

§5104. Appropriation for expenditure or accumulation of endowment fund; rules of construction

1. Appropriate; accumulate; donor-restricted; good faith; care. Subject to the intent of a donor expressed in the gift instrument, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

A. The duration and preservation of the endowment fund; [PL 2009, c. 450, §2 (NEW); PL 2009, c. 450, §3 (AFF).]

B. The purposes of the institution and the endowment fund; [PL 2009, c. 450, §2 (NEW); PL 2009, c. 450, §3 (AFF).]

C. General economic conditions; [PL 2009, c. 450, §2 (NEW); PL 2009, c. 450, §3 (AFF).]

D. The possible effect of inflation or deflation; [PL 2009, c. 450, §2 (NEW); PL 2009, c. 450, §3 (AFF).]

E. The expected total return from income and the appreciation of investments; [PL 2009, c. 450, §2 (NEW); PL 2009, c. 450, §3 (AFF).]

F. Other resources of the institution; and [PL 2009, c. 450, §2 (NEW); PL 2009, c. 450, §3 (AFF).]

G. The investment policy of the institution. [PL 2009, c. 450, §2 (NEW); PL 2009, c. 450, §3 (AFF).]

[PL 2009, c. 450, §2 (NEW); PL 2009, c. 450, §3 (AFF).]

2. Limitation. To limit the authority to appropriate for expenditure or accumulate under subsection 1, a gift instrument must specifically state the limitation.

[PL 2009, c. 450, §2 (NEW); PL 2009, c. 450, §3 (AFF).]

3. Terms. Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only "income," "interest," "dividends" or "rents, issues or profits," or "to preserve the principal intact" or words of similar import:

A. Create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund; and [PL 2009, c. 450, §2 (NEW); PL 2009, c. 450, §3 (AFF).]

B. Do not otherwise limit the authority to appropriate for expenditure or accumulate under subsection 1. [PL 2009, c. 450, §2 (NEW); PL 2009, c. 450, §3 (AFF).]

[PL 2009, c. 450, §2 (NEW); PL 2009, c. 450, §3 (AFF).]

4. Track historic dollar value. An institution shall track the historic dollar value of its institutional funds.

[PL 2009, c. 450, §2 (NEW); PL 2009, c. 450, §3 (AFF).]

5. Aggregate value of \$2,000,000 or more. An institution administering endowment funds with an aggregate value of \$2,000,000 or more shall notify the Attorney General upon its adoption of the provisions of this Act.

[PL 2009, c. 450, §2 (NEW); PL 2009, c. 450, §3 (AFF).]

6. Aggregate value of less than \$2,000,000. An institution administering endowment funds with an aggregate value of less than \$2,000,000 shall notify the Attorney General at least 60 days prior to an

appropriation for expenditure of an amount that would cause the value of the institution's endowment funds to fall below the aggregate historic dollar value of the institution's endowment funds. During the 60-day period, the Attorney General may require the institution to obtain court approval for the proposed expenditure.

[PL 2009, c. 450, §2 (NEW); PL 2009, c. 450, §3 (AFF).]

7. Rebuttable presumption. The appropriation for expenditure in any year of an amount greater than 7% of the fair market value of an endowment fund, calculated on the basis of market values determined at least quarterly and averaged over a period of not less than 3 years immediately preceding the year in which the appropriation for expenditure is made, creates a rebuttable presumption of imprudence. For an endowment fund in existence for less than 3 years, the fair market value of the endowment fund must be calculated for the period the endowment fund has been in existence. This subsection does not apply to an appropriation for expenditure permitted under law other than this chapter or by the gift instrument.

[PL 2009, c. 450, §2 (NEW); PL 2009, c. 450, §3 (AFF).]

SECTION HISTORY

PL 2009, c. 450, §2 (NEW). PL 2009, c. 450, §3 (AFF).

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