

OPINION
65-313

March 29, 1965 (OPINION)

Honorable K.O. Nygaard

Commissioner of Insurance

RE: State Investment Board - Reserves - Amounts

This is in response to your letter in which you ask for an interpretation of section 21-10-08 of the North Dakota Century Code as enacted in 1963. This section provides as follows:

RESERVES - PERCENTAGE LIMITATIONS. In order to preserve the liquidity of the funds to meet claims and liabilities as they are incurred, the following reserve requirements shall be maintained by each of the funds enumerated in section 21-10-06:

1. A primary reserve of from four to six percent of the assets of each fund in the form of cash or Bank of North Dakota certificates of deposit.
2. A secondary reserve of from twelve to sixteen percent of the assets of each fund in the form of short term United States government securities maturing in one year or less or short term commercial and finance company paper.

The reserve requirements of this section shall not apply to the permanent funds of the common schools and institutions. The board may authorize temporary deviations from these reserve requirements when exceptional circumstances justify.

Not more than fifty percent of the assets of any fund shall be invested in securities authorized by subsections 8, 9, and 10 of section 21-10-07."

Your specific question upon which you ask for an opinion is whether or not the foregoing statute means that the primary reserve shall be not less than four percent nor more than six percent, and that the secondary reserve shall be not less than twelve percent nor more than sixteen percent of the assets of each fund.

On casual reading of subsections 1 and 2 of the aforementioned section, one might get the impression that the Legislature merely intended to fix a minimum but upon careful examination it becomes quite apparent that the Legislature in setting up brackets of "four to six percent of the assets" and "twelve to sixteen percent of the assets" clearly intended to establish a maximum and minimum. After arriving at this conclusion and by examining the other language of the act, which appears to be mandatory, we arrive at the further conclusion that the reserves shall be maintained within the stated brackets.

Under the specific provisions of the act, the board, as created and defined in sections 21-10-01 and 21-10-02 of the North Dakota Century Code, may authorize temporary deviation from the brackets set out by law. Such deviations, however, must be justified by exceptional circumstances. The limitation of fifty percent as found in the last sentence of the above quoted section would apply in all instances.

It is therefore our opinion that the brackets set up in subsections 1 and 2 of section 21-10-08 of the North Dakota Century Code ranging from four to six percent for a primary reserve and from twelve to sixteen percent for secondary reserve is mandatory, and any deviation therefrom must be authorized by the board and must be justified by exceptional circumstances.

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