



STATE OF FLORIDA

BILL McCOLLUM
ATTORNEY GENERAL

December 2, 2009

The Honorable Alex Sink
Chief Financial Officer
Department of Financial Services
The Capitol
Tallahassee, FL 32399-0301

Dear CFO Sink:

My office is in receipt of your letter dated November 24, 2009, concerning your desire to expand the State Board of Administration Board of Trustees. You previously outlined your proposals for expanding the composition of the State Board of Administration at a Cabinet meeting earlier this year in an attempt to provide additional oversight for Florida's Pension Fund. Specifically, you stated that: "...we believe the Legislature can expand the Board statutorily without a constitutional amendment." After having reviewed your initial proposal to expand the Board, I suggested that a constitutional change would be required.

In the recent letter you sent to Governor Crist and to me, you reiterated your desire to expand the Board when you stated the following: "...I believe we need to strengthen the oversight of our fund by expanding the Board of Trustees to include one or more members with extensive investment experience and one or more members who are participants in the Florida Retirement System." Had you asked, I would have been happy, as Florida's chief legal officer, to assist you with the following information:

Pursuant to Article IV, section 4(e), Florida Constitution, the Governor, the Chief Financial Officer, and the Attorney General of the State of Florida comprise the State Board of Administration. The powers and duties of the Board relating to the administration of the pension fund are prescribed by statute as crafted by the Legislature. *See* s. 215.44, Fla. Stat., *et seq.* Section 215.44(1), Florida Statutes, specifically recognizes that "[e]xcept when otherwise specifically provided by the State Constitution[.]" and subject to limitations of trust agreements relating to specific trust funds, the Board, composed of the Governor, the Chief Financial Officer, and the Attorney General, shall invest all the funds specifically required by law to be invested by the Board. Therefore, any changes to the *composition* of the State Board of Administration as set forth in Article IV, section 4(e), State Const., must come through constitutional amendment.

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The outside counsel that you hired to provide an opinion on the matter, former Florida Supreme Court Justice Major Harding, supports this analysis. In his opinion letter to your general counsel dated November 10, 2009, Justice Harding recognizes that "...change to the composition of the SBA would require article IV section 4 (e), Florida Constitution, to be superseded by amendment."

Justice Harding also stated that the Legislature has the authority to change the duties and responsibilities of the State Board of Administration or to create a new entity to manage the Pension Fund. I concur with the analysis that the Florida Legislature, by statute, can alter oversight of the Pension Fund in any way it wishes. For this reason, I sent a letter to Senate President Atwater and Speaker Cretul outlining my legislative proposals for expanding the composition of the Investment Advisory Council (a legislatively-created entity), changing internal audit procedures, and codifying existing ethics policies. State Representative Robert Schenck, whose committee has oversight of the State Board of Administration for the Florida House of Representatives, has agreed to incorporate my proposals into legislation he intends to offer for the 2010 Session.

I firmly believe these changes will provide the additional oversight the Trustees are seeking, in an effort to protect the financial future of all Florida Pension Fund participants. I look forward to discussing this matter with you and with Governor Crist at our next Board of Trustees meeting.

Sincerely,



Bill McCollum

cc: Governor Charlie Crist
Ash Williams, Executive Director, State Board of Administration