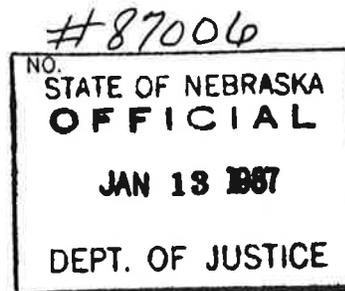


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509



ROBERT M. SPIRE  
Attorney General  
A. EUGENE CRUMP  
Deputy Attorney General

DATE: January 9, 1987

SUBJECT: Liability for Retired Teachers Supplementary Benefits Fund; Neb.Rev.Stat. §79-1564 (Supp. 1986)

REQUESTED BY: Jack E. Nellson, Director  
James J. Powers, Deputy Director  
Nebraska Public Employees Retirement Systems.

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

This is in response to your request for an opinion concerning the liability of the state for the Retired Teachers Supplementary Benefits Fund provided for by Neb.Rev.Stat. §79-1564 (Supp. 1986).

You have indicated that the Public Employees Retirement Board has entered into an agreement for the purchase of a Single Sum Purchase Contract with an insurance carrier. It is intended that this agreement relieve the state of a future funding liability of the Retired Teachers Supplementary Benefits Fund for all retirees of the School Retirement System as of June 30, 1987. This Fund is established by Neb.Rev.Stat. §79-1564 (Supp. 1986) which states:

There is hereby established a fund, to be administered by the Public Employees Retirement Board, to be known as the Retired Teachers Supplementary Benefits Fund. This fund shall be considered an express obligation of the state. The appropriation for such fund shall be determined by the Public Employees Retirement Board as of January 1 of each odd-numbered year and included in the biennial budget to be adopted by the regular session of the Legislature held in each odd-numbered year. (emphasis added).

The Public Employees Retirement Board has the statutory duty to administer the Fund. The Board, in administering the Fund, may appropriately contract for the purchase of a single sum purchase contract. It is understood that the contractual

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arrangement with the insurance carrier provides for certain services to be performed by the insurance carrier. These services include investment of funds, issuance of checks or drafts for payment of benefits, record keeping, and other related administrative functions. The investment function under Neb.Rev.Stat. §79-1503 (Reissue 1981) is completed by the State Investment Officer pursuant to the Nebraska State Funds Investment Act, Neb.Rev.Stat. §§72-1237 to 72-1259 (Reissue 1986). As you have indicated, a Single Sum Purchase Contract has been recommended by the State Investment Council to administer the retirement benefits program for all retirees participating in the School Retirement System.

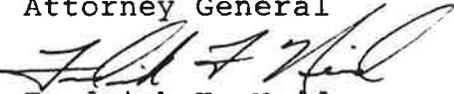
A purpose of the Board in entering into the contract is to relieve the state of any future funding liability of the Fund necessary to provide supplementary benefits. If the insurance carrier fully performs under the contract as intended, no additional funding would be required by the state to provide these benefits. However, if the insurance carrier would be unable to fulfill its contractual responsibilities for any reason, the state would be liable for any resulting funding deficiencies. This conclusion is reached because of the express language of the statute which provides that the Fund shall be considered an express obligation of the state.

Further, Neb.Rev.Stat. §79-1560 (Reissue 1981) provides that the Retired Teachers Supplementary Benefits Fund "shall be separate and not commingled with any other state funds allocated to the school retirement system . . . ." Due to this statutory constraint, it is not permissible that the Retired Teachers Supplementary Benefits Fund be added to other state or retirement funds if this is the contractual arrangement.

For these reasons, it is our opinion that the Board may enter into such a contract but the funds must be separately held and the state would continue to be liable for any funding deficiencies should they occur.

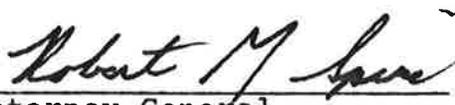
Sincerely,

ROBERT M. SPIRE  
Attorney General

  
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Assistant Attorney General

FFN:bmh

APPROVED BY:

  
Attorney General