

Date Issued: January 25, 1983 (AGO 83-4)

Requested by: Scott Engmann, Executive Secretary
North Dakota Teachers' Fund for Retirement

- QUESTION PRESENTED -

Whether the restrictions contained in section 15-39.1-26 of the North Dakota Century Code permit the State Investment Board to invest Teachers' Fund for Retirement funds in equities.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the restrictions contained in section 15-39.1-26, N.D.C.C., do not permit the State Investment Board to invest Teachers' Fund for Retirement funds in equities.

- ANALYSIS -

Types of investments in which the State Investment Board is permitted to invest Teachers' Fund for Retirement funds are described in section 21-10-07, N.D.C.C., which provides as follows:

21-10-07. LEGAL INVESTMENTS. The following types of securities shall be legal investments for funds, the investment of which is under the supervision of the board:

1. Securities which are a direct obligation of the treasury of the United States or of an instrumentality thereof.
2. Bonds or certificates of indebtedness of the state of North Dakota.
3. General obligation bonds of any other state.
4. Bonds, certificates of indebtedness, or warrants of any political subdivision of the state of North Dakota which constitute the general or contingent general obligations of the issuing tax authority, or revenue bonds of a political subdivision issued for public utility purposes or under the authority of the Municipal Industrial Development Act contained in chapter 40-57.
5. Loans and mortgage investments, insured or guaranteed in any manner, wholly or in part, or for which a commitment to so insure or guarantee has been issued by the United States or any instrumentality or agency thereof or the state of North

Dakota or any instrumentality or agency thereof; or other investments that are issued by or fully insured or guaranteed by the United States or any instrumentality or agency thereof.

6. Bank of North Dakota certificates of deposit.
7. Building and loan association certificates of North Dakota building and loan associations, to the extent that such certificates are fully insured or guaranteed by the United States or an instrumentality or agency thereof.
8. Short term commercial and finance company paper traded on a national basis and issued by a corporation having a record of no default of obligations during the ten years preceding such investment and whose net income available for fixed charges for a period of five fiscal years immediately preceding such investment and during the last year of such period, shall have averaged per year not less than one and one-half times its average annual fixed charges applicable to such period.
9. Bonds, notes or debentures of any corporation duly incorporated under the laws of any state of the United States rates as "A" or higher by a nationally recognized rating service approved by the board.
10. Nonrated bonds, notes or debentures of any corporation duly incorporated under the laws of any state of the United States and whose principal business operations are carried on within the state of North Dakota, having a record of no default of obligations during the ten years preceding such investment and whose net income available for fixed charges for a period of five fiscal years immediately preceding such investment and during the last year of such period, shall have averaged per year not less than one and one-half times its average annual fixed charges applicable to such period.

As used in this section the term "net income" shall mean income after deducting operating and maintenance expenses, all taxes, depreciation and depletion, but excluding extraordinary nonrecurring items of income and expense.

The term "fixed charges" shall include interest on funded and unfunded debt, amortization of debt discount and expense, and rentals for leased property.

Nowhere in section 21-10-07, N.D.C.C., is investment by the State Investment Board in equities permitted. The language contained in this section is that of limitation. Simply, any

type of investment, including equities, not specifically permitted by this section is prohibited.

Section 15-39.1-26, N.D.C.C., provides as follows:

15-39.1-26. INVESTMENT OF MONEYS IN FUND. Investment of the fund shall be under the supervision of the state investment board in accordance with chapter 21-10, except that the state investment board shall have the authority to contract with insurance companies, trust banks, or other financial institutions to hold and invest fund moneys; provided, that the total amount of all moneys so placed shall not exceed an amount equal to twenty percent of the total moneys of the fund. Such moneys shall be placed for investment only with a firm or firms whose primary endeavor is money management, and only after a trust agreement or contract has been executed. Such moneys may be expended by the state investment board by the preparation of an appropriate voucher and submitting such voucher to the office of management and budget.

This section authorizes the Board of Trustees of the Teachers' Fund for Retirement to place for investment with money management firms not more than twenty percent of the moneys in the fund. This section relates to the types of entities which may invest fund moneys rather than the types of investments which may be made with fund moneys. Section 15-39.1-26, N.D.C.C., has no effect on the types of legal investments which may be made pursuant to section 21-10-07, N.D.C.C.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

ROBERT O. WEFALD
Attorney General

Prepared by: Stephen D. Little
Assistant Attorney General