

JANUARY 20, 1954.

The Honorable The Members of the
State Investment Council
State House
Trenton, New Jersey

FORMAL OPINION—1954. No. 2.

You have requested my opinion as to the investment responsibility of the Director of the Division of Investment and the State Investment Council over certain assets in the account of the Trustees for the Support of Public Schools, State of New Jersey.

I am informed by the Director of the Division of Investment that the assets in question consist of the following:

Stocks—880 shares capital stock (\$25.00 par value) Trenton Banking Company
1,355 shares capital stock (\$100.00 par value) United New Jersey Rail-
way and Canal Company, and
Mortgage—on real estate transferred to Mrs. Marion T. Newbold, \$5,000.00

Chapter 1, P. L. 1903 (R. S. 18:10—1 to 18:10—17), as amended, established a board known as "The Trustees for the Support of Public Schools", and vested in the trustees investment responsibility over the funds entrusted to this board, for the support of public schools "arising from appropriations made by law, or which may arise from gift, grant, bequest, or devise." (R. S. 18:10—1).

In connection with this fund, Paragraph 2 of Section IV of Article VIII of our new State Constitution, provides as follows:

"The fund for the support of free public schools, and all money, stock and other property, which may hereafter be appropriated for that purpose, or received into the treasury under the provision of any law heretofore passed to augment the said fund, shall be securely invested, and remain a perpetual fund; and the income thereof, except so much as it may be judged expedient to apply to an increase of the capital, shall be annually appropriated to the support of free public schools, for the equal benefit of all the people of the State; and it shall not be competent for the Legislature to borrow, appropriate or use the said fund or any part thereof for any other purpose, under any pretense whatever."

The general functions of the trustees of this fund were the subject matter of an opinion by our Court of Errors and Appeals in the case of *The American Dock and Improvement Company, et al. v. The Trustees for the Support of the Public Schools, et al.*, 35 N. J. Eq. 181. In this case Mr. Justice Depue, speaking for the Court said:

"The property in the fund set apart for the support of the public schools is by law vested exclusively in the trustees to hold on the trusts declared by the statute. They are made custodians of the fund, free, by constitutional provision, from even the control of the Legislature, except in the designation of the mode of application to the support of public schools."

See also *The Trustees for the Support of Public Schools v. The Ott and Brewer Company, et al.*, 135 N. J. Eq. 174.

OPINIONS

Section 170 of Chapter 1, P. L. 1903 (2nd Sp. Sess.), as amended, (R. S. 18:10-8) provides that moneys belonging to the school fund shall be invested by the trustees in bonds of the United States, of the State of New Jersey, or of any county or municipality of this State; and further provides that interest on such bonds shall become a part of the income of the school fund.

The State Investment Council and the office of the Director of the Division of Investment were established by Chapter 270, P. L. 1950 (R. S. 52:18A—70 to 52:18A—94 inc.). Section 9 of this act (R. S. 52:18A—87) vested in the Director of the Division of Investment "the functions, powers and duties vested by law in . . . the trustees for the support of public schools, of, or relating to, investment or reinvestment of moneys of, and purchase, sale or exchange of any investment or securities of or for, any funds or accounts under the control and management of such agencies . . .".

In view of the provisions of the statute last cited, it is my opinion that the provisions of Section 9 of Chapter 270, P. L. 1950 vest in the Director of the Division of Investment, investment responsibility over the specific assets referred to in this letter.

In connection with the \$5,000 mortgage that is part of the assets, I note the provisions of Chapter 18, P. L. 1953 (R. S. 18:10—2) that requires the Trustees to foreclose whenever the interest on bonds secured by mortgages shall remain unpaid for six months. It is my opinion that your responsibility is solely that touching upon the investment, and reinvestment, of moneys, and the purchase, sale or exchange of other assets of the Fund, and neither you, nor the Investment Council, have any responsibility for directly supervising the status of this mortgage, or enforcing any default.

Very truly yours,

GROVER C. RICCIAN, JR.
Attorney General

By: DANIEL DE BRIER
Deputy Attorney General

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FEBRUARY 2, 1954.

HON. CHARLES R. ERDMAN, JR.
*Commissioner, Department of Conservation
and Economic Development*
520 East State Street
Trenton, New Jersey

FORMAL OPINION 1954—No. 3.

DEAR COMMISSIONER:

You have requested a formal opinion as to the legal authority of your Department, with respect to lands below low water mark in the Delaware River within the so-called twelve-mile Delaware Circle, (1) to make riparian grants and (2) to issue licenses and fix a charge for the dredging of bottom material pursuant to R. S. 12:3-22.