

CONSTITUTIONAL LAW:
PENSION FUNDS:
INVESTMENTS:

Trustees of pension fund may make investments authorized by statutes without being restricted by constitutional limitations on investments by political corporations or subdivisions of the state.

Compare: 529 SW₂ 388

OPINION NO. 16

March 6, 1972

Honorable Charles S. Broomfield
State Representative, District 87
Room 401A Capitol Building
Jefferson City, Missouri 65101



Dear Representative Broomfield:

This official opinion is issued pursuant to your request in which you ask whether the Pension Board of the Firemen and Policemen's Pension Fund of North Kansas City is subject to the restrictions of Section 23, Article VI of the Constitution of Missouri, which reads as follows:

"No county, city or other political corporation or subdivision of the state shall own or subscribe for stock in any corporation or association, or lend its credit or grant public money or thing of value to or in aid of any corporation, association or individual, except as provided in this Constitution."

In your opinion request you stated that Section 86.590, RSMo 1969 governs investments by police and firemen's pension funds of North Kansas City. Such section adopts the provisions of the statutes governing investments by life and accident insurance companies. These latter provisions need not be set out in full. They are found in Sections 376.300 to 376.310, RSMo 1969. It is sufficient for present purposes to observe that the statutes authorize some investments which would not be permitted by a "county, city or other political corporation or subdivision of the state."

A question very similar to the one you present was decided by the Texas Court of Civil Appeals in the case of Bolen v. Board of Firemen, 308 S.W.2d 904 (1957). That case involved the permissible investments for firemen's pension funds, under constitutional provisions very similar to the provisions of the Missouri Constitution

Honorable Charles S. Broomfield

quoted above. The court concluded that the board which administered the firemen's pension funds was not a political corporation or subdivision, and that the statutes permitting it to invest in common stocks did not violate constitutional provisions forbidding political corporations and subdivisions to subscribe for the stock of private corporations. The opinion states at page 905:

"The Board just simply is not a political corporation nor a political subdivision of the State. It does not have any of the attributes of a political subdivision. A political subdivision contemplates: geographical area and boundaries, public elections, public officials, taxing power and a general public purpose or benefit. The Board has none of these attributes. . . ."

The court cited Wallace v. Childers, 198 Okl. 604, 180 P.2d 1005 (1947), holding that a pension fund was not a city or public fund, but rather was a fund held in a fiduciary capacity for the benefit of the participants. That case also cited Federal Deposit Insurance Corporation v. Casady, 106 F.2d 784 (10th Cir. 1939), which held that a sinking fund for the repayment of bonds was a trust fund for the benefit of the bondholders, and not a fund containing public monies.

The Supreme Court of Oregon in the case of Sprague v. Straub, 451 P.2d 49 (1969), held that a statute authorizing the purchase of corporate stock with money from the Public Employees' Retirement Fund was not contrary to the provisions of a constitutional provision prohibiting the state from subscribing to or being interested in the stock of any company, association or corporation. The court said l.c. 58:

"We are of the opinion that the people intended the prohibition in Article XI, § 6 to apply only to funds owned by the state and not to funds which the state has expended and for which the state has received a quid pro quo, as it does when it receives coverage for its employees through its contributions as an employer to these funds.

"We do not mean to suggest that Article XI, § 6 can be circumvented simply by the transfer of state moneys to a trustee who is granted the power to invest in corporate stocks. In that case the state would continue to have the beneficial ownership of the fund and would be subject to the constitutional prohibition. But

Honorable Charles S. Broomfield

that is not the situation we have before us. The state's custodianship of these funds is not a device to circumvent the constitution; it is set up to implement a workmen's compensation plan and a retirement plan. Moreover, as we have pointed out, the state has no beneficial ownership of any part of these funds, in this respect having no different standing than other contributing employers.

"There are few cases in other jurisdictions bearing upon the question before us. *Bolen v. Board of Firemen, etc.*, 308 S.W.2d 904 (Tex. Civ.App.1958), although not precisely in point, contains reasoning similar to that which we have employed. In that case a statute authorized a pension board to invest pension funds of firemen and policemen in corporate stocks. The fund was held by the city treasurer and was administered by a board composed of the mayor, two city councilmen, two firemen and two policemen. In holding that the statute authorizing investments in corporate stocks did not violate the Texas Constitution prohibiting the state or any county, city or town from loaning or pledging its credit to any individual or corporation, the court said:

'It is true that the city pays money into this trust fund, but once it is paid into the fund the city loses control over it and it no longer belongs to the city. The law just happens to name the mayor and two councilmen as members of the Board, but it might just as well have named someone else. The fact that the mayor and two councilmen happen to be members of the Board does not make the trust funds property belonging to the city. The City Treasurer just happens to be named as ex officio treasurer of the pension fund, but this fact, again, does not give the city, as such, any control over the funds or make them city property.' 308 S.W.2d at 905.

The same idea is expressed in *Wallace v. Childers*, 198 Okl. 604, 180 P.2d 1005, 1007 (1947).

Honorable Charles S. Broomfield

"These cases express essentially the same point of view as that taken in *Bennett v. State Industrial Accident Commission*, *supra*, and fortify our conclusion that Article XI, § 6 is not violated by the investment of moneys from the Industrial Accident Fund and the Public Employees' Retirement Fund in corporate stocks.

"Plaintiffs also contend that Section 19 of the Act violates the separation of powers principle pronounced in Article III, § 1 of the Oregon Constitution. Plaintiffs interpret Section 19 to mean that this court is required to pass upon the validity of each investment proposed to be made by the Investment Council out of the Industrial Accident Fund and Public Employees' Retirement Fund which, it is argued, 'would require the Judicial Department to exercise executive functions and to render non-judicial advisory opinions.'"

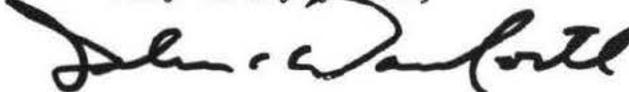
We believe that the *Bolen* case is well reasoned and that the Missouri courts would follow it. Pensions are a form of additional compensation. A pension fund exists for the sole benefit of the participants, so as to provide them the benefits to which they are entitled when the benefits come due. Its operation is quite comparable to that of an insurance company, which accumulates premiums and pays benefits in accordance with contract obligations.

CONCLUSION

It is the opinion of this office that the provisions of Section 86.590, RSMo 1969, authorizing the investment of firemen and policemen's pension funds in the manner permitted by life and accident insurance companies are valid and do not conflict with the restrictions on investments by cities or other political subdivisions of the state contained in Article VI, Section 23, Missouri Constitution.

The foregoing opinion which I hereby approve was prepared by my special assistant, Charles B. Blackmar.

Very truly yours,



JOHN C. DANFORTH
Attorney General