

Governance Manual

MainePERS Board of Trustees

Board Governance

1.2 – Trustee Fiduciary Responsibility

Date Adopted: June 9, 2012

Date Amended: December 13, 2012; June 13, 2013; October 13, 2016

Policy

The Trustees of the System, both collectively as the Board of Trustees and individually, have a fiduciary duty imposed by the Constitution of Maine, Maine State statutes, and common law. The members of the Board of Trustees are trustees of the funds of the System and have a fiduciary obligation to administer the System and the funds under the System's control solely in the interest of the members as beneficiaries of pension and related benefits.

It is the obligation of every Trustee to conduct herself or himself in a manner that promotes public confidence in the integrity, impartiality, professionalism and ethical behavior of the System in its relations with retirees, beneficiaries, members, employers, the public, staff and outside providers of goods and services.

Nothing in this policy shall excuse any Trustee from any other restrictions or requirements of State or federal law concerning conflicts of interest and fiduciary duties.

Statutory/Legal Provisions

- [Me. Const. art. IX, § 18.](#)
- [5 M.R.S. §§ 17102, 17103, 17435; 18-B M.R.S. § 801, et seq.](#) (Maine Uniform Trust Code); [18-B M.R.S. § 901, et seq.](#) (Maine Uniform Prudent Investor Act).
- [5 M.R.S. §§ 17153\(4\).](#)
- Restatement (Third) of Trusts § 78(1) (2007) (the “sole interest rule”).
- The Employee Retirement Income Security Act (“ERISA”), codified at [29 U.S.C. § 1002, et seq.](#), provides a description of the standard of care that applies to trustees of private sector retirement plans. Although the System as a public retirement plan is not specifically governed by the fiduciary duty standard set forth in ERISA, courts will often consider the standard set forth in ERISA when addressing public pension plan issues. Under ERISA, a fiduciary must act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person (expert) acting in a like capacity would act. This statutory standard is derived from the common law of trusts, which is applicable in the State of Maine.

Statement of Fiduciary Standards

All MainePERS Trustees shall adhere to this list of fiduciary standards:

- A fiduciary relationship is one founded on trust or confidence under circumstances where one person relies upon the integrity and fidelity of another;
- A Trustee of the System has a fiduciary duty to act in the best interests of the members as beneficiaries of the pension plans and related benefits administered by the System;
- As a fiduciary, a Trustee must discharge duties with respect to the trust for the exclusive benefit of the member or participant and beneficiaries of the trust;

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- A Trustee has the duty of undivided loyalty to the members and beneficiaries;
- A Trustee must administer the trust solely for the benefit of the members, participants and beneficiaries. Trustee self-dealing is illegal under the laws of the State of Maine;
- A Trustee cannot take advantage of the trust position for personal gain;
- Scrupulous good faith, complete fairness, the highest standard of honesty and candor are always required of a Trustee; and
- A Trustee is not expected or required to be an expert in all matters under the Trustee's ultimate control. If a fiduciary lacks the expertise in a certain area, then the fiduciary must delegate responsibilities to an expert which has been prudently hired and responsibly monitored and evaluated. Trustees are entitled, and in some instances obligated, to rely upon such experts.