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JUSTICE BUILDING, LITTLE ROCK 72201

(501) 371-2007

March 12, 1985

OPINION NO. 85-77

The Honorable Doug Brandon
State Senator
State Capitol
Little Rock, Arkansas 72201

HAND DELIVERED

Dear Senator Brandon:

You have requested an official opinion regarding whether the language found on page 3, line 14 of House Bill 487 which states "shall seek to invest not less than five percent (5%) nor more than ten percent (10%) of their portfolio in Arkansas relate investments" is mandatory or permissive language.

Certain rules of statutory construction are applicable here. For instance, in interpreting statutes, a court must give words their ordinary and usually accepted meaning in common language. Hicks v. Arkansas State Medical Board, 260 Ark. 31, 34, 537 S.W.2d 794 (1976). Additionally, the word "shall" is defined as a future auxiliary, but is frequently used in statutes to mean "must". Fort Smith Gas Company v. Kincannon, 202 Ark. 216, 220, 150 S.W.2d 968 (1941). In many cases, the Arkansas Supreme Court has held that the term "may" used in a statute may actually be mandatory language in light of the purposes to be effectuated by the Act in question. Washington County v. Davis, 162 Ark. 335, 258 S.W. 324 (1924); Arkansas State Racing Commission v. Southland Racing Corporation, 226 Ark. 995, 295 S.W.2d 617 (1957) and Lovett v. State, 267 Ark. 912, 591 S.W.2d 683 (1979). However, our research reveals only one case in which the Supreme Court has held that the term "shall" can mean "may" thus, being permissive. In Arkansas State Highway Commission v. Mabry, 229 Ark. 261, 315 S.W.2d 900 (1958), the Supreme Court construed a biennial appropriation act for the Highway Department which provided that \$25,000.00 "shall" be paid for the purchase of the ferry on the Arkansas River which connects Highway 60 between Faulkner and Perry counties. From a reading of the entire act, the Court stated that it was clearly the intent of the Legislature that the amounts to be spent on the project were discretionary. Id. at 267. In order then to carry out the legislative intent in this specific case, the Court construed the term "shall" as permissive in order to effectuate a natural and common sense meaning of the Act in question. Id. at 269.

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House Bill 487, Section 4, does not require any strained interpretation in order to effectuate the intention of the legislature as clearly outlined. That Section provides:

It is the intention of the General Assembly that as assets become available for investment, the systems [certain Arkansas retirement systems] shall seek to invest not less than five percent (5%) nor more than ten percent (10%) of their portfolio in Arkansas related investments. (Emphasis added).

Therefore, in line with Arkansas precedent, it is my opinion that the term "shall" found on page 3, line 14 of House Bill 487 is mandatory.

The foregoing opinion, which I hereby approve, was prepared by Deputy Chief of Staff R.B. Friedlander.

Sincerely,


STEVE CLARK
Attorney General

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