

## **Opinion No. 67-43**

March 13, 1967

**BY:** OPINION OF BOSTON E. WITT, Attorney General

**TO:** Mr. Leonard Valdes Executive-Secretary Public Employees' Retirement Board 113 Washington Avenue Santa Fe, New Mexico

### **QUESTION**

#### **QUESTIONS**

1. May funds of the Public Employees' Retirement Board be invested in time deposits in banks insured by the Federal Deposit Insurance Corporation and in Savings and Loan Associations insured by the Federal Savings and Loan Insurance Corporation?
2. May the directors of the Public Employees' Retirement Association control the lawful investment of its funds?

#### **CONCLUSIONS**

1. Yes, but see analysis.
2. Yes.

### **OPINION**

#### **{\*55} ANALYSIS**

The Public Employees' Retirement Association was established by Section 5-5-1 et seq., N.M.S.A., 1953 Compilation. Section 5-5-4.1, N.M.S.A., 1953 Compilation provides {\*56} for the investment of its funds. Subsection (1) thereof reads:

"Bonds, notes or other obligations of the United States, or those guaranteed by, or for which credit of the United States is pledged for the payment of the principal and interest or dividends thereof."

Federal Savings and Loan Associations are created under the provisions of Section 1461 U.S.C.A., et seq., and amendments thereto. Its deposits and those of other Savings and Loan Associations may be insured by the Federal Savings and Loan Deposit Insurance Corporation under the provisions of Section 1724 U.S.C.A., et seq., and amendments thereto. The maximum insurance on a deposit is \$ 15,000. The Federal Savings and Loan Deposit Insurance Corporation is expressly declared to be an instrumentality of the United States. Section 1725 (C) U.S.C.A.

It is noted that interest on time deposits is not due or payable until the time called for by the deposit agreement has elapsed. At such time it is earned, due, and payable and is then considered a part of the deposit. The insurance covers the full deposit up to \$ 15,000 maximum. It is stated in Section 1728 U.S.C.A., as follows:

"(a) Each institution whose application for insurance under this subchapter is approved by the Corporation shall be entitled to insurance up to the full withdrawal or repurchasable value of the accounts of each of its members and investors. . . ." (Emphasis added).

Such being the case and once the dividends or interests are due and payable and thus a part of the account, the insurance applies to this equally along with other funds making up such account and the deposit or investment is insured in an amount not to exceed \$ 15,000.

The laws governing the insurance of bank deposits by the Federal Deposit Insurance Corporation are found in Section 1811 U.S.C.A., et seq as amended. "Deposit" is defined as the unpaid balance of money received by a bank in the usual course of business and for which it has given or is obliged to give credit to an account. This would include interest earned, due and payable whether claimed or not. **Federal Deposit Insurance Corporation v. Irving Trust Company**, D.C. NY. 1955 (137 F. Supp. 145). Such deposits are similarly insured up to \$ 15,000.

The Public Employees' Retirement Board may legally invest its funds in insured deposits with banks or savings and loan associations so long as the gross deposit or investment, including the amount of interest or dividends earned, does not exceed \$ 15,000. Various deposit, dividend and interest agreements may vary concerning the time when dividends or interest accrue or become payable and a part of the deposit, but the investment will be legal so long as such limitations are not exceeded. Your attention, however, is invited to the provisions of Article VIII, Section 4 of our Constitution.

Insofar as your second question is concerned Section 5-5-4.1 provides that the Retirement Board shall be the trustee of the funds and that **it has the full power to invest and reinvest the same**. Under certain circumstances it may direct the State Treasurer, having the physical custody of securities of the board, to deposit such securities with a local bank or trust company.

The board may consult with the State Investment Council or State Investment Officers concerning its proposed investments. It shall thereupon be extended such advisory services without charge. However, the Retirement Board has full authority for the investment of its funds, within lawful bounds, and the deposit for safe keeping of its securities.

By: James V. Noble

Assistant Attorney General