

## CHAPTER 320.

## TRUST FUND INVESTMENTS.

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**320.01 Investment; eligible securities.** Executors, administrators, guardians and trustees may invest the funds of their trusts in accordance with the provisions pertaining to investments contained in the instrument under which they are acting, or in the absence of any such provision, then in the securities of the following classes:

(1) In bonds, notes or other evidences of indebtedness of the United States, or which are unconditionally guaranteed as to the payment of interest and principal by the United States. The earned increment on United States savings bonds or on similar obligations of the United States held in trust (being the difference between the cost and the redemption value of said bonds) shall be considered income and not trust principal.

(2) In bonds, notes, or other evidences of indebtedness which are a direct obligation of any state of the United States; provided that such state shall not have defaulted for a period longer than thirty days in the payment of any of its funded indebtedness during the ten calendar years immediately preceding such investment.

(3) In bonds, notes, or other evidences of indebtedness which are a direct obligation of any city, town, village, county or school district in the state of Wisconsin; in bonds issued pursuant to section 66.20 relating to metropolitan sewerage districts and in bonds issued pursuant to section 59.96 relating to metropolitan and city sewerage commissions in counties having a city of the first class, and in bonds, notes or other evidences of indebtedness which are a direct obligation of any city in any other state of the United States and which city had a population, as shown by the last federal census next preceding said investment, of not less than thirty thousand inhabitants, and in bonds, notes, or other evidences of indebtedness which are a direct obligation of any county in any other state of the United States and which county had a population as shown by the last federal census next preceding said investment, of not less than thirty-five thousand; provided that such city, town, village, county, school district or sewerage district shall not have defaulted for a period longer than thirty days in the payment of any of its funded indebtedness during the ten calendar years immediately preceding such investment, and provided further that the existing indebtedness of any such city or county of a state other than Wisconsin, be restricted under the laws of the state wherein it may be situated to a sum in the aggregate not exceeding five per centum of the value of the taxable property therein, to be ascertained by the last assessment for state or county taxes previous to the incurring of such indebtedness.

(4) In certificates of deposit issued by any bank organized under the laws of this state which is a member of the temporary federal deposit insurance fund or which is an insured bank as defined in the federal banking act of 1933 or any act amendatory thereof or supplementary thereto, in certificates of deposit issued by any national bank, or by depositing in a savings account in any such bank, not exceeding the maximum amount fully insured in said fund or by said corporation.

(5) In the lawfully authorized evidences of indebtedness of a municipally owned public utility of this state, created pursuant to section 3 of article XI of the constitution, if the net book value of the property pledged as security for such bonds has been established or approved by the public service commission, and the total issue of such bonds does not exceed fifty per cent of the net book value of the property pledged as security therefor.

(6) In the stock of any building and loan association organized under the laws of this state, and of any federal savings and loan association organized under the laws of the United States and in bonds or evidence of indebtedness of any building and loan finance corporation organized under the laws of this state.

(7) In the bonds of the federal land banks authorized by the federal farm loan act approved July 17, 1916, as amended from time to time, and in the bonds of the home owners' loan corporation authorized by the federal home owners' loan act of 1933, approved June 13, 1933, as amended from time to time.

(8) In bonds, notes, or other evidences of indebtedness of the Dominion of Canada, or which are unconditionally guaranteed as to the payment of interest and principal by the Dominion of Canada.

(9) In mortgage bonds issued, assumed or guaranteed as to principal and interest by a railway or railroad corporation incorporated under the laws of the United States, or any of the states thereof, owning and operating not less than five hundred miles of standard gauge railroad track exclusive of sidings, in the United States, the gross earnings of which, from the operation of said corporation, during the five fiscal years preceding the date of any such investment, including the gross earnings of all lines leased and operated and controlled and operated by it, shall not have been less than ten million dollars, in each said year, provided that:

(a) Such corporation shall not have failed within five calendar years next preceding the date of any such investment to pay the matured principal and interest of any of its mortgage and other fixed interest-bearing indebtedness;

(b) The amount of income of such corporation (after operating expenses, depreciation, maintenance and taxes) available for its fixed charges, as hereinafter defined, for a period of five fiscal years immediately preceding the date of the investment shall have averaged not less than one and one-half times the total of such fixed charges; and

(c) Such corporation shall not have failed in any one of said five fiscal years immediately preceding the investment to earn such fixed charges.

(d) Fixed charges as used in this subsection (9) shall be defined as follows: Rent for leased roads, miscellaneous rents, interest on funded debt, interest on unfunded debt, and amortization of discount on funded debt.

(10) In mortgage bonds of any public utility corporation incorporated under the laws of the United States, or any of the states thereof, owning or operating any plant, property or equipment for the conveyance of telephone messages or for the production, transmission, delivery or furnishing of heat, light, gas, water or power, either directly or indirectly, to or for the public, provided that:

(a) Gross revenues of such corporation for each of the five fiscal years immediately preceding the date of the investment shall be not less than one million dollars.

(b) Net earnings available for fixed charges for the five fiscal years immediately preceding the investment shall have averaged not less than 2 times, and such net earnings of such corporation for the fiscal year immediately preceding such investment shall be not less than  $1\frac{1}{2}$  times the fixed charges of such corporation for the fiscal year immediately preceding the investment.

(c) The corporation shall not within five calendar years prior to such investment have failed to pay the matured principal and interest on any of its mortgages and other fixed interest-bearing indebtedness.

(d) The issuance of such bonds is subject to the supervision of a public authority of the state of Wisconsin, or of any state of the United States, or of the United States government.

(e) The mortgage indebtedness of such corporation shall not be in excess of two-thirds of the sum of the face amount of all outstanding mortgage bonds and the face amount of all outstanding notes and debenture issues secured by trust agreement and the face amount of all outstanding stocks of all classes, and the surplus of the company, both earned and paid in. If any such outstanding stock is without par value, then the stated value of such stock shall be deemed the face amount thereof.

(f) Such mortgage bonds are issued under and secured by a mortgage under which a principal amount of at least five hundred thousand dollars, in one or more series, are at the time of the investment, or have been at some prior time, outstanding in the hands of the public.

(g) The mortgage bonds are secured by a mortgage on property owned by the debtor corporation.

(h) "Net earnings available for fixed charges", as used in this subsection, shall mean net income after allowance for operating and maintenance expenses, depreciation and depletion, and taxes, other than federal and state income taxes, but excluding extraordinary nonrecurring items of income or expense appearing in the regular financial statement of the issuing corporation. In applying tests of such "net earnings available for fixed charges" to an issuing corporation, whether or not in legal existence during the whole of the test period, which has during the test period acquired the assets of any other corporation or corporations by purchase, merger, consolidation or otherwise, substantially as an entirety, net earnings available for fixed charges of such predecessor or constituent corporation or corporations for such portion of the test period as preceded acquisition may be included in the net earnings of the issuing corporation, in accordance with consolidated earnings statement covering such period.

(i) Fixed charges as used in subsection (10) shall consist of interest on funded debt, interest on unfunded debt, amortization of discount on funded debt, lease rentals and miscellaneous rents.

(11) Obligations secured, whether alone or in combination with other obligations on a parity therewith, by real estate mortgages or trust deeds which, except as to taxes and assessments not delinquent, are a first lien on improved real property situated in this state or adjoining states, the amount of which obligations do not exceed 50 per cent of the fair market value of the property covered thereby.

(12) In promissory notes amply secured by pledge of any of the bonds, real estate mortgages or securities in which investment is hereinbefore authorized.

(13) In bonds issued for construction of dormitories, commons or field house at the state university under subsection (6) of section 36.06, provided the total issue does not exceed fifty per cent of the appraised value of buildings or improvements mortgaged.

(14) In single premium endowment insurance policies and single premium annuities of life insurance companies authorized to do business in Wisconsin.

(15) In the stock, notes and debentures of any credit union, or credit union finance corporation organized under the laws of this state.

(16) In notes or bonds secured by mortgage or deed of trust insured by the federal housing administrator and debentures issued by the federal housing administrator. [1935 c. 363, 511, 520; 43.08 (2); 1937 c. 131, 152; 1939 c. 513 s. 54; 1941 c. 244, 246, 257]

**Note:** A testamentary trustee received a second mortgage. When the second mortgage came due the security was sufficient to pay both the first and second mortgages, but the trustee accepted a new second mortgage. Thereafter upon foreclosure sale under the first mortgage, very little more than the first mortgage debt was realized. The loss to the estate was considerable and the trustee was personally liable because he was not diligent in collecting the original second mortgage when it came due. In re Dreier's Estate, 204 W 221, 235 NW 439.

Where thirty to forty acres of fenced eighty-acre tract, fifty rods from public road, was under plow, remaining woodland was cleared of brush and under pasture, and whole was used in connection with adjoining farm, property was "improved farm property," within statute relating to investment of trust funds, though no house or barn was on it. Lentz v. Dostal, 212 W 81, 249 NW 174.

Where a testamentary trustee has invested trust money in accordance with legal requirements, in good faith and with due care, the beneficiary on final accounting must accept the specific securities in which the trustee has invested. The investment of trust funds by a testamentary trustee in securities other than those prescribed by this section, at least in the absence of express authority from the court administering the trust, is in itself a want of due care as a matter of law, and a trustee so doing must respond by turning over to the beneficiary on final accounting the money invested; the beneficiary not being required under such circumstances to accept the securities. Estate of Fouks, 213 W 550, 252 NW 160.

Beneficiaries were not estopped to claim that the trustees had breached their trust in investing the trust fund contrary to this section because the beneficiaries had accepted securities so invested as advancements in lieu of cash. Schroeder v. Miller, 215 W 54, 254 NW 371.

Shares of stock should be sold by trustees usually within one year and in the most advantageous manner and at the most advantageous time, but where for more than nine years prior to his death beneficiary of trust never objected to holding of stock of private corporation and never requested sale or disposition thereof, and facts showed that he had knowledge of the holding thereof, neither beneficiary nor his executrix was entitled to charge trustees with depreciation in value of stock. Action of court in authorizing trustees to continue to carry stock until further order of the court was error. Estate of Grotenrath, 217 W 109, 253 NW 453.

Will requiring trustee to invest funds in interest-bearing securities and income-producing property did not authorize investment in interest-bearing securities other

than as prescribed by law. Letters of trust did not amount to interpretation of will and did not authorize trustee to do anything contrary to terms thereof. Estate of Allen, 218 W 349, 259 NW 348.

Under 231.32 (1) (g) (Stats. 1933) the fact that the fiduciary acts in good faith and exercises sound discretion does not excuse the investment or render it in compliance with the statute if in fact the amount of the mortgage obligation exceeds one-half of the actual value of the property covered by the mortgage. The word "actual" as used in connection with the word "value" in the statute means real, genuine, positive and certain, as opposed to speculative, potential, virtual or theoretical. Estate of Karkowski, 220 W 45, 264 NW 487.

A ward who failed to show that she had sustained any loss was not entitled to damages from guardian because guardian failed to convert stock belonging to ward into cash and invest proceeds in securities specified by statute. In re Guardianship of Farness, 225 W 383, 273 NW 522.

Sections 319.29 and 320.01 must be construed together. There is a marked distinction between the rights and liabilities of the guardian and those of executors and administrators. The guardian is a mere conservator of the ward's property without title thereto while in theory the property is in the custody of the court. By virtue of 319.29 a guardian may sell and is only authorized to sell such personal property as is mentioned therein, including corporate stock, if he is authorized or directed to do so by a court order; in the absence of such an order it is neither imperative for the guardian to sell the property, nor can he do so; his holding or retention of the property for the ward does not constitute a violation of his duty or negligence, as a matter of law, unless and until after the sale thereof he has been authorized or directed by the court. Therefore the guardian was entitled to credit for having paid an assessment upon bank stock which had been purchased by his ward and which was still the property of the ward. In re Paulsen's Guardianship, 229 W 262, 282 NW 36.

Where broad powers are given by a trust instrument to trustees with respect to investments, the trustees are not bound to comply with the provisions of ch. 320, Stats., as to retaining investments, or making new ones, or converting nonlegal investments into legal investments within a reasonable time. Under a trust instrument conveying the bulk of the settlor's property, consisting of real estate, industrial bonds, shares of stock and other securities, in trust for the benefit of the settlor and her children, and giving the trustees, of whom the settlor herself was one, broad powers with respect to selling or otherwise disposing of trust property, investing and reinvesting proceeds,

converting personal property into real property and real into personal, borrowing money and engaging in business, the settlor did not limit the trustees to such investments only as are permissible under chapter 320, but the trustees in the exercise of their discretion were required to act as prudent and provident persons would act under the same or similar circumstances. In an action for an accounting the court discusses many

questions concerning the management of the trust estate. *Welch v. Welch*, 235 W 282, 290 NW 758, 293 NW 150.

Trust certificates of investment association are legal for investment of trust funds notwithstanding fact that certificates may be secured on real estate mortgages which would not qualify for trust fund investments. 19 Atty. Gen. 329.

**320.02 Proportion invested in one security.** The proportion of any one trust fund that may be invested by an executor, administrator, guardian or trustee in notes, bonds or other securities in which investment is authorized by this chapter, the value of which is dependent upon the same persons, firms, associations or public or private corporations, shall be subject to limitations as follows:

(1) When the trust fund exceeds two thousand but does not exceed five thousand dollars, fifty per cent thereof, unless the investment is in obligations secured by a first real estate mortgage;

(2) When it exceeds five thousand but does not exceed twenty thousand dollars, forty per cent thereof, unless the investment is in obligations secured by a first real estate mortgage the amount of which does not exceed six thousand dollars;

(3) When it exceeds twenty thousand but does not exceed fifty thousand dollars, thirty per cent thereof;

(4) When it exceeds fifty thousand dollars, twenty per cent thereof.

(5) The limitations provided in this section as to the proportion of any one trust fund that may be invested in notes, bonds or securities shall not apply as to bonds, notes or other evidences of indebtedness of the United States, or which are unconditionally guaranteed as to the payment of interest and principal by the United States. [1935 c. 363; 1941 c. 248]

**320.03 Jurisdiction of court.** Nothing contained in this chapter shall be construed to affect the power or jurisdiction of any court of the state of Wisconsin in respect to trusts and trustees, nor to affect any powers or authority as to investments conferred by will or other instrument of trust. [1935 c. 363]

**320.04 Investments under prior laws not affected.** Nothing contained in this chapter shall affect any investment made prior to the enactment hereof or affect any rights or interests established, accrued or created thereunder or affect any suit or action pending when this chapter becomes effective. [1935 c. 363]

**320.05 Retention of securities by executors, administrators, guardians and trustees.** Every executor, administrator, guardian or trustee may continue to hold any stocks, bonds or securities which may have been possessed by any deceased person at the time of his death, and which shall pass to such executor, administrator, guardian or trustee by virtue of any will or instrument of trust, if in the judgment of such executor, administrator, guardian or trustee the sale or disposition of the same is not advantageous to said estate or trust, upon obtaining an order from the county court in which said estate or trust is being administered, authorizing the holding of the same for such period of time as shall be designated in said order, notwithstanding any of the provisions of chapter 320 of the statutes. Any heir or beneficiary shall have the right at any time to file an application with the county court in which said estate or trust is being administered for the purpose of compelling the sale of such stocks, bonds or securities so held, and to compel the investment of the proceeds in accordance with the provisions of chapter 320 of the statutes. Upon the filing of such application said county court shall conduct a hearing, after giving to all persons interested in said estate or trust such notice as shall be designated by said court, and upon such hearing said court shall enter an order thereon directing the retention or sale of such stocks, bonds or securities as may be for the best interests of said estate or trust. [1933 c. 379; 1935 c. 363; 43.08 (2)]