



STATE OF ARKANSAS
THE ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2015-069

August 17, 2015

Barbara W. Webb, Chief Executive Officer
Arkansas Workers' Compensation Commission
324 Spring Street
Little Rock, Arkansas 72201

Dear Ms. Webb:

This is in response to your request for an opinion on the following questions concerning the investment of funds administered by the Arkansas Workers' Compensation Commission ("AWCC")¹:

1. Does the AWCC have the authority to invest any surplus funds in securities other than certificates of deposit?
2. To the extent those investments are handled by the Treasurer of the State of Arkansas, does the Treasurer have the authority to invest the surplus funds as designated by the AWCC in securities other than certificates of deposit?
3. Does the special language in Act 969 of 2015 (the AWCC appropriation act) modify the provisions of Ark. Code Ann. § 19-3-518 in regard to AWCC funds?
4. Are there any other rules or statutes that would restrict the Treasurer from making investments in other securities with AWCC surplus funds?

¹ There are three AWCC funds: The Workers' Compensation Fund, the Second Injury Trust Fund, and the Death and Permanent Total Disability Trust Fund. Ark. Code Ann. § 11-9-301(a) (Repl. 2012).

As background for these questions, you report that previously, the majority of the surplus from the AWCC funds has been invested in certificates of deposit pursuant to Ark. Code Ann. § 19-3-518. You state that the AWCC would in the future like to direct the State Treasurer to invest surplus funds in securities that would earn a greater return on investment.

RESPONSE

In my opinion, the answer to Question 1 is “yes,” as a general matter, pursuant to Section 8 of Act 969 of 2015 (AWCC’s appropriation act), which is effective from July 1, 2015 through June 30, 2016. It is my opinion in response to Question 2 that the State Treasurer may, at the direction of the AWCC, invest surplus AWCC funds in securities other than certificates of deposit between July 1, 2015 and June 30, 2016. The answer to Question 3 is “yes,” in my opinion. With regard to Question 4, I am unaware of any specific restrictions other than those contained in Ark. Code Ann. § 19-3-518, which generally requires the Treasurer to invest surplus trust fund moneys in certificates of deposit to the extent feasible.

DISCUSSION

Question 1 - Does the AWCC have the authority to invest any surplus funds in securities other than certificates of deposit?

The answer to this question is generally “yes,” in my opinion, pursuant to Act 969 of 2015 – the appropriation act for the AWCC. This act contains the following special language regarding the investment of AWCC funds:

All such funds as are held at any time in the Death and Permanent Total Disability Trust Fund, Second Injury Trust Fund, and the Workers' Compensation Fund shall be invested and reinvested to the extent feasible, [sic] all such investments as authorized for use by the Office of the Treasurer shall be available to the listed funds. The movement of these funds into and out of investments shall be by

fund transfers as directed by the Chief Executive Officer of the Workers' Compensation Commission.²

This language – which appears to be unique to the AWCC³ – is markedly different from the section of the State Treasury Management Law⁴ that generally governs the investment of trust fund accounts. Under Ark. Code Ann. § 19-3-518, the State Treasurer is required to invest surplus trust fund moneys in certificates of deposit (CDs) to the extent feasible:

The Treasurer of State shall invest the amount certified^{5]} in certificates of deposit issued by eligible banks and savings and loan associations.

If the Treasurer of State is unable to place the certified amount in certificates of deposit, then the remainder may be placed in securities with the administrator's approval.⁶

This section of the Treasury Management Law is clear regarding the investment of surplus trust funds in securities. Investments in securities may only occur to the extent of any “remainder” following the investment in CDs. This limitation on securities investments is absent from AWCC's appropriation act. The appropriation's special language instead provides for “all such investments as

² Acts 2015, No. 969, § 8. The section is effective “only from July 1, 2015 through June 30, 2016.” *Id.*

³ I have found no similar language in any other agency appropriation act.

⁴ Ark. Code Ann. § 19-3-501 *et seq.* (Repl. 2007 & Supp. 2013).

⁵ The “amount certified” is the “estimated surplus moneys in the trust fund account that exceed the immediate requirements of the trust fund account.” Ark. Code Ann. § 19-3-518(a)(2)(A) (Supp. 2013). This estimated surplus is determined by the administrator of the trust fund, who certifies the amount to the Treasurer. *Id.* See also *id.* at (B)(i)(a) (“After taking into consideration the amount of the estimated surplus moneys under subdivision (a)(2)(A) of this section, the administrator shall certify to the Treasurer of State the amount of surplus moneys and the period of time during which the surplus moneys are not required.”).

⁶ *Id.* at (b) and (c).

authorized for use by the Office of the Treasurer....”⁷ Additionally, the appropriation act provides for investments “as directed by [the AWCC’s] Chief Executive....”⁸ This authority on the part of the AWCC to direct the investment of AWCC funds stands in stark contrast to section 19-5-518’s requirement that the Treasurer first invest surplus AWCC trust funds in CDs, with investments in securities only occurring (“with the administrator’s approval”) if the Treasurer is unable to place the entire surplus in CDs.

AWCC’s authority over investments is echoed by several line items in the appropriation act,⁹ together with a reference to the investment of funds “as allowed by the Workers’ Compensation Commission.”¹⁰

In my opinion, the appropriation language is controlling. It is a standard principle of statutory construction that where two statutes apparently speak to the same subject matter and one is more specific than the other, the more specific statute controls.¹¹ Additionally, more recently enacted legislation will prevail over an earlier enactment, as the later expression of legislative will.¹² These principles lead me to conclude that the appropriation act – which is both more recent and

⁷ The reference to “investments ... authorized for use by the ... Treasurer” presumably refers to the Treasurer’s investment authority with respect to state funds in the State Treasury. In this regard, see Ark. Code Ann. § 19-3-518(b) (Supp. 2013).

⁸ It bears noting that there is no prohibition against the inclusion of substantive language such as this in an appropriation act, so long as the act “embrace[s] but one subject.” Ark. Const. art. 5, § 30. See *Arkansas Motor Carrier Ass’n v. Pritchett*, 303 Ark. 620, 798 S.W.2d 918 (1990). Act 969 of 2015 plainly meets this so-called “unity of subject” requirement, as each section relates to the appropriation of funds for AWCC personal services and operating expenses.

⁹ Acts 2015, No. 969, §§ 3 and 4 (appropriating, respectively, for “investments” \$14,000,000 from the Workers’ Compensation Fund and \$151,750,000 from the Death and Permanent Total Disability Trust Fund.).

¹⁰ *Id.* at § 4 (referring to the “investment of funds in the Death and permanent Total Disability Trust Fund as allowed by the Workers’ Compensation Commission.”) (emphasis added).

¹¹ *E.g. Searcy Farm Supply, LLC v. Merchants & Planters Bank*, 369 Ark. 487, 492, 256 S.W.3d 496 (2007); *Donoho v. Donoho*, 318 Ark. 637, 639, 887 S.W.2d 290 (1994).

¹² *E.g., Steward v. Statler*, 371 Ark. 351, 266 S.W.3d 710 (2007).

more specific than Ark. Code Ann. § 19-3-518 with respect to the investment of AWCC funds – controls.

Accordingly, it is my opinion that the answer to Question 1 above is generally “yes,” during the period of July 1, 2015 through June 30, 2016, when the superseding appropriation language is in effect. I believe the AWCC is authorized during this fiscal period (after which the appropriation act, along with its special language, will expire) to direct the investment of AWCC funds. And unlike the Treasury Management Law, the appropriation act does not require the initial placement of AWCC funds in CDs.

Question 2 - To the extent those investments are handled by the Treasurer of the State of Arkansas, does the Treasurer have the authority to invest the surplus funds as designated by the AWCC in securities other than certificates of deposit?

As explained above, the AWCC is authorized under its appropriation act to direct the investment of AWCC funds. As long as the State Treasurer is acting at the direction of the AWCC, therefore, I believe the Treasurer may invest surplus AWCC funds in securities other than certificates of deposit. Such action would not be contrary to Ark. Code Ann. § 19-3-518, which otherwise constrains the Treasurer’s ability to place the surplus in securities by requiring that it be placed in CDs to the extent feasible. It must be recognized, however, that this investment authority regarding AWCC funds only applies during the effective dates of the appropriation act, July 1, 2015 through June 30, 2016.

Question 3 - Does the special language in Act 969 of 2015 (the AWCC appropriation act) modify the provisions of Ark. Code Ann. § 19-3-518 in regard to AWCC funds?

Yes, to the extent the appropriation act authorizes “all such investments as authorized for use by ... the Treasurer...” This relatively broad investment authority cannot be reconciled with section 19-3-518’s requirement that investments in securities only occur to the extent of any “remainder” following the investment in CDs. That is why I opined in response to Question 2 above, based on standard principles of statutory construction, that the Treasurer may invest

surplus AWCC funds in securities other than certificates of deposit, as long as the Treasurer does so at the direction of the AWCC.

Question 4 - Are there any other rules or statutes that would restrict the Treasurer from making investments in other securities with AWCC surplus funds?

I am unaware of any specific restrictions other than those contained in Ark. Code Ann. § 19-3-518 which I have explained generally requires the Treasurer to invest surplus trust fund moneys in certificates of deposit to the extent feasible.

Deputy Attorney General Elisabeth A. Walker prepared this opinion, which I hereby approve.

Sincerely,


LESLIE RUTLEDGE
Attorney General

LR/EAW:cyh