

Opinion No. 62-76

June 26, 1962

BY: OPINION OF EARL E. HARTLEY, Attorney General Boston E. Witt, First Assistant Attorney General

TO: Dr: Edmund H. Kase, Jr., State Investment Officer, State Investment Council, Santa Fe, New Mexico

QUESTION

QUESTIONS

"1. Does the Council, for short - term investment purposes, have authority to purchase commercial-bank time certificates of deposit?

"2. Do the investment restrictions imposed on the Council by Section 11 - 2 - 8.12, New Mexico Statutes Annotated, 1953 Compilation (P.S.), apply to investments made in securities having maturities of one year or less?

"3. If the answer to (2) is No, what restrictions are imposed by law on investments made by the Council in securities having maturities of one year or less, other than the restrictions implied by application of the 'prudent man' principle?

"4. What is meant by the following expression in the above cited statute: 'Moneys made available for investment for a period in excess of (1) year'?

"Specifically, how does one distinguish moneys made available for investment for a period in excess of one year from moneys made available for investment for a period of one year or less? If there is a distinction, what restrictions are imposed by law on the investment of moneys made available for investment for a period of one year or less, other than the restrictions implied by application of the 'prudent man' principle?

"5. Does the Council have investment jurisdiction over any funds available for investment only for a period of one year or less, apart from temporary escrow funds and undistributed income (11-2-8.15)?"

CONCLUSIONS

1. See analysis.

2. Yes.

3. See analysis.

4. See analysis.

5. See analysis.

OPINION

ANALYSIS

Since all of your questions are interrelated, we will, for the sake of clarity, discuss them together. Section 11-2-8.12, N.M.S.A., 1953 Compilation (P.S.) reads in part as follows:

"Moneys made available for investment for a period in excess of one (1) year may be invested in the following classes of securities and investments. . . ." (Emphasis ours)

We are asked for our opinion as to the meaning of the underscored portion of the above section. Section 11-2-8.9 limits the power of the state investment officer to investment of those funds which are in the "permanent fund." The words "permanent fund" are defined in Section 11-2-8.4 as those funds derived from lands under the direction, control, care and disposition of the Commissioner of Public Lands, conferred by Article XIII, Sections 1 and 2 of the Constitution of New Mexico. It is rather obvious, therefore, that the investment authority of the state investment officer is limited to those funds derived from lands granted the state and its institutions by virtue of the above sections of the State Constitution, including, of course, any increase in the permanent fund by virtue of the investment of these funds by the officer. There is no restriction found in either the Constitution or the statutes as to the period of time for which these funds may be invested. It follows, therefore, that they are all subject to being invested for periods in excess of one year; hence, these funds are all "monies available for investment for a period in excess of one (1) year" within the meaning of Section 11-2-8.12. This is true even though they are invested for periods of less than a year.

We are of the opinion, therefore, that the restrictions of Section 11-2-8.12 apply to all investments made by the officer including those for periods of less than one year.

You ask us whether the state investment officer may invest in "commercial-bank time certificates of deposit." If the officer may do so, permission must be found in Section 11-2-8.12, Subsection A of that section reads in part as follows:

". . . Bonds, notes or other obligations . . . guaranteed by the United States for the payment of principle . . . and interest . . ."

We are informed that the Federal Deposit Insurance Corporation insures certificates of deposit in an amount not to exceed \$ 10,000 for each depositor in each bank. This, in our opinion, would allow the state investment officer to invest in certificates of deposit in each bank up to an amount not exceeding \$ 10,000, covering both the principal and interest. We find no authority in that section to invest further in these securities.

In view of our answer to Question No. 2, Question No. 3 need not be answered.

Your fifth question is connected to Questions 2 and 4. Since we have indicated above that there are no restrictions on the period of time that permanent funds may be invested, and since these are the only funds over which the council has jurisdiction, the answer to your fifth question becomes clear. There are no funds over which the state investment officer has jurisdiction that are restricted to short term investment. All investment funds available to you are subject to investment for periods in excess of one year.