



TO: Cash Management Policy Board and Investment Subcommittee Members
The Honorable Treasurer Colleen Davis
Deputy Treasurer Jordan Seemans
Deputy Attorney General Jason Staib
Ms. Fiah Kwessey, Director of Operations and Funds Management
Mr. Brennon Fountain, Director of Reconciliations and Funds Management
Ms. Antonia Kramer, Cash Manager
Ms. Ninna Vaughn, Executive Assistant
Ms. Priyanshi Vaidya, Accounting Specialist

FROM: Khairat Makanjuola, CPA, Chief Operating Officer

DATE: October 16, 2024

RE: CMPB's authority relating to funds held by state agencies/school districts that are derived from private donations/endowments for purposes such as scholarships, or other purposes

During the Cash Management Policy Board ("CMPB")'s Investment subcommittee meeting held on August 7, 2024, a discussion ensued about the Endowment Trust ("Trust") of the State of Delaware's ("State") investment portfolio which is managed by the Office of the State Treasurer ("OST") under the authority of the CMPB. OST's Cash Manager, Mr. Steve McVay, prepared a memo shared with the board that summarized the history of the participating entities within the Trust as well as their contribution and withdrawal history at the request of CMPB member: Secretary Geisenberger.

Participating entities include: DNREC (Land & Water Fund), and Smyrna and Woodbridge School Districts (Scholarship Funds). This memo was intended to facilitate the understanding of the participant's intended use of the funds in the Trust as well as how their needs and withdrawal requests may be affected should the CMPB change the Trust's investment mix to include other strategies in addition to fixed income and equity securities.

After much discussion about the diversity of intentions among various participants in the Trust and the appropriateness of investing in riskier assets such as alternative investments that typically require commitment periods as long as 10 years, which could have an impact on available liquidity to meet participants' need to withdraw on an annual basis, an amount representing 3% to 4% of invested balance, the Board did not entertain any further discussions about altering the investment strategies of the Trust.

Secretary Geisenberger asked OST to do a deeper dive to identify other school districts or agencies that could be eligible for participation in the Endowment Trust. He asserted that the Division of Libraries has funds (about \$15 million to \$20 million) through private donations that are invested with the Delaware Community Foundation ("DCF") and further stated that he would not be surprised if there are schools/other agencies who have such funds invested with DCF.

Board Chair Warren Engle asked this question to OST's Deputy Attorney General: "Is it in our charter, is that what we're supposed to be doing in terms of adding these funds and I'm asking this question to our counsel". To



paraphrase, the board chair asked the DAG to provide a legal opinion around the CMPB's authority to invest and manage funds on behalf of agencies/school districts that are derived from private donations.

To facilitate the preparation of this legal opinion, OST's Chief Operating Officer, Khairat Makanjuola reviewed the list of funds listed on the DCF website. From this list, several funds were identified that appeared to be owned by either the State or a school district. One of such funds identified was the: Lee Hirsch Scholarship for Milford School District. Ms. Makanjuola enlisted the help of OST's Director of Reconciliation and Funds Management, Mr. Brennon Fountain to procure answers to the following discovery questions about this scholarship fund:

1. How was this scholarship fund created? Specifically, which entity owns the funds? Does the school have responsibility for it or is there a not-for-profit entity that owns this scholarship fund?
2. Does Milford play any role in administering the scholarship fund?
3. This fund is not reported as a scholarship fund in Milford High School's First State Financials GAAP package for Fiscal Year 2023, can you help confirm reporting for Fiscal Year 2024?

The school district provided the following responses:

1. The history of the scholarship fund is unknown, but it has been at DCF for quite a while. There are other Lee Hirsch funds at DCF on behalf of Milford School District, so it likely originated via a trust or some other entity to manage and distribute. The DCF owns this scholarship fund.
2. Milford High has no role.
3. This fund is not reported in the Fiscal Year 2024 GAAP package.

A second fund identified from DCF's list titled: Delaware Division of Arts fund prompted Ms. Makanjuola to direct Mr. Fountain to obtain answers to a similar series of questions. It was at this juncture that Mr. Brennon Fountain organized a meeting between Ms. Makanjuola, himself and the Compliance and Operations team at DCF: Rebecca Elzey and Joyce Darling. The conclusions of that meeting are as follows:

- DCF is a charitable organization and as such all contributions to it are deemed as gifts/grants. DCF is not a money manager on behalf of any other entity. It is also the title holder of all the component funds listed on its website.
- These funds have been restricted for specific use by the donors (including the state). And while the state/donor may have some input into how the gifts can be used, the ultimate decision-making authority rests with DCF. The Division of Arts fund in question was a grant to DCF from the State in 1993.

While the above findings remove any doubt about the role of DCF with respect to state/school districts/agency funds, an open question remains about the CMPB's authority to invest and manage funds on behalf of agencies/school districts that are derived from private donations.

To answer this question, Ms. Makanjuola asked DAG Staib to consider whether these funds are banked in any of the CMPB's approved banking providers and if donations are solicited using the State's Employer Identification Number ("EIN"). Additionally, would this opinion differ if these funds were held in a separate foundation owned by these agencies/school district, which are likely be administered through a separate EIN. Mr. Staib's legal opinion on this question will be provided to the board at the Investment Subcommittee meeting scheduled to occur on November 6, 2024.