

November 12, 1971

OPINION LETTER NO. 285
Answer by letter-Jones

Mr. G. L. Donahoe
Executive Secretary
Public School Retirement
System of Missouri
P. O. Box 268
Jefferson City, Missouri 65101



Dear Mr. Donahoe:

This letter is to acknowledge receipt of your request for an opinion in regard to whether or not, two or more, or if necessary, all five members of the board of trustees, may enter into a partnership agreement for the sole purpose of accomplishing the registration of securities owned by the Public School Retirement System of Missouri and also the Nonteacher School Employee Retirement System of Missouri in a "Nominee Name"?

It is our understanding that the partnership would enter into separate contracts with each retirement system which, among other things, would provide:

- "1. That neither the partnership nor its members shall have any beneficiary interest in the securities.
- "2. Than any of the partners shall sign any necessary documents for the transfer of said securities as instructed by the system."

You state that the present registration of securities in the corporate name of each Retirement System does not constitute "good delivery in the event of sale." You further state that under the rules of the New York Stock Exchange, payments for such sales cannot be demanded until the transfer is approved by the transfer agent. You indicate that experience has shown that weeks of delay can be

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involved in such transfers, which results in delay in the reinvestment of sale proceeds at considerable loss of income to the system. It is further indicated with the "Nominee Name" registration, immediate payment could be demanded upon delivery of the securities to the broker on the regular settlement date, with no attendant loss of income on the reinvestment of the proceeds.

Finally, you state that the nominee name to be selected would be used exclusively for the registration of securities owned by each retirement system and control of the investment and reinvestment of the assets of each retirement system would remain subject to the investment procedures as adopted by the board of trustees. The sole purpose of registration of the securities in a "Nominee Name" would be to facilitate the orderly collection of sale proceeds.

Subsection 3 of Section 169.040, RSMo 1969, relating to the Public School Retirement System of Missouri, reads as follows:

"No investment transaction authorized by the board shall be handled by any company or firm in which a member of the board has an interest, nor shall any member of the board profit directly or indirectly from any such investment. All investments shall be made in the name of the retirement system." (emphasis ours)

Similarly, subsection 3 of Section 169.630, RSMo 1969, relating to the Nonteacher School Employee Retirement System of Missouri, reads as follows:

"No investment transaction authorized by the board shall be handled by any company or firm in which a member of the board has an interest, nor shall any member of the board profit directly or indirectly from any such investment. All investments shall be made in the name of the retirement system." (emphasis ours)

As a result of the above, subsection 3 of Section 169.040, RSMo, relating to the Public School Retirement System of Missouri and subsection 3 of Section 169.630, RSMo, relating to the Nonteacher School Employee Retirement System each expressly provides that "all investments shall be made in the name of the retirement system." It is our opinion that these statutory provisions each refer specifically to the Public School Retirement System of Missouri and the Nonteacher Employee Retirement System respectively, and we find no statutory authority in Chapter 169 for the board of trustees to consent to the use or adoption of a nominee name. In this regard, there is authority for the proposition that where statutes are plain, unambiguous, and clear, there is no room for construction and they must

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be applied by courts as they are written by the legislature. United Air Lines, Inc. v. State Tax Commission, 377 S.W.2d 444 (Mo. banc 1964).

It is our view that the board of trustees does not have authority to accomplish the registration of securities owned by the Public School Retirement System of Missouri or the Nonteacher School Employee Retirement System of Missouri in a "Nominee Name."

Yours very truly,

JOHN C. DANFORTH
Attorney General