



A background on the funding issue of March 28, 2013:

The State Treasurer's Office believes the safety of the SC Retirement System Trust Fund is a top priority. Protecting these funds require that custody issues be resolved using written, uniform legal documents signed by appropriate public officials prior to any funds being transferred to outside investment managers.

For many years the Investment Commission required their general legal counsel to give verbal approval to an investment concerning the "legal sufficiency" of a contract before it could be executed. Legal sufficiency means that the terms of an investment approved by the Commission actually become part the contract with the investment manager. This would include, among other items, fees, the amount of money to be invested, the length of the contract, etc.

Since billions of dollars of Retirement System Trust Fund money have been invested based on the verbal approval by general counsel, I asked that the approval be placed in writing. Individuals, businesses and governments demand that documents of importance such as home mortgages, car loans or tax notices are in writing. The Treasurer's Office believes investment contracts consisting of billions of dollars of public money should not be considered any less important.

On November 8th the Commission voted to provide a document of legal sufficiency on a specific investment. In that meeting, I asked the Commission's lawyers, who are "my" lawyers as well, to create a document. As of March 28th they had not done so. Instead, Commissioner Reynolds Williams demanded that I transmit \$50 million based on an email that consisted of informal back and forth correspondence between myself and a junior commission attorney.

The email from the Investment Commission lawyer does not constitute a legal document. The email is not conclusive and not signed by general legal counsel. It neither portrays the seriousness of our obligations as Commissioners responsible for a \$26.6 billion trust fund, nor does it provide information for the State's custodian to move money from the safety of its custody bank to an outside money manager.

There is also an unresolved issue with the actual custody of the funds once they are in the possession of the investment manager. Custody arrangements are very important to the protection of investment funds and are the statutory responsibility of the State Treasurer. Inadequate custody arrangements have been at the core of recent financial scandals like the Bernie Madoff affair and MF Global debacle. As is often the case with alternative investments, custody arrangements are not traditional but with proper diligence an appropriate level of comfort can be obtained. I have asked for specific custody arrangements about the specific investment fund and the response from the commission has been incomplete.

On March 18, instead of waiting to settle the custody and legal issues, Commissioner Reynolds Williams ordered the investment contract signed and executed. The Treasurer's Office and Investment Commission were just days away from having the appropriate information needed to fund this investment. The decision to prematurely execute the investment contract was most unfortunate and places the state at unnecessary risk.

The Treasurer's office has presented the Investment Commission with [a proposed document of legal sufficiency](#) and awaits their response. The Treasurer's office also believes this manufactured crises can be resolved in a reasonable amount of time should the Commission so chose.