

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. *87-35* *1897*

April 21, 1987

SUBJECT: Taxation and Revenue - Investment Of Surplus
Funds By County Treasurer In Mutual Funds.

SYLLABUS: A County Treasurer is not authorized by §
6-5-10 or § 12-45-220 to invest surplus funds
in mutual funds. Such is the case whether or
not the mutual fund has invested in
government securities.

TO: Honorable Clyburn L. Nichols
Treasurer of York County

FROM: Joe L. Allen, Jr. *JA*
Chief Deputy Attorney General

QUESTION: Can a County Treasurer invest surplus funds in
mutual funds including those principally holding securities
of the Federal Government?

APPLICABLE LAW: Sections 6-5-10 and 12-45-220, South
Carolina Code of Laws, 1976.

DISCUSSION:

Section 6-5-10 authorizes investments in (1) obligations of
the United States and agencies thereof, (2) general
obligations of the State and its political subdivisions, (3)
savings and loan associations to the extent that the same
are insured by an agency of the Federal Government and (4)
certificates of deposit when secured by securities described
in (1) and (2).

Section 12-45-220, however, requires that the obligation of
the United States or its agencies be fully guaranteed by the
United States. Additionally, investments may be in bonds or
certificates of indebtedness of the State and its political
entities and in savings and loans to the amount insured by
an agency of the United States.

A mutual fund appears to be none of these. It is an open
end investment company. Investment Company Institute v.
Camp, 401 U.S. 617, 91 S.Ct. 1091. The Court there stated:

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"One would suppose that the business of a mutual fund consists of buying stock 'for its own account' and of 'issuing' and 'selling' 'stock' or 'other securities' evidencing an undivided and redeemable interest in the assets of the fund. . . . "

It is understood that a mutual fund share is given when funds are invested. The share merely reflects the shareholder's undivided interest in the fund's ownership. The "essential nature" of a mutual fund share certificate is that of a piece of paper which represents ownership and which is not the essence of the owned property itself. Baum v. Investors Diversified Services, Inc., 286 F.Supp. 914.

The investment of public funds in mutual funds would not therefore be an investment in any of the securities authorized by the two statutes. An investment in mutual funds by the Treasurer is an investment under contract with another although that person or business may invest the funds in government securities. The investors are like other businesses, subject to failure, mismanagement, etc. The liability for repayment to the Treasurer is that of the investor or the mutual fund and not that of the government entities.

CONCLUSION:

A County Treasurer is not authorized by § 6-5-10 or § 12-45-220 to invest surplus funds in mutual funds. Such is the case whether or not the mutual fund has invested in government securities.

JLAJr:wcg