

APRIL 25, 1961

HONORABLE JOHN A. KERVICK
State Treasurer
State House
Trenton, New Jersey

MEMORANDUM OPINION—P-6

DEAR MR. KERVICK :

You have asked for an opinion concerning L. 1960, c. 44. This Act authorizes the Director of the Division of Investment, with approval of the Board of Trustees of the Public Employees' Retirement System, to acquire real property in New Jersey on behalf of the System, upon which buildings are to be erected which are thereafter to be leased to the State of New Jersey for its use in accordance with the Act. The Division of Purchase and Property has been given the responsibility of planning and constructing the facility. The new facility will be leased to the State at an annual rental which will amortize the investment over a 20-year period with a 4% return to the System on its total investment.

Your particular inquiry concerns the interpretation to be given section 2 of the Act which provides :

"The total investment authorized pursuant to this act shall not exceed 3% of the book value of the total investments of such fund *at the time of the making of the investment.*" (Emphasis supplied.)

We are advised that the Public Employees' Retirement System and the Division of Purchase and Property have entered into an agreement authorizing the Division to acquire necessary lands and to construct a central office building complex to house the State Departments of Health and Agriculture. Under the terms of this agreement, funds advanced by the System will bear interest at the rate of 4% per annum from the date of any such advance. Further, this asset of the System will be reflected on the books of the Division of Investment at the time the State enters into occupancy under the terms of a leasing agreement to be executed following completion of construction.

In our opinion, the 3% of book value limitation should be interpreted so that the aggregate of all payments advanced by the System shall not exceed the statutory percentage at the time of making of any such payment. This interpretation is in harmony with the provisions in the Act which look toward making enlargements and further capital improvements after "the initial investment." L. 1960, c. 44, sec. 6. Thus, the 3% limitation "at the time of the making of the investment" should be interpreted as ambulatory in nature, looking toward payments at a future time. The limitation applies to the assets of the System at the time of each payment. The aggregate of all payments shall not exceed 3% of the total assets on the date of the last payment made by the System.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: THEODORE I. BOTTER
Assistant Attorney General