland to adopt and implement the MacBride Principles. According to the legislation, the MacBride Principles are goals for corporations doing business in Northern Ireland to follow and are designed to increase representation of under-represented religious groups in the work force, provide adequate security for minority employees in the work place, eliminate a variety of discriminatory practices to provide adequate job training and establish certain affirmative action programs. Further, L.D. 2008 requires that after July 1, 1992, "if it is in accordance with sound investment criteria consistent with prudent standards of fiduciary responsibility", the Board of Trustees divest from the portfolio of its investments those corporations doing business in Northern Ireland who have not adopted and implemented the MacBride Principles.

You have inquired whether this legislation, if signed by the Governor, in any way compromises the fiduciary responsibilities of the Board of Trustees. For the reasons which follow, it is the Opinion of this Department that nothing

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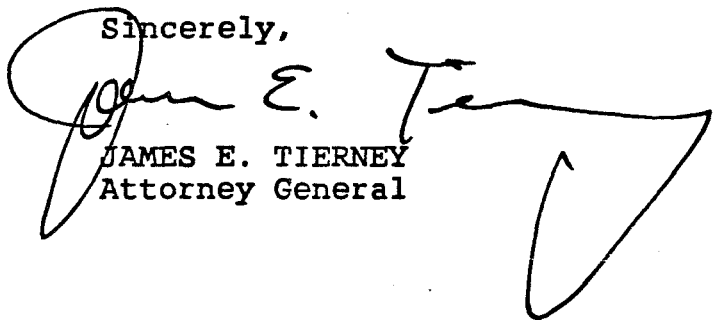
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in L.D. 2008 infringes upon the fiduciary responsibility of the Trustees. To the contrary, the express terms of L.D. 2008 and its Statement of Fact indicates the divestiture requirements of the bill come into play "only if divestiture is in accordance with the prudent person standard of fiduciary responsibility."

The Legislature has previously established the "prudent person standard" as the standard by which funds of the Retirement System are to be invested. 5 M.R.S.A. § 17153(3) incorporating 18-A M.R.S.A. § 7-302. See also 5 M.R.S.A. § 17108(2)(A). Accordingly, in legal effect, the Legislature in L.D. 2008 has subordinated its preference for investment in companies implementing the MacBride principles, and its non-support of companies doing business in Northern Ireland not implementing those principles, to the investment judgment of the Trustees in carrying out their general responsibility for funds of the Retirement System. The practical effect of the bill, if it becomes law, would be to direct the Trustees to follow the principles embodied in the bill in choosing among investment alternatives that are otherwise equal. Nothing in L.D. 2008 requires the Trustees to divest its portfolio in a particular company if it is not in accordance with sound investment criteria standards previously set out for the Trustees in exercising their fiduciary responsibilities.

I trust this fully responds to the concern that has been raised in your correspondence to my Department dated March 21, 1988. If this office may be of any further assistance, please do not hesitate to call Assistant Attorney General Gregory Sample, 289-3661.

Sincerely,



JAMES E. TIERNEY  
Attorney General

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