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OPINION NO. 86-5

January 8, 1986

Mr. Bud Canada
State Senator
106 Meyer Building
Hot Springs, AR 71901

RE: Act 6 of 1985

Dear Senator Canada:

This is in response to your opinion request wherein you posed the following question regarding Act 6 of 1985 (enclosed):

Does Act 6 of 1985 permit moneys in Firemen's and Policemen's Pension and Relief Funds to be invested in stocks and bonds?

This Act does not authorize investment of such funds' moneys in "stocks" as the term is generally used in a business or financial sense. It does authorize investment of certain such funds in shares of "no-load mutual funds". Investment in certain government interest-bearing bonds is also permitted under this Act, as under prior law.

STOCKS

Act 6 of 1985 does not authorize the investment of moneys from these funds in "stocks" in general, but does authorize, under certain circumstances, investment in no-load mutual funds having the following characteristics:

. . . such mutual funds shall be an open-end diversified investment company registered under the Federal Investment Company Act of 1940, as amended; the management company of the investment company shall have assets under management of more than one-hundred million dollars; and there is no sales charge for purchasing shares of such fund, and no redemption for selling such shares.

(Ark. Stat. Ann. §12-3806(6.20)(g) as amended by Act 6 of 1985).

A "stock", as traditionally used as a business or financial term, is a proprietorship element in a corporation (Webster's Third New World International Dictionary 1966). If a share of a "no-load" mutual fund can be considered a stock, it is the only type stock in which Act 6 permits investment.

Act 6 of 1985, [amending Ark. Stat. Ann. §12-3806 (6.20); §19-1805; and §19-2223] allows the Board of Trustees, of those funds having assets in excess of \$500,000.00, to employ professional investment counsel to invest its assets subject to those conditions provided in subsection 6.20 (i.e., no-load mutual funds) and does not limit investment to interest-bearing bonds.

BONDS

Act 6 retains the identical language which authorizes and limits bond investment, in each of two of the statutes it amends (Ark. Stat. Ann. §19-1805 for Policemen's Pension and Relief Funds, and §19-2223 for Firemen's Pension and Relief Funds) as follows:

. . . in interest-bearing bonds of the United States, of the State of Arkansas, or of the city where such board is located, . . .

Consequently, investment in the above described bonds is still permitted.

CONCLUSION

The only significant change made by Act 6 of 1985 is to provide Policemen's and Firemen's Pension and Relief Funds, having assets in excess of \$500,000.00, the additional options of employing professional investment counsel, and investing in certain no-load mutual funds.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General David S. Mitchell.

Sincerely,

Steve Clark

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by RB Friedlander

SC/DSM/ljm