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Honorable David G. Bronner
Secretary-Treasurer
Teachers' Retirement System of Alabama
201 South Union Street
Montgomery, Alabama 36130-2150

Investments – Teachers' Retirement
System – Rules and Regulations –
Fiduciaries

In considering investments recommended by the Secretary-Treasurer, the investment committee for the Board of Control of the Teachers' Retirement System ("Board" or "Board of Control") is statutorily mandated to determine whether to approve or disapprove investments based on whether the investments are in accordance with the investment policies set by the Board of Control, and not based on other factors beyond those investment policies. The proper performance of that function fulfills the investment committee's fiduciary duty to the members of the Teachers' Retirement System.

Dear Dr. Bronner:

This opinion of the Attorney General is issued in response to your request.

QUESTION

Under the statutory provisions and fiduciary responsibilities governing the investment committee for the Board of Control of the Teachers' Retirement System, how should the investment committee determine whether to approve or disapprove investment recommendations made by the Secretary-Treasurer?

FACTS AND ANALYSIS

The Board of Control for the Teachers' Retirement System of Alabama has inquired as to how the investment committee should determine whether to approve or disapprove investment recommendations made by the Secretary-Treasurer. Your request notes that, historically, members of the investment committee have given approvals by confirming that investments were in accordance with the investment policies of the Board, and the Teachers' Retirement System ("TRS" or "System") has always understood that the appropriate function of the investment committee is to approve or disapprove investments based on whether they are in accordance with the investment policies set by the Board.

Responsibility for the general administration and proper operation of the Teachers' Retirement System is vested in the Board of Control. ALA. CODE § 16-25-19(a) (Supp. 2013). The Board elects a secretary-treasurer to serve as the chief executive officer of TRS, and the Board invests funds through the Secretary-Treasurer. ALA. CODE § 16-25-19(i) (Supp. 2013); ALA. CODE § 16-25-20(a)(1) (2012).

The Board approves investment policies setting the classes of investments in which the Secretary-Treasurer is to invest, reinvest, sell, or transfer. *Id.* The Board has a fiduciary duty to approve classes of investments "with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with the matters would use in the conduct of an enterprise of a like character and with like aims." *Id.*

The Secretary-Treasurer has the authority and fiduciary duty to carry out the investment policies fixed by the Board and, pursuant to those policies, to make investments "as he or she shall deem to the best interests of the funds and as the investment committee . . . shall approve." ALA. CODE § 16-25-20(a)(2) (2012).

Members of the Board of Control also have a fiduciary responsibility, of course, to monitor the Secretary-Treasurer's performance and to ensure that he or she appropriately fulfills his or her own fiduciary responsibilities. *See, generally, In re RCN Litig.*, No. 04-5068, 2006 WL 753149, at *9 (D.N.J. Mar. 21, 2006) ("[t]he power to appoint fiduciaries is itself a fiduciary function. Implicit in this power is the duty to monitor. The duty to monitor carries with it . . . the duty to take action upon discovery that the appointed fiduciaries are not performing properly") (internal citations omitted).

The investment committee consists of three members of the Board, two of whom are elected by the Board and one of whom is the state Director of Finance who serves *ex officio* on the Board. ALA. CODE § 16-25-20(a)(3) (2012). The

investment committee acts as agent for the Board and considers all investment recommendations made by the Secretary-Treasurer, approving or disapproving those recommendations in accordance with policies set by the Board. *Id.* The investment committee may act through the affirmative vote of any two of its members. *Id.* Approval may be secured informally in advance, but written approval must be obtained after the investment has been made. *Id.*

When interpreting a statute, the plain language of the statute controls, except in rare cases where a literal application of the statute would produce results demonstrably at odds with the intention of the drafters. *U.S. v. Ron Pair Enters., Inc.*, 489 U.S. 235, 242 (1989); *Odum Lumber Co. v. S. States Iron Roofing Co.*, 36 Ala. App. 270, 272, 58 So. 2d 641, 643 (1951). Words used in a statute must be given their ordinary, plain meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says. *Ex parte T.B.*, 698 So. 2d 127, 130 (Ala. 1997). Moreover, all parts of a statute are entitled to equal weight in determining the appropriate interpretation [*City of Prichard v. Balzer*, 95 So. 3d 1, 3 (Ala. 2012)], and statutory language should be interpreted so as to assume no meaningless language or redundancies [*Surtees v. VFJ Ventures, Inc.*, 8 So. 3d 950, 975 (Ala. Civ. App. 2008)].

Turning to the statutory provision governing the investment committee's role, the language of that provision is plain. The statute provides that the investment committee "shall either approve or disapprove [investment recommendations made by the Secretary-Treasurer] in accordance with policies set by the board." ALA. CODE § 16-25-20(a)(3) (2012). The statutory language expressly circumscribes the investment committee's function to the effectuation of board policies. Given the clear language of the provision, the principle of statutory construction requiring no assumption of meaningless language supports the interpretation that the investment committee is directed to approve or disapprove investments based on whether the investments are in accordance with the investment policies set by the Board. *Surtees* at 975.

Furthermore, the broad language establishing the Secretary-Treasurer's role of selecting investments "as he or she shall deem to the best interests of the funds" contrasts sharply with the narrow language establishing the investment committee's role of simply approving or disapproving investments "in accordance with policies set by the board." ALA. CODE §§ 16-25-20(a)(2), 16-25-20(a)(3) (2012). Again, the statutory language favors the interpretation that the investment committee approves or disapproves investments based on whether the investments are in accordance with the policies of the Board.

With respect to fiduciary law, the assets of TRS are held in trust for its members, and the members of the Board are the trustees of that trust. *See Knutson v. Bronner*, 721 So. 2d 678, 681 (Ala. 1998) ("RSA is a public corporation with a fiduciary duty to hold and invest its assets in trust for its members"); *see also* ALA. CODE § 16-25-20(a)(1) (2012) ("[t]he Board of

Control shall be trustees of the several funds of the Teachers' Retirement System . . ."). The duties and obligations of trustees and other administrators of the trust are governed, in large part, by the terms of the trust. *See, e.g. First Alabama Bank of Huntsville, N.A. v. Spragins*, 475 So. 2d 512 (Ala. 1985). Furthermore, as trustees of a pension plan, the Board of Control has a fiduciary duty to administer the TRS trust in accordance with its terms. *See Walker v. Bd. of Trustees*, 69 Fed. Appx. 953, 959 (10th Cir. Colo. 2003); *see also, Sinai Hosp. of Baltimore, Inc. v. Nat'l Ben. Fund for Hospital and Health Care Employees*, 697 F.2d 562, 566 (4th Cir. 1982) (discussing the fiduciary duties imposed by the Employee Retirement Income Security Act of 1974 ("ERISA")).

Section 16-25-20 of the Code establishes the terms of the TRS trust and the duties of the relevant officials tasked with its oversight. ALA. CODE § 16-25-20 (2012). That assignment of duties and obligations constitutes a statutory delegation of authority over management of the System's funds and must be adhered to if the Board is to satisfy its fiduciary duties with respect to TRS.

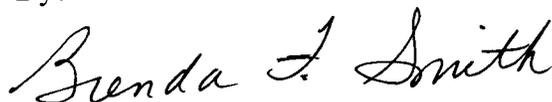
CONCLUSION

In considering investments recommended by the Secretary-Treasurer, the investment committee for the Board of Control of the Teachers' Retirement System is statutorily mandated to determine whether to approve or disapprove investments based on whether the investments are in accordance with the investment policies set by the Board of Control, and not based on other factors beyond those investment policies. The proper performance of that function fulfills the investment committee's fiduciary duty to the members of TRS.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Ben Baxley of my staff.

Sincerely,

LUTHER STRANGE
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division