

INSURANCE:
PENSIONS:
RETIREMENT:
CITIES, TOWNS & VILLAGES:

The Board of Trustees of the Firemen's and Police Pension Fund of the City of Jennings, Missouri, organized pursuant to Section 86.583, RSMo 1969, (1) cannot apply the

funds of such system toward the purchase of accidental death or permanent total disability insurance policies, but (2) can enter into a contract with an insurance company whereby the insurance company would hold the funds of the system in a "separate account" and would invest same as authorized by Section 376.309 (4), RSMo 1969.

OPINION NO. 7

June 19, 1973

Honorable James P. Mulvaney
State Representative, District 61
317 State Capitol Building
Jefferson City, Missouri 65101



Dear Representative Mulvaney:

This official opinion is issued in response to your inquiries addressed to the Attorney General's Office which follow:

"Does the Board of Trustees of the Firemen and Police Pension Fund of the City of Jennings, Missouri have authority to (1) purchase insurance against accidental death or permanent total disability on its covered employees, and (2) enter into a pension contract with a life insurance company whereby the funds of the pension plan would be invested in the insurance company's fixed income account which consists principally of investments in corporate bonds and mortgages?"

Section 86.583, RSMo 1969, permits certain municipalities to establish police and firemen's pension systems. We quote:

"Any municipality in any county of the first class, and any other municipality in this state which now contains or may hereafter contain not more than one hundred thousand inhabitants nor less than three thousand inhabitants as determined by the last preceding federal census is hereby authorized to

Honorable James P. Mulvaney

provide for the pensioning of the salaried members of its organized police force or fire department and the widows and minor children of deceased members; . . ."

The remainder of Section 86.583 provides how such pension systems may be established. Your inquiry indicates that the City of Jennings has complied with this section to create its Police and Firemen's Pension Fund.

Section 86.590, RSMo 1969, authorizes the board of trustees of such a pension fund to invest the moneys thereof as follows:

"The board of trustees of police and firemen's pension systems, established under the provisions of section 86.583, may invest and reinvest the moneys of the system, and may hold, purchase, sell, assign, transfer or dispose of any of the securities and investments in which such moneys shall have been invested, as well as the proceeds of such investments and such moneys; except that such investment and reinvestments shall be subject to all the terms, conditions, limitations, and restrictions imposed by law upon life and casualty companies in the state of Missouri in making and disposing of their investments, except that the percentage limitations of subsection 2 of section 376.305, RSMo, shall not apply; and except that the system shall not increase its common stock investments by more than four percent of its assets in any one fiscal year after its first fiscal year."

Disposing of your second inquiry first, we shall answer the question whether the board of trustees of a firemen's and police pension fund may "enter into a pension contract with a life insurance company whereby the funds of the pension plan would be invested in the insurance company's fixed income account which consists principally of investments in corporate bonds and mortgages?"

Mr. Lloyd E. Eaker, Jennings city attorney and attorney for the Board of Trustees of the Police and Firemen's Retirement Fund of Jennings, has informed us that this particular question contemplates that the Board of Trustees would enter into an investment contract with an insurance company whereby the insurance company would hold and invest the funds made available under the contract pursuant to the "separate account" provisions of Section 376.309, RSMo 1969. That section defines a "separate account" of an insurance company as one

Honorable James P. Mulvaney

". . . into which any amounts paid to or held by such company under applicable contracts are credited and the assets of which, subject to the provisions of this section, may be invested in such investments as shall be authorized by a resolution adopted by such company's board of directors. . . ."

All income, gains, or losses realized on such a separate account are credited to the account only without regard to other assets of the company. Likewise, such accounts are not chargeable with the liabilities arising out of other business the company conducts. Subsection 2 of that statute provides:

"Any domestic life insurance company may, after adoption of a resolution by its board of directors, establish one or more separate accounts, and may allocate to such account or accounts any amounts paid to or held by it which are to be applied under the terms of an individual or group contract to provide benefits payable in fixed or in variable dollar amounts or in both."

The language of the statute indicates that the primary purpose of "separate accounts" is to segregate from the other business of the insurance company investment contracts such as the pension investment contract which is the subject of your inquiry. Please note that subsection 3 of Section 376.309 would authorize an insurance company to give the members of a pension fund, such as the one in question, some control over the separate account which includes said fund. Subsection 4 provides how amounts included in such accounts can be invested. That subsection provides that:

"The amounts allocated to each such account and accumulations thereon may be invested and reinvested in any kind or type of investment authorized for life insurance companies by the statutes of this state, but the investment shall not be included or taken into account in applying the limitations established in sections 375.330, 376.300, 376.301, 376.303, 376.305, and 376.307 to the general investment account of any company; provided, that to the extent that the company's reserve liability with regard to (1) benefits guaranteed as to principal amount and duration, and (2) funds guaranteed as to principal amount or stated rate

Honorable James P. Mulvaney

of interest, is maintained in any separate account a portion of the assets of such separate account at least equal to such reserve liability shall be, except as the superintendent of insurance might otherwise approve, invested in accordance with the laws of this state governing the general investment account of any company. As used herein, the expression 'general investment account' shall mean all of the funds, assets and investments of the company which are not allocated in a separate account. The provisions of section 376.170 relating to deposits for registered policies shall not be applicable to funds and investments allocated to separate accounts. No investment in the separate account or in the general investment account of a life insurance company shall be transferred by sale, exchange, substitution or otherwise from one account to another."

An investment in a "separate account", therefore, would comply with the generic requirement of Section 86.590, that the investment and reinvestment of pension funds be consistent with the legal requirements imposed upon the investments of life and casualty companies.

Any contract executed between the board of directors of the pension fund in question and an insurance company should include the 4% common stock increase limitation set forth in Section 86.590. This inclusion would be consistent with the establishment of a "fixed income account" which we assume refers to investments in debt securities paying a fixed rate of return which would not include investments in common stock. The contract should also include a provision that the trustees have the power to terminate the contract and resume custody of the funds or securities involved upon reasonable notice given to the insurance company. This provision would enable the trustees to retain the power to "invest and reinvest" the funds of the system as authorized by Section 86.590.

We conclude that the Board of Trustees of the Firemen's and Police Pension Fund of the City of Jennings, Missouri, can enter into a contract with an insurance company whereby the funds of the pension system would be held in a "separate account" of the insurance company and would be invested by the insurance company subject to the limitations and restrictions imposed upon by law upon the investments of life and casualty companies. The use of the "separate account" device is a reasonable and permissible exercise of the trustees' discretion and authority with regard to investments conferred by Section 86.590, RSMo 1969.

Honorable James P. Mulvaney

Your first inquiry asks whether the board of trustees of a firemen's and police pension fund may "purchase insurance against accidental death or permanent total disability on its covered employees." The General Assembly of the state of Missouri, by means of Section 86.590, RSMo 1969, has expressly confined the authority of the board of trustees of the police and firemen's pension system, to the investment and reinvestment of the moneys of the system. The legislature has not authorized the purchase of insurance against accidental death or permanent total disability. We conclude that because of the specific requirement in Section 86.590, that the funds of a police and firemen's pension system be invested and reinvested, there has been granted no authority by law for the trustees of such a system to purchase insurance policies against accidental death or permanent total disability on its covered employees.

CONCLUSION

It is the opinion of this office that the Board of Trustees of the Firemen's and Police Pension Fund of the City of Jennings, Missouri, organized pursuant to Section 86.583, RSMo 1969, (1) cannot apply the funds of such system toward the purchase of accidental death or permanent total disability insurance policies, but (2) can enter into a contract with an insurance company whereby the insurance company would hold the funds of the system in a "separate account" and would invest same as authorized by Section 376.309(4), RSMo 1969.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Michael L. Boicourt.

Very truly yours,



JOHN C. DANFORTH
Attorney General