

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL  
State of California

GEORGE DEUKMEJIAN  
Attorney General

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OPINION	:	No. 79-814
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of	:	November 1, 1979
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GEORGE DEUKMEJIAN	:	
Attorney General	:	
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Rodney Lilyquist, Jr.	:	
Deputy Attorney General	:	
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SUBJECT: SELECTION OF BROKERAGE FIRMS—Under the County Employees Retirement Law of 1937, the selection of brokerage firms by the county treasurer for purchase or sale of securities on behalf of the retirement system may be limited by the board of retirement to a list of brokers approved by the board.

The Honorable Richard J. Moore, County Counsel of Alameda County, has requested an opinion on a question we have rephrased as follows:

Under the County Employees Retirement Law of 1937, may the selection of brokerage firms by the county treasurer for the purchase or sale of securities on behalf of the retirement system be limited by the board of retirement to a list of brokers approved by the board?

CONCLUSION

Under the County Employees Retirement Law of 1937, the selection of brokerage firms by the county treasurer for the purchase or sale of securities on behalf of the retirement system may be limited by the board of retirement to a list of brokers approved by the board.

## ANALYSIS

We are informed that the Board of Retirement of the County of Alameda has established certain criteria<sup>1</sup> to be met by brokerage firms wishing to transact business for the county retirement system. The question presented for analysis is whether the board may require the county treasurer to select one of the brokerage firms meeting the criteria and approved by the board in buying or selling securities on behalf of the retirement system.<sup>2</sup> We conclude that it may.

Under the County Employees Retirement Law of 1937 (Gov. Code §§ 31450–31898,<sup>3</sup> (hereinafter “Act”), the “public obligation to county and district employees who become incapacitated by age or long service in public employment and its accompanying physical disabilities” is recognized. (§ 31451; *see Heaton v. County Employees Retirement Board* (1976) 63 Cal. App. 3d 421, 429.) Contributions from the members and county funds are accumulated for the payment of various employee benefits under the statutory scheme. Moneys not required for current disbursements are invested in stocks, bonds, and other securities. (§§ 31595–31595.6.)

The retirement system is managed by a retirement board consisting of either five or nine members, one of whom must be the county treasurer.<sup>4</sup> (§§ 31520, 31520.1.) With regard to the investment of retirement system funds, the Act gives the board and the treasurer the following responsibilities:

“Subject to the *approval* of the board the county treasurer has control and shall safely keep the moneys of the retirement system. He shall invest and reinvest the moneys, and may from time to time sell any securities belonging to the system and shall invest and reinvest the proceeds therefrom. An investment in or sale of securities shall not be made except upon the authorization of the board.” (Emphasis added.) (§ 31594.)

The issue that we must resolve is whether the county treasurer may be required by the board to select certain brokerage firms in transacting the board’s security purchases and sales or whether section 31594 provides the treasurer with independent authority in making

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<sup>1</sup> The criteria concern stock exchange membership, office location within Alameda County, and a limitation on brokerage fees.

<sup>2</sup> Under the board’s plan, purchase and sell orders would be equally distributed among the brokerage firms on the approved list.

<sup>3</sup> All unidentified section references are to the Government Code.

<sup>4</sup> A board of investments may also be established with management responsibility pursuant to section 31520.2 in any county in which the assets of the system exceed \$800,000,000. We do not have that situation here and will limit our discussion accordingly.

such decisions.

In analyzing the question, we are guided by several principles of statutory construction. The cardinal rule in interpreting a statute is to “ascertain the intent of the Legislature so as to effectuate the purpose of the law.” (*Select Base Materials v. Board of Equal.* (1959) 51 Cal. 2d 640, 645.) Legislative intent may be found by examining the words used, giving effect to the statutes “according to the usual ordinary import of the language employed in framing them.” *In re Alpine* (1928) 203 Cal. 731, 737.) Moreover, “various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole.” (*Moyer v. Workmen’s Comp. Appeals Bd.* (1973) 10 Cal. 3d 222, 230.)

The key words in section 31594 are “approval” and “authorization.” The former is defined as a judgment or certification of acceptability (Webster’s New Internat. Dict. (3d Ed. 1966), p. 106), while the latter is defined as the granting of permission to act. (*Id.*, at p. 146.)

We view section 31594 as giving the board primary responsibility and control over the investment of retirement system funds. (See *Wilson v. Board of Retirement* (1959) 167 Cal. App. 2d 229, 231; 18 Ops. Cal. Atty. Gen. 159, 161 (1951).) Although subject to a contrary interpretation, such control may reasonably be said to include the mechanism by which the investments are made. The specification of brokerage firms would appear to be incidental to the power of the board in authorizing the “investment in or sale of securities.” We can find no words of limitation upon the board’s powers in this regard.

Furthermore, we are required to interpret section 31594 in light of other related statutory provisions. In particular, section 31595.3 states:

“*The board shall employ investment counsel or trust companies or trust departments of banks to render service in connection with the board’s investment program and shall pay for such service as provided in subdivision (d) of Section 31596.*”

“ . . . .

“The Legislature makes the following declaration *in order that the intent of the Legislature may be made clear to retirement boards*, with respect to employment of investment counsel or trust companies or trust departments of banks to render service *in connection with the boards’ investment program, or with respect to investments authorized in this article*, but without restricting the necessary flexibility that must exist for successful employment of such firms or for successful investing of the retirement fund: *Retirement*

*boards shall give primary consideration to dealing with counseling firms, brokerage firms, trust companies and trust departments or banks which maintain offices and staffs in the State of California so that the investment program may make a meaningful contribution to the economy of the state. Retirement funds should be used as much as reasonably possible to benefit and expand the business and economic climate within the State of California, so long as such use would be consistent with sound investment policy.” (Emphasis added.)*

Under section 31595.3, the Legislature has directed the board, and not the county treasurer, to follow its declaration of policy regarding the transaction of business by brokerage firms on behalf of the retirement system. Thus, section 31595.3 indicates a legislative intent to have the board control the selection of brokerage firms under the provisions of section 31594. The legislative directive of section 31595.3 is consistent with the view that the board may require certain brokerage firms to be selected by the treasurer in the purchasing and selling of securities.

Although the treasurer’s duties include effecting the transfer of the funds and securities of the retirement system (§§ 31588–31590, 31596), we can find no statutory basis for concluding that the treasurer may ignore a policy of the board concerning which brokerage firms may transact the security purchases and sales for the retirement system.

The conclusion to the question presented, therefore, is that under the Act, the selection of brokerage firms by the county treasurer for the purchase or sale of securities on behalf of the retirement system may be limited by the board of retirement to a list of brokers approved by the board.

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