

From: Soura, Christian
To: Patel, SwatiSwatiPatel@gov.sc.gov
Date: 6/20/2013 8:23:53 AM
Subject: Fw: Coffee/Proviso 117.126

I'll follow-up with you later on this, but in the meantime, RSIC's lawyers are available to discuss the legal issues with this proviso with you, if you don't mind exploring this. Thanks.

CLS

From: Danny Varat [mailto:DVarat@ic.sc.gov]
Sent: Wednesday, June 19, 2013 05:11 PM
To: Soura, Christian
Subject: RE: Coffee/Proviso 117.126

Swati will be getting this from Mike Shealy, but just for your information

Laws that are potentially relevant include the following:

1. Internal Revenue Code, Section 401(a)(2) – the “exclusive benefit” rule (emphasis added)

(a) Requirements for qualification

A trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust under this section—

(2) if under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust, **for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of ... employees or their beneficiaries** (but this paragraph shall not be construed, in the case of a multiemployer plan, to prohibit the return of a contribution within 6 months after the plan administrator determines that the contribution was made by a mistake of fact or law (other than a mistake relating to whether the plan is described in section 401 (a) or the trust which is part of such plan is exempt from taxation under section 501 (a), or the return of any withdrawal liability payment determined to be an overpayment within 6 months of such determination).

2. S.C. Const., Art. X, Section 16. Regulation of benefits, funding and membership contributions of state-operated retirement systems; investment of funds.

Assets and funds established, created and accruing for the purpose of paying obligations to members of the several retirement systems of the State and political subdivisions shall not be diverted or used for any other purpose (emphasis added).

3. S.C. Code Ann. 9-16-40 (2), (5)

A trustee, commission member, or other fiduciary shall discharge duties with respect to a retirement system:

1. Solely in the interest of the retirement systems, participants, and beneficiaries;

2. For the exclusive purpose of providing benefits to participants and beneficiaries and paying reasonable expenses of administering the system; ...
- (5) incurring only costs that are appropriate and reasonable....



DANNY VARAT
PUBLIC INFORMATION DIRECTOR
P 803.737.7556 | M 803.528.5554 | DVARAT@IC.SC.GOV
1201 MAIN STREET | SUITE 1510 | COLUMBIA, SC | 29201
SOUTH CAROLINA RETIREMENT SYSTEM

INVESTMENT COMMISSION

-----Original Appointment-----

From: Soura, Christian [<mailto:ChristianSoura@gov.sc.gov>]

Sent: Wednesday, June 19, 2013 5:00 PM

To: Danny Varat

Subject: New Time Proposed: Coffee/Proviso 117.126

When: Thursday, June 20, 2013 8:00 AM-8:30 AM (UTC-05:00) Eastern Time (US & Canada).

Where: Your Office or you choose

Can we do 7:45 at Drip on Main Street? I have to be at HHS around 8:20. Thanks.

CLS