As heretofore discussed, the independent authority carved out of and reserved from the supervisory grant are the duties and functions of "rule-making, licensing and registration, including the prescription of rules, rates, regulations and standards, and adjudication. . . ."

As pointed out in O.A.G. No. 4479, *supra*, the powers, duties and functions to be exercised independently must be found in the basic statutes by which the bridge authorities were created and empowered. The function of rule-making and prescription of rates and regulations and standards have been discussed in answer to your third question.

Examination of the acts does not disclose duties and functions relating to licensing and registration, nor has the legislature granted to the bridge authorities any adjudicatory powers.

Accordingly, the bridge authorities shall continue to establish the rates of tolls and prescribe regulations for use of the bridges, independently of the Michigan Department of State Highways. The independent rule-making functions of the bridge authorities must be exercised in the areas excepted from the supervisory authority granted the Michigan Department of State Highways as the principal department.

Both the bridge authorities and the Michigan Department of State Highways, are bound by the provisions of any existing agreements and trust indentures given as security for bond issues.

FRANK J. KELLEY,
Attorney General.

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RETIREMENT SYSTEMS: **Investment of retirement system funds.**

The governing body of a public employee retirement system with total assets of $250,000 may invest funds under its control in common stocks of diversified investment companies, subject to limitations found in the act.

No. 4511 May 26, 1966.

Hon. Ray M. Flavin
State Representative
The Capitol
Lansing, Michigan

You have asked for my opinion on the following question:

> May a governing body of a public employee retirement system invest retirement system funds in a bond fund of a diversified open-end investment compay under the provisions of Act 314, P.A. 1965?

With your inquiry you have submitted a copy of the prospectus of the bond fund and in the prospectus the corporation in question claims that it is a diversified management type open-end investment company registered under the investment company act of 1940. The prospectus states that the corporation issues four classes of capital shares, each class representing

ownership of a separate mutual fund. The prospectus indicates that the corporation was incorporated in the year 1940. While the particular bond fund in which you have indicated interest has total net assets in excess of one million dollars according to the prospectus of the corporation, the corporation represents that it has total net assets in excess of one billion dollars representing the beneficial interests of shareholder accounts in its four mutual funds.

Act 314, P.A. 1965, being M.S.A. 1965 Cum. Supp. § 3.981(101) et seq., authorizes the investment of funds of public employee retirement systems or plans created and established by the state or any political subdivision.

Section 1 of the act provides that the supplementary powers conferred by the act may be exercised by the governing body of public employee retirement system when it has total assets of $250,000.

Section 4 of the act provides in pertinent part as follows:

> "Investments may be made in the common stocks of . . . (b) diversified investment companies registered under the 'investment company act of 1940', as amended, if the company has been in existence for not less than 5 years immediately preceding such investment and has net assets in excess of $50,000,000.00 . . ."

The Federal investment company act of 1940 may be found in 15 U.S.C.A. § 80a-1 et seq.

Management companies under the investment company act of 1940, supra, include "open-end company," which means a management company which is offering for sale or has outstanding any redeemable security of which it is the issuer, and "diversified company" which means a management company which has at least 75 per centum of the value of its total assets represented by cash and cash items (including receivables), government securities, securities of other investment companies, and other securities limited in respect of any one issuer to an amount not greater in value than 5 per centum of the value of the total assets of such management company and to not more than 10 per centum of the outstanding voting securities of such issuer. 15 U.S.C.A. 80a-5.

Under Section 4 of Act 314, P.A. 1965, supra, the legislature has authorized investments of public employee retirement system funds in the common stocks of diversified investment companies registered under the investment company act of 1940 if the company has been in existence not less than five years immediately preceding such investment and has net assets in excess of 50 million dollars.

The term "common stock" has been defined as stock entitling its owner to an equal pro rata division of profits, one stockholder or class of stockholders having no advantage, priority or preference over any other stockholder or class of stockholders in a particular division. *General Investment Company v. Bethlehem Steel Corporation,* 100 A 347 (1917).

It must follow that the term "common stock" as employed by the legislature in Sec. 4 of Act 314, P.A. 1965, includes classes of common stock.

If the corporation to which you refer is registered under the investment company act of 1940, if it has been in existence for not less than 5 years

immediately preceding the time of the proposed investment, and if such company has more than one class of common stock, the question remains whether or not the governing body of a public employee retirement system, otherwise qualified, may invest retirement funds in the class of common stock, which stock shares in a mutual fund with assets of less than fifty million dollars. I note that the class of common stock sharing in the mutual fund in question shares in a mutual fund with total net assets of considerably less than 50 million dollars.

It is therefore necessary to ascertain the legislative intent as found in Sec. 4 of Act 314, P.A. 1965, supra, and to give effect to the intent in light of the purpose sought to be accomplished. *In re Dearborn Clinic & Diagnostic Hospital,* 342 Mich. 673 (1955).

In authorizing the investment of public employee retirement system funds in the common stock of diversified investment companies registered under the "investment company act of 1940," it may be presumed that the legislature knew that diversified investment companies registered under the act may include those which operate as open-end companies issuing several classes of capital shares representing the beneficial ownership in separate mutual funds. See *People v. Harrison,* 194 Mich. 363 (1916). It appears equally clear that the legislature barred investment in comon stocks where total net assets beneficially owned by such common stockholders were less than 50 million dollars. Thus, when the legislature commanded that no investment be made in the common stocks of diversified investment companies unless the total net assets of the company exceeded 50 million dollars, it directed that investment be permitted in the particular class of common stock of a diversified investment company representing the beneficial ownership in a separate mutual fund only when the total net assets beneficially owned by such class of common stock are not less than 50 million dollars.

In answer to your question, therefore, the governing body of a public employee retirement system is without authority to invest its funds in the class of common stock sharing in a mutual fund of a diversified investment company if the net total assets of such mutual fund are less than 50 million dollars.

It is my opinion that the governing body of a public employee retirement system is authorized, pursuant to Sec. 4 of Act 314, P.A. 1965, supra, to make investments in the common stock of diversified investment companies registered under the investment company act of 1940, subject to limitations found in the act.

FRANK J. KELLEY,
Attorney General.