APPENDIX Z

Statutes Governing Investment of the Public School Trust Fund

Endowment Trust Fund.

Accounting system required that distinguishes between principal and income. Capital gains and losses not income. Capital gains and losses become part of principal.

Section 37.14.110. Public school trust fund established. (a) There is established as a separate endowment trust fund the public school trust fund.

(b) The principal of the fund established in (a) of this section consists of

(1) the balance of the public school permanent fund on July 1, 1978; and

(2) sums transferred under AS 37.14.150.

(c) The commissioner of revenue shall determine the net income of the fund in accordance with investment accounting principles and in a manner that preserves the distinction between principal and income and that excludes capital gains or losses realized on principal. The principal of the fund and the capital gains or losses realized on principal shall be perpetually retained in the fund for investment purposes.

Five member board.

Section 37.14.120. Public school fund advisory board created. (a) There is created in the Department of Revenue the Public School Fund Advisory Board composed of the commissioner of education, three members elected by the Board of Education from among its membership, and the commissioner of revenue.

(b) The board created in (a) of this section shall elect a chairman from the membership of the board. Members serve without compensation but are entitled to per diem and travel expenses authorized by law for other boards.

Board's only specific responsibility is to have prepared an annual accounting of principal and income. Does not specifically require independent CPA firm.

Section 37.14.130. Powers and duties of board. The board created in AS 37.14.120 has the following powers and duties:

(1) to hold regular meetings and special meetings considered necessary;

(2) to have prepared an annual accounting of the principal and income of the fund established in AS 37.14.110**.**

Must be used for State public schools.

Income on income may be used.

Section 37.14.140. Utilization of income. The net income of the fund may not be appropriated for a purpose other than the support of the state public school program. The commissioner of revenue shall invest realized net income that has not been appropriated or that has been appropriated but not expended until the income is appropriated and expended.

1/2% of State land revenues to Fund. 1993 Attorney General Opinion No. 1 - dedication OK to a point. Further legal advice - point now probably reached. Action to determine whether payments should be stopped now required.

Section 37.14.150. Contributions. During each fiscal year the commissioner of revenue shall transfer to the fund created in AS 37.14.110 a sum equal to one-half of one per cent of the total receipts derived from the management of state land, including amounts paid to the state as proceeds of sale or annual rent of surface rights, mineral lease rentals, royalties, royalty sale proceeds, and federal mineral revenue-sharing payments or bonuses.

Commissioner of Revenue Treasurer - powers and duties governed by AS 14.25.080(c).

Keep principal and income separate.

Provide performance reports to the Board.

Section 37.14.160. Duties of the commissioner of revenue. The commissioner of revenue is the treasurer of the trust fund created in AS 37.14.110 and shall

(1) in carrying out investment duties under this section, exercise the same powers and duties established for the Alaska State Pension Investment Board in AS 14.25.180(c);

(2) deposit the principal and income from investments in separate principal and income accounts for the fund;

(3) invest and maintain accounting records that distinguish between the principal and income of the fund;

(4) provide reports to the board established under AS 37.14.120 on the condition and investment performance of the fund.

Section 37.14.170. Investments.

AS 14.25.180(c) *in turn incorporates all of* AS 37.10.071 *except it modifies the standard of prudence imposed by* AS 37.10.071(c) *with respect to this Fund.*

Section 14.25.180. Management and investment of fund.

(c) In carrying out investment duties under this chapter, the Alaska State Pension Investment Board has the same powers and duties in regard to the teacher's retirement trust fund as are provided in AS 37.10.071, except that the standard of prudence that the board must obey under AS 37.10.071(c) shall be in regard to the management of large trust investments rather than large investments.

This section incorporated and made applicable by AS 14.25.180(c).

Section 37.10.071. Investment powers and duties. (a) In making investments under this section, the fiduciary of a state fund shall:

(1) act as official custodian of cash and investments by securing adequate and safe custodial facilities for them;

(2) receive all items of cash and investments;

(3) collect and deposit the principal of and income from owned or acquired investments;

(4) invest and reinvest the assets in accordance with this section;

(5) receive and spend appropriations to cover the cost of the exercise of duties under this section;

(6) exercise the powers of an owner with respect to the assets;

(7) perform all acts, not prohibited by this section, whether or not expressly authorized, that the fiduciary considers necessary or proper in administering the assets;

(8) maintain accounting records in accordance with generally accepted accounting principles;

Annual independent audit required.

(9) engage an independent certified public accountant to conduct an annual audit of the financial condition and investment transactions;

(10) enter into and enforce contracts or agreements considered necessary, convenient, or desirable for the investment purposes of this section; and

(11) when choosing to acquire or dispose of investments, secure competitive national or international market rates or prices, or the equivalence of those rates or prices in the judgment of the fiduciary.

(b) Under this section, the fiduciary of a state fund or the fiduciary's designee may

(1) delegate investment, custodial, or depository authority on a discretionary or nondiscretionary basis to officers or employees of the state or to independent firms, banks, financial institutions, or trust companies by designation through appointments, contracts, or letters of authority;

(2) acquire or dispose of investments either directly, indirectly, or through investment pools or trusts, by competitive or negotiated agreements, contracts, or auctions, in public or private markets;

(3) concentrate or diversify investments as the fiduciary considers appropriate to increase the probable total rate of return or to decrease the overall exposure to potentially adverse market value risks;

(4) protect the market value or the rate of return of the investments by entering into forward agreements to buy or sell assets at a future date as a hedge against existing held assets or as a precommitment of future cash flows;

(5) lend assets, under an agreement and for a fee, against deposited collateral of equivalent market value;

(6) borrow assets on a short-term basis, under an agreement and for a fee, against the deposit of collateral consisting of other assets in order to accommodate temporary cash or investment needs;

(7) hold investments in bearer or registered form in the name of the state, a fund, or nominees authorized by the fiduciary;

(8) utilize consultants, advisors, custodians, investment services, and legal counsel for assistance in investment matters on either a continuing or a limited-term basis and with or without compensation;

(9) declare records to be confidential and exempt from AS 09.25.110 and 09.25.120 if the records contain information that discloses the particulars of the business or the affairs of a private enterprise, investor, borrower, advisor, consultant, counsel, or manager.

(c) In exercising investment, custodial, or depository powers or duties under this section, the fiduciary of a state fund shall apply the prudent investor rule and exercise the fiduciary duty in the sole financial best interest of the fund entrusted to the fiduciary. Among beneficiaries of a fund, the fiduciaries shall treat beneficiaries with impartiality.

(d) In exercising investment, custodial, or depository powers or duties under this section, the fiduciary or the fiduciary's designee is liable for a breach of a duty that is assigned or delegated under this section, or under AS 14.25.180, AS 14.40.400(b), AS 37.10.070, AS 37.14.110(c), 37.14.160, 37.14.170, or AS 39.35.080. However, the fiduciary or the designee is not liable for a breach of a duty that has been delegated to another person if the delegation is prudent under the applicable standard of prudence set out in statute or if the duty is assigned by law to another person, except to the extent that the fiduciary or designee;

(1) knowingly participates in, or knowingly undertakes to conceal, an act or omission of another person knowing that the act or omission is a breach of that person's duties under this chapter;

(2) by failure to comply with this section in the administration of specific responsibilities, enables another person to commit a breach of duty; or

(3) has knowledge of a breach of duty by another person, unless the fiduciary or designee makes reasonable efforts under the circumstances to remedy the breach.

(e) The state shall defend and indemnify the fiduciary or an officer or employee of the state against liability under (d) of this section to the extent that the alleged act or omission was performed in good faith and was prudent under the applicable standard of prudence.

(f) In this section, "fiduciary of a state fund" or "fiduciary" means

(1) the commissioner of revenue for investments under AS 37.10.070;

(2) with respect to the Alaska State Pension Investment Board, for investments under AS 14.25.180,

(A) each trustee who serves on the board of trustees; and

(B) any other person who exercises control or authority with respect to management or disposition of assets for which the board is responsible or who gives investment advice to the board; or

(3) the person or body provided by law to manage the investments for investments not subject to AS 14.25.180 or AS 37.10.070.

Funds to be invested to provide increasing net income over long-term. Since only dividends and interest are "income," this Fund requires very particularized asset allocation. This section also incorporated by reference with respect to the University of Alaska Trust Fund with the same effect. This section, together with AS 37.14.240(c) have the same legal and practical effect with respect to the AK Children's Trust Fund.

Section 37.14.170. Investments. The commissioner of revenue is the fiduciary of the trust fund and shall invest the fund to provide increasing net income over long-term periods to the fund's income beneficiaries. The commissioner may invest the money in the fund on the basis of probable total rate of return to promote the long-term generation of income. In managing the trust fund, the commissioner shall:

(1) consider the status of the fund's capital and the income generated on both a current and a probable future basis;

(2) determine the appropriate investment objectives;

(3) establish investment policies to achieve the objectives; and

(4) act only in regard to the financial interests of the fund's beneficiaries.