

LAW AND CONTEMPORARY PROBLEMS

VOLUME 17

WINTER, 1952

NUMBER 1

FOREWORD

The purpose of this symposium is to discuss the investment programs, policies, and problems of the institutional investors—life insurance companies, savings and commercial banks, trust companies, trust funds, investment trusts, pension funds, and endowments. All these investors have certain common characteristics. For example, in handling the funds at their disposal for investment, they of necessity must consider the special relationships, contractual and otherwise, which exist between them and the ultimate recipients of the major part of these funds—the depositors or trust, insurance, or pension beneficiaries. This relationship clearly imposes on them obligations far different from those of the ordinary investor handling his own funds. The fiduciary or contractual nature of it compels them to make special provisions for safety of capital, for liquidity of funds, and for guarantee of a minimum fixed rate of return. The importance and relevance of these factors may vary widely among the different types of institutional investor. Frequently these factors come in conflict with each other—conservatism for safety of principal may mean reduction of the rate of return below the desired level.

Another common feature of the institutional investors is their comparatively large size, both individually and in the aggregate, when viewed in relation to other investors. Of course there are numerous small trust funds, but even these are now in an increasing number of cases being combined into the larger common trust funds. Size, at least up to a certain extent, undoubtedly does offer investment advantages, such as more adequate diversification and more comprehensive appraisals of investments, but it also creates problems of control, management, and responsibility. There is the question of monopolistic trends both in respect to certain investing institutions' own business—insurance, banking, or other—and in respect to the possible control through investments of other sectors of our economy. Large investment institutions in times of expanding governmental activities for defense and other functions offer a most convenient and attractive source of deficit financing for the government and, as such a channel for the public debt, may have an important influence on its size, nature, and ultimate cost. These investing institutions are also a supplier of capital and credit for private industrial expansions and business activities and here too their investment policies may strongly influence the nature and extent of the expansions and of the capital structures of industry and business,

including the relationship between equity and debt. This role of the institutional investors as substantial suppliers of public and private credit and capital obviously must be considered in any program of voluntary or involuntary credit control in eras of inflation or deflation and will often have a close relationship to the efforts of the government through a central bank or otherwise to deal with the problems facing the national economy at such times. Finally, we should not overlook the fact that, because of their very size, the institutional investors may well contribute large sums of revenue to the states through taxes directly levied upon them, although because of the special nature of their funds and investments, difficult questions of fair play will be encountered in devising any equitable tax system for them.

Certainly it is not difficult to see why both federal and state governments have taken an extremely active role in controlling and regulating in various ways the investments and many other aspects of these institutions.

This symposium does not contain a detailed examination of all the state and federal rules and legislation affecting the investments of these institutions. It endeavors to determine, as far as possible, what have been the past investment policies and problems of these institutions, what part they have played and are playing in our economy, and the significance of the changes which have recently occurred here. Do our existing laws enable us to utilize fully their vast and powerful financial resources? Do our laws at present encourage them, with the necessary but minimum number of safeguards, to employ their skills, organizations, and funds wisely and effectively, for the best interests of the nation as a whole?

ROBERT KRAMER.