



NORTH CAROLINA COMMUNITY COLLEGE SYSTEM
Dr. R. Scott Ralls, President

July 7, 2011

IMPORTANT INFORMATION

MEMORANDUM

TO: Chairs of Boards of Trustees
Presidents

FROM: Kennon D. Briggs
Executive Vice President & Chief of Staff

SUBJECT: Investment Flexibility for Boards of Trustees

After several years of challenges to the investment authority of local Boards of Trustees, the 2011 Session of the General Assembly enacted clarifying legislation intended to broaden investment flexibility. It is the purpose of this communication to clarify the investment authority and accompanying responsibilities of Boards of Trustees.

Background

In the conduct of financial audits in calendar year 2009, the Office of State Auditor (OSA) took exception and cited both Vance-Granville and Isothermal Community Colleges for making “unauthorized investments.” The OSA took exception to the investment of endowment funds invested in stock-based mutual funds, international bond funds, and real estate. Both local Boards challenged the exception, and requested assistance from the System Office in seeking legislative clarification of local investment authority.

At issue in both the exception and the challenge is the interpretation of General Statute 115D-58.6 and -58.7. The OSA determined that colleges did not have the ability to invest in instruments other than those authorized for units of local government. The trustees and presidents of the colleges cited argued otherwise, with the intent to maximize the potential return on investments. Also at issue was a recommendation by the OSA that colleges divest of the investments as soon as possible. The contra argument was that to do so in the investment climate of 2009 would cause significant losses to endowment funds.

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Shortly following this citation, the Association of Community College Presidents established a working group, chaired by Dr. John Dempsey – President, Sandhills Community College. The task given the work group was both to explore pooled investment opportunities among colleges; and to provide investment counsel opportunities for those colleges who heretofore had not used such counsel. After an RFP and selection process, Branch Banking and Trust was selected as the voluntary investment advisor and as a vehicle for pooled investments, should such authority to do so be clarified in law.

Consultation with State Treasurer

In response to a request of the System Office, staff worked with the Office of State Treasurer to seek legislative clarification and flexibility over investments made from Institutional Funds accounts held by community colleges. First, the State Treasurer’s Office was consulted about what safeguards should accompany investment flexibility, and options for colleges to participate in the Treasurer’s “Long Term Investment Fund” (LTIF).

Following that consultation, the Treasurer added language to strengthen a DRAFT piece of clarifying and authorizing legislation, and was agreeable to permitting community colleges to invest Endowment Funds in the LTIF. The strengthening language provided for both the appointment of an “Investments Committee” by the Trustees, and a statement of the discharge of duties for investments by the Trustees. The Treasurer was also agreeable to allow colleges to participate in the LTIF.

Legislative Clarification Sought

As a part of the State Board of Community College’s 2011 “Legislative Agenda”, a bill was drafted and introduced (House Bill 72) to grant community colleges additional investment flexibility with regard to investments. Elements of this bill were also incorporated into Senate Bill 575 – “An Act to Provide Efficiency and Flexibility for the North Carolina Community College System and The University of North Carolina.”

What ultimately passed the General Assembly was language taken from both bills, which was incorporated into Session Law 2011-145 (House Bill 200), otherwise known as the “Current Operations and Capital Improvements Act of 2011.”

Revisions to General Statute 115D

Section 8.20 of Session Laws 2011-145 provides the clarity sought by community colleges with respect to their investment authority, and the responsibilities that accompany that flexible authority. The following outlines the flexibility of local Boards of Trustees (highlights added for emphasis and attention):

- I.** **Investments.** – The institution may invest all or part of the cash balance of any fund in an official depository of the institution. The institution shall manage investments subject to whatever restrictions and directions the board of trustees

may impose. The institution shall have the power to purchase, sell, and exchange securities on behalf of the board of trustees. The investment program shall be so managed that investments and deposits can be converted into cash when needed.

- (1) Moneys shall be invested only in the form of investments pursuant to G.S. 159-30(c) to county governments or in any form of investment established or managed by an investment advisor who is registered and in good standing with either the Securities and Exchange Commission or the North Carolina Secretary of State, Securities Division, and is a member of the Securities Investor Protection Corporation. Money in endowment funds may be invested pursuant to G.S. 147-69.2. Provided, however, the institution may elect to deposit at interest any local funds with the State Treasurer for investment as special trust funds pursuant to the provisions of G.S. 147-69.3, and the interest thereon shall accrue to the institution as local funds.
- (2) The investment securities listed in G.S. 159-30(c) may be bought, sold, and traded by private negotiation, and the institutions may pay all incidental costs thereof and all reasonable costs of administering the investment and deposit program from local funds. The institution shall be responsible for their safekeeping and for keeping accurate investment accounts and records.

II. **The board of trustees shall appoint an Investment Committee** which shall consist of a minimum of three people who have sufficient financial background to review and evaluate investment options. These individuals should have experience in institutional or retail investment management with knowledge of fixed income and public equities. This committee shall make recommendations to the Board on those investment options, as well as monitor the performance of investments once made.

III. **The board of trustees shall discharge their duties with respect to the management and investment of college funds as follows:**

- (1) Investment decisions shall be solely in the interest of the college and the students, faculty, and staff of the college.
- (2) The investments shall be for the exclusive purpose of providing an adequate return to the college.
- (3) Investments shall be made with the care, skill, and caution under the circumstances then prevailing which a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an activity of like character and purpose.
- (4) Investment decisions shall be made impartially, taking into account the best interest of the college, with special attention to conflicts of interest or potential conflicts of interest.
- (5) Investments shall incur only costs that are appropriate and reasonable.

IV. G.S. 147-69.2(a) is amended by adding a new subdivision to read:
(20) Institutional funds of the colleges of the North Carolina Community College System."

Effect of Changes

There are four primary changes to the statute, two of which are clarifications of flexibility, and two of which are new. The flexibility changes include a delineation of investment instruments and the optional use of an investment advisor; and clarification that colleges may invest institutional funds in investments authorized for special funds held by the State Treasurer (read LTIF).

The two new investment changes are:

1. The requirement to appoint an “Investments Committee” from among the trustees; and,
2. An admonition to make investment decisions in the best interest of the college. et. al.

Neither of these requirements is burdensome, but was intended to illustrate that the Trustees are prudent stewards and decision-makers over funds entrusted to their care.

It is advisable to set up the Investments Committee if you intend to invest institutional funds. If you already have one, it can serve this purpose without the establishment of a new one. It is also advisable that the Trustees adopt a resolution or policy acknowledging the five items (III. above) in the discharge of their duties with respect to the management and investment of college funds. Such an action is not required, but illustrates the commitment of the Trustees to embrace legislative intent.

We are pleased that the General Assembly acknowledged the cooperative work of the State Board, State Treasurer, Trustees, Presidents and System Office staff, and subsequently enacted into law clarifying legislation intended to broaden investment flexibility for Boards of Trustees with respect to Institutional Funds.

If you have questions or wish to discuss this further, please contact Kennon Briggs at 919-807-7068 or at briggsk@nccommunitycolleges.edu

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