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#89061

NO.
STATE OF NEBRASKA
OFFICIAL
SEP 25 1989
DEPT. OF JUSTICE

DATE: September 20, 1989

SUBJECT: Public Employees Retirement Systems, Investment Responsibility and Authority

REQUESTED BY: Jack E. Nellson, Director
Public Employees Retirement Systems

WRITTEN BY: Robert M. Spire, Attorney General
Fredrick F. Neid, Assistant Attorney General

The purpose of this opinion is to clarify and supplement the opinion of this office No. 89057, dated August 24, 1989. The opinion was in response to your questions relating to the responsibility of the Public Employees Retirement Board for the investment of funds in retirement programs administered by the Public Employees Retirement Systems.

Additional review of the applicable statutes results in this clarification of the conclusions set out in the opinion dated August 24, 1989. It is our opinion that the authority and responsibility for selection of investment managers for investment of funds of all retirement programs administered by Retirement Systems is reposed in the Public Employees Retirement Board.

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Neb.Rev.Stat. § 84-1503(2) (a) and (b) (Cum. Supp. 1988) states:

(2) In administering the retirement systems listed in subdivision (1) (a) of this section, it shall be the duty of the board:

> (a) To use the services of the state investment officer or to select, on the basis of the most sound proposal or proposals received, after written notice of such proposals received, after written notice of such proposition to all domestic companies, one or more life insurance companies, banks, trust companies, or investment managers authorized to do business in Nebraska to underwrite, serve as trustee, or manage investments for the retirement system and to enter into a contract or contracts with such company or companies in the name of the retirement system, except that if a bank, trust company, or investment manager is chosen as the primary carrier or investment manager the funds shall be invested or reinvested in such securities and investments of the nature which individuals of prudence, discretion, and intelligence acquire or retain in dealing with the property of another, and if the life insurance company, bank, trust company, or investment manager has special skills or is named on the basis of representation of special skills or expertise, it is under a duty to use such skills;
>
> (b) To change underwriters, trustees, or investment managers if, in the judgment of the board, such action would be desirable. The cancellation notice may be given by telephone and shall be confirmed in writing within five days by the board or a designated person appointed by the board;

Accordingly, it is our conclusion based on these statutory provisions that final authority for selection of investment management for the investment of funds for each of the retirement systems is reposed in the Public Employees Retirement Board.

Further, Neb.Rev.Stat. § 84-1503 (3) (Cum. Supp. 1988) provides that it shall be a duty of the board to have an analysis made of the investment return that has been achieved on the assets of each retirement system administered by the board. Since the board has the statutory responsibility to perform analysis of investment results as well as select investment managers, it is our opinion that the board must necessarily monitor the

investment results achieved by the investment managers including the State Investment Officer.

Respectfully Submitted,

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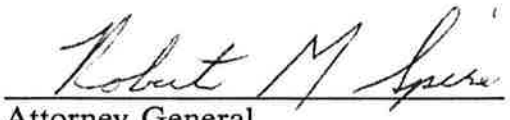
Approved By:



Attorney General

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