

in the department, R. S. 12:7—16 must now be construed to include rules and regulations issued by the Department carrying out the functions previously performed by the Board of Commerce and Navigation.

Very truly yours,

GROVER C. RICHMAN, JR.,
Attorney General.

By : WILLIAM P. REISS
Assistant Attorney General

JUNE 22, 1954.

HON. ARCHIBALD S. ALEXANDER
State Treasurer of New Jersey
State House
Trenton 7, New Jersey

FORMAL OPINION 1954—No. 13

DEAR MR. ALEXANDER:

Your recent inquiry relating to the State Disability Benefits Fund is acknowledged.

This fund was established by the provisions of N. J. S. A. 43:21—46. It is composed of worker and employer contributions made pursuant to the provisions of our Unemployment Compensation Law, less refunds, plus interest and earnings from investments of the Fund, and assessments, fines and penalties collected under the act. The Fund is held in trust for the payment of disability benefits and for authorized refunds, the State Treasurer being designated as custodian of the Fund.

Your inquiry presents the following questions in connection with this Fund:

1. What is the proper procedure with respect to purchases and sales of investments for the account of the Fund?

The statute (*supra*) establishing this Fund, also created a Board of Trustees now consisting of the State Treasurer, the Secretary of State, the Commissioner of Labor and Industry, the Director of the Division of Employment Security of the Department of Labor and Industry and the State Comptroller, vested with power to invest and reinvest all monies in the Fund in excess of its cash requirements. This power to invest and re-invest was the sole function to be performed by this Board of Trustees.

In 1950, however, pursuant to the provisions of N. J. S. A. 52:18A—87, all functions, powers and duties vested by law in the Board of Trustees of the State Disability Fund of, or relating to, investment or reinvestment of monies of, and purchase, sale or exchange of, any investments or securities of or for, any funds or accounts relating to the State Disability Benefits Fund were transferred to the Director of the Division of Investment, Department of the Treasury, to be exercised by him, subject to a right vested in the State Treasurer to accept or reject investments or reinvestments proposed to be made from such Fund by the Director of the Division of Investment.

This transfer from the Trustees of the Disability Benefits Fund to the Director of the Division of Investment, of all investment powers and authority, was made even more manifest by a 1951 amendment to the Disability Benefits Fund Law (Chapter 355, P. L. 1951 First Sp. Sess.) which provided that the provisions of the

then existing section of the law relating to the investment of the Fund by the Board of Trustees shall in all respects be subject to the provisions of the law cited in the preceding paragraph above, transferring these investment powers and authority to the Director of the Division of Investment.

You are therefore advised that the investment of State Disability Benefits Fund, in excess of cash requirements, is the function of the Director of the Division of Investment, Department of the Treasury, subject, however, to the statutory procedure and limitation set forth in N. J. S. A. 52:18A—87, namely:

"that before any such investments, reinvestments, purchase, sale or exchange may be made by said Director for or on behalf of any such agency, he shall submit the details thereof to the State Treasurer, who shall, within forty-eight hours, exclusive of Sundays and public holidays, after such submission to him, file with the director his written acceptance or rejection of such proposed investment, reinvestment, purchase, sale or exchange; and the director shall have authority to make such investment, reinvestment, purchase, sale or exchange, for or on behalf of such agency, unless there shall have been filed with him a written rejection thereof by the State Treasurer as herein provided."

2. *Who has the responsibility of determining the anticipated cash requirements, present and future, of the Fund, and who has the responsibility for advising those responsible for investments of the amounts available for investment, and of making these amounts available?*

It is our opinion that the responsibility for the determination and functions itemized in your second question above, is that of the Director of the Division of Employment Security, Department of Labor and Industry.

The latter is the official responsible for the administration of the act. To him are known, or are available through his immediate subordinates, all data relating to collections, disbursements, probable and expected impacts and demands upon the Fund, and all departmental experience and statistics touching upon the operation of the Fund and its requirements. The determination as to what constitutes cash requirements, present and foreseeable, and what constitutes cash in excess thereof, is his to make, as is likewise, the responsibility of advising all others officially concerned, of his determinations.

3. *Is the Board of Trustees of the Fund still in existence, and if so, what are its duties?*

Inasmuch as the statute establishing this Board of Trustees is still on our statute books, the Board is to be regarded officially as still in existence. As has been pointed out heretofore, however, the real purpose of the Board of Trustees, as we view the matter, was to invest and reinvest the Fund. On the transfer of these investment functions to the Director of the Division of Investment, discussed hereinbefore, the Board, in our opinion, was left without further functions, duties or responsibilities. There would appear, therefore, no need on your part to convene the Board or to again organize it.

Very truly yours,

GROVER C. RICHMAN, JR.,
Attorney General.

By : DANIEL DE BRIER
Deputy Attorney General.