



Attorney General

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Robert R. Corbin

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ARIZONA ATTORNEY GENERAL

February 21, 1984

Mr. Max Sullivan
Director
State Retirement System
Post Office Box 33910
Phoenix, AZ 85067

Re: 184-027 (R83-079)

Dear Mr. Sullivan:

You have asked, on behalf of the Investment Advisory Council and investment management of the Arizona State Retirement System ("System"), whether A.R.S. § 38-757 authorizes investment of assets of the System in bonds, debentures, notes and other evidences of indebtedness issued by foreign corporations in foreign countries when such items are guaranteed by United States corporations.

We understand that several United States corporations guarantee bonds known as Eurodollar bonds that are issued in Europe by European corporations that are affiliates of the guarantor United States corporations. We understand further that the bonds are not registered under the United States Securities Act of 1933 and that the underwriters and selling groups of such bonds may not offer or sell the bonds in the United States to nationals or residents of the United States as part of the initial offering. However, we understand that United States investors may purchase such bonds in the secondary market at the end of the initial underwriting period. The Retirement System, we understand, would purchase these bonds in the secondary market.

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If Eurodollar bonds are an authorized investment for the System, they are such only if they satisfy the requirements of A.R.S. § 38-757.B.5 which authorizes investment of State Retirement System money in the following:

5. (a) Bonds, debentures, notes and other evidences of indebtedness issued, assumed or guaranteed by any solvent institution created or existing under the laws of the United States or of any state, district or territory of the United States, which are not in default as to principal or interest and which are secured by collateral worth at least fifty per cent more than the par value of the entire issue of such obligations, but only if not more than one-third of the total value of such required collateral shall consist of common stock.

(b) Fixed interest bearing obligations which are not in default as to principal or interest, other than those described in subdivision (a) of this paragraph, of such institutions if the net earnings of the issuing, assuming or guaranteeing institution available for its fixed charges for a period of five fiscal years next preceding the date of investment have averaged per year not less than one and one-half times its average annual fixed charges applicable to such period and if during either of the last two years of such period such net earnings have been not less than one and one-half times its fixed charges for such year.

The System may invest in either secured or unsecured Eurodollar bonds if they are not in default and are guaranteed by a solvent entity that derives its authority to do business from United States law or the laws of a state or district or territory of the United States. A.R.S. § 38-757.B.5. Inasmuch as the bonds at issue are guaranteed by United States corporations, they satisfy the requirements of A.R.S. § 38-757.B.5 to that extent notwithstanding that the issuers are created under foreign law and that their bonds, absent the guarantee, would not satisfy A.R.S. § 38-757.B.5.

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Under A.R.S. § 38-757.B.5(a), which authorizes investment in secured bonds, secured Eurodollar bonds, in addition to being guaranteed by solvent United States corporations, must be secured by collateral worth at least 50% more than the par value of the entire issue of which the bonds are a part. However, the collateral may not consist of common stock equalling more than one-third of the total balance of the required collateral.

A.R.S. § 38-757.B.5(b), authorizes investment in unsecured bonds. Pursuant to that provision, the entity guaranteeing unsecured Eurodollar bonds must have had, immediately preceding the investment, a five-fiscal-year history of net earnings available for payment of fixed charges averaging not less than one and one-half times its average annual fixed charges for the five-year period and earnings during either of the last two years of the five-year period of not less than one and one-half times fixed charges for that year.

You also have advised us that Eurodollar bond transactions are settled through one of two clearing organizations in Europe and that, for reasons of economy and efficiency, you prefer that the bonds remain in Europe. You have asked us, therefore, whether you may allow Eurodollar bonds owned by the System to remain in Europe.

A.R.S. § 38-743.01.D.2 directs you to "[a]ppoint a custodian for the safekeeping of all investments owned by the system. . . ." We are aware that you have appointed such a custodian for the System's investments. No statute of which we are aware specifies or limits the physical location of the custodian or the physical location of the investments in its custody. A.R.S. § 38-743.01 indicates that your concern must be for the safekeeping of the System's investments. If you arrange with the custodian for the safekeeping of the System's Eurodollar bonds in Europe, in our view, you will have satisfied the requirements of Arizona law.

Sincerely,



BOB CORBIN
Attorney General