

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 sections 66.20 to 66.209 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 30,000 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 35,000; provided that such city, town, village, county, school district or sewerage district shall not have defaulted for a period longer than 30 days in the payment of any of its funded indebtedness during the 10 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 5 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 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.

(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 savings 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 savings 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 insurance policies and annuities of life insurance companies authorized to do business in Wisconsin and, with the approval of the court, may retain and pay premiums on annuities, endowment policies, life insurance policies and accident and health policies benefiting the beneficiary of the trust or the ward or their dependents.

(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.

(16m) In bonds, notes, trust certificates or other evidences of indebtedness of a denominational church body, which are exempt under s. 189.06 (7) or which are registered with the department of securities under s. 189.13.

(17) When the value of any trust or guardianship fund exceeds \$15,000, 35 per cent of the excess thereof above \$15,000 may be invested in investments authorized by section 201.25 (1) (ff) and (fg), regulating investments of domestic insurance companies, subject however to the provisions of section 320.02. For the purpose of this subsection the word "corporation" as used in section 201.25 (1) (ff) shall be construed to include investment companies which are common law trusts as well as those which are corporations.

History: 1951 c. 404, 579; 1953 c. 164, 590; 1955 c. 502.

Provisions of trust instrument claimed to permit investment of funds without regard to 320.01 discussed. *First Wisconsin Trust Co. v. Perkins*, 275 W 464, 82 NW (2d) 331. First Mortgage serial bonds issued by First Baptist Church of Columbia, Missouri, and registered with the Wisconsin department of securities are eligible for the investment of trust funds under (16m). 45 Atty. Gen. 208.

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.

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.

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.

320.05 Retention of securities by executors, administrators, guardians and trustees. Every executor, administrator, guardian or trustee may continue to hold any stocks, bonds, securities or real estate 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, securities or real estate so held, and to compel the investment of the proceeds in accordance with the provisions of chapter 320. 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 order thereon directing the retention or sale of such stocks, bonds, securities or real estate as may be for the best interests of said estate or trust.

320.09 Market values. (1) No sale or other liquidation of any investment shall be required solely because of any change in the relative values of investments eligible under this chapter.

(2) In determining the values of the assets of a fund for the purposes of this chapter, market values shall be used. An executor, administrator, guardian or trustee may rely upon published market quotations as to those investments for which such quotations are available, and upon such valuations of other investments as are fair and reasonable according to available information.

History: 1953 c. 228.