



**OFFICE OF THE ATTORNEY GENERAL**  
STATE OF ILLINOIS

July 15, 1998

**Jim Ryan**

ATTORNEY GENERAL

FILE NO. 98-015

PENSIONS:

Investment Limits in  
Public Act 90-507

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The Honorable Denny Jacobs  
Senate Minority Spokesman  
State House, Room M103C  
Springfield, Illinois 62706

Dear Senator Jacobs:

I have your letter wherein you inquire whether the 35% of assets limitations on investments by certain pension funds contained in sections 1-113.3 and 1-113.4 of the Pension Code (added by Public Act 90-507, effective January 1, 1998, to be codified at 40 ILCS 5/1-113.3 (1-113.4) are inclusive of, or in addition to, the 10% of assets investment limitation contained in section 1-113.2 of the Code. (Added by Public Act 90-507, effective January 1, 1998, to be codified at 40 ILCS 5/1-113.2.) For the reasons hereinafter stated, it is my opinion that the 35% of assets investment limitations in sections 113.3 and 113.4 of

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the Pension Code are in addition to, and not inclusive of, the 10% of assets investment limitation in section 113.2 of the Code.

Public Act 90-507 added five new sections to the Pension Code (40 ILCS 5/1-101 et seq. (West 1996)) pertaining to investments by the downstate police and firefighter pension funds established pursuant to articles 3 and 4 of the Code (40 ILCS 5/3-101 et seq., 4-101 et seq. (West 1996)). New section 1-113.1 (to be codified at 40 ILCS 5/1-113.1) grants authority to pension fund boards to invest their assets in accordance with the provisions of the subsequent three sections, and prescribes the standard of care to be followed. New section 1-113.2 enumerates various types of investments in which any article 3 or 4 fund may invest its assets, restating essentially the authority previously granted in sections 3-135 and 4-128 of the Pension Code (40 ILCS 5/3-135, 4-128 (West 1996)). The last paragraph of new section 1-113.2 provides that a pension fund may invest in:

" \* \* \*

(13) Any combination of the following, not to exceed 10% of the pension fund's net assets:

(i) separate accounts that are managed by life insurance companies authorized to transact business in Illinois and are comprised of diversified portfolios consisting of common or preferred stocks, bonds, or money market instruments; and

(ii) separate accounts that are managed by insurance companies authorized to transact business in Illinois, and are comprised of real estate or loans upon real estate secured by first or second mortgages." (Emphasis added.)

New section 1-113.3 provides:

"List of additional permitted investments for pension funds with net assets of \$2,500,000 or more.

(a) In addition to the items in Section 3-113.2, a pension fund established under Article 3 or 4 that has net assets of at least \$2,500,000 may invest a portion of its net assets in the following items:

(1) Separate accounts that are managed by life insurance companies authorized to transact business in Illinois and are comprised of diversified portfolios consisting of common or preferred stocks, bonds, or money market instruments.

(2) Mutual funds that meet the following requirements:

(i) the mutual fund is managed by an investment company as defined and registered under the federal Investment Company Act of 1940 and registered under the Illinois Securities Law of 1953;

(ii) the mutual fund has been in operation for at least 5 years;

(iii) the mutual fund has total net assets of \$250 million or more; and

(iv) the mutual fund is comprised of diversified portfolios of

common or preferred stocks, bonds,  
or money market instruments.

(b) A pension fund's total investment in the items authorized under this Section shall not exceed 35% of the market value of the pension fund's net present assets stated in its most recent annual report on file with the Illinois Department of Insurance." (Emphasis added.)

(The reference to "[s]ection 3-113.2" in subsection 1-113.3(a) is an obvious drafting error, since no such section has been enacted. That reference was clearly intended to be to new section 1-113.2, and I will consider it accordingly.)

New section 1-113.4 provides, in pertinent part:

"List of additional permitted investments for pension funds with net assets of \$5,000,000 or more.

(a) In addition to the items in Sections 1-113.2 and 1-113.3, a pension fund established under Article 3 or 4 that has net assets of at least \$5,000,000 and has appointed an investment adviser under Section 1-113.5 may, through that investment adviser, invest a portion of its assets in common and preferred stocks authorized for investments of trust funds under the laws of the State of Illinois. The stocks must meet all of the following requirements:

(1) The common stocks are listed on a national securities exchange or board of trade (as defined in the federal Securities Exchange Act of 1934 and set forth in Section 3.G of the Illinois Securities Law of 1953) or quoted in the National Association of Securities Dealers Automated Quotation System National Market System (NASDAQNMS).

(2) The securities are of a corporation created or existing under the laws of the United States or any state, district, or territory thereof and the corporation has been in existence for at least 5 years.

(3) The corporation has not been in arrears on payment of dividends on its preferred stock during the preceding 5 years.

(4) The market value of stock in any one corporation does not exceed 5% of the cash and invested assets of the pension fund, and the investments in the stock of any one corporation do not exceed 5% of the total outstanding stock of that corporation.

(5) The straight preferred stocks or convertible preferred stocks are issued or guaranteed by a corporation whose common stock qualifies for investment by the board.

(6) The issuer of the stocks has been subject to the requirements of Section 12 of the federal Securities Exchange Act of 1934 and has been current with the filing requirements of Sections 13 and 14 of that Act during the preceding 3 years.

(b) A pension fund's total investment in the items authorized under this Section and Section 1-113.3 shall not exceed 35% of the market value of the pension fund's net present assets stated in its most recent annual report on file with the Illinois Department of Insurance.

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(Emphasis added.)

The final new section added by Public Act 90-507, section 1-113.5 (to be codified at 40 ILCS 5/1-113.5), sets forth

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criteria for the appointment of investment advisors by article 3 and article 4 pension fund trustees.

The fundamental purpose of statutory construction is to ascertain the intention of the General Assembly and to give it effect. The statutory language itself is the best indication of the intent of the drafters, and where intent can be ascertained from the language of the statute, it will be given effect without resorting to other aids for construction. People v. Robinson (1982), 89 Ill. 2d 469, 475-76.

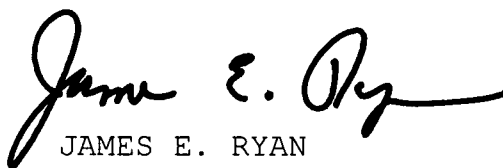
Sections 1-113.3 and 1-113.4 expressly provide that pension funds which meet the threshold requirements may, "in addition to" the investments enumerated in section 1-113.2, invest a portion of their net assets in the types of investments enumerated therein. Although the portion of assets which may be invested in the items authorized under those sections is limited to 35% of the net assets of the funds, the 35% limit is clearly applicable only to those items which are enumerated in sections 1-113.3 and 1-113.4 inclusive. Any intent to include items enumerated in subsection 1-113.2(13) within the 35% limit is clearly lacking.

Based upon the plain language of these new sections, it is my opinion that the 35% of assets limitations on investments contained in sections 1-113.3 and 1-113.4 of the Pension Code are

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in addition to, and not inclusive of, the 10% of assets limitation on investments in the items listed in subsection 1-113.2(13) of the Pension Code. In other words, an article 3 or 4 pension fund meeting the threshold requirements may invest up to 35% of its net assets in the types of investments enumerated in sections 1-113.3 and 1-113.4 of the Pension Code, as may be applicable, and may invest up to an additional 10% in the investments enumerated in section 1-113.2 of the Code.

Sincerely,

A handwritten signature in cursive script that reads "James E. Ryan". The signature is written in black ink and is positioned above the typed name and title.

JAMES E. RYAN  
ATTORNEY GENERAL