

CHAPTER 313—H.F.No. 3162

An act relating to local government; permitting the city of Cohasset to own and operate a gas utility.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. COHASSET GAS UTILITY.

The city of Cohasset may own and operate a gas utility pursuant to Minnesota Statutes, chapter 412, without an election under Minnesota Statutes, section 412.321, subdivision 2.

Sec. 2. EFFECTIVE DATE.

Section 1 is effective the day after compliance by the city of Cohasset with Minnesota Statutes, section 645.021, subdivision 3.

Presented to the governor March 14, 1996

Signed by the governor March 15, 1996, 11:47 a.m.

CHAPTER 314—H.F.No. 1998

An act to trusts; regulating the investment and management of trust assets; providing standards; amending Minnesota Statutes 1994, sections 48.38, subdivision 6; 48.84; 317A.161, subdivision 24; 525.56, subdivision 4; and 529.06; proposing coding for new law in Minnesota Statutes, chapter 501B; repealing Minnesota Statutes 1994, sections 501B.10; and 501B.11.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1994, section 48.38, subdivision 6, is amended to read:

Subd. 6. It may invest all moneys received by it in trust, in authorized securities, and shall be responsible to the owner or cestui que trust for the validity, regularity, quality, value, and genuineness of these investments and securities at the time made and for the safekeeping of these securities and the evidences thereof. When special directions are given in any order, judgment, decree, will, or other written instrument as to the particular manner or the particular class or kind of securities or property in which any investment shall be made, it shall follow this direction and, in such case, it shall not be further responsible by reason of the performance of the trust.

It may, in its discretion, retain and continue any investment and security or securities coming into its possession in any fiduciary capacity. For the faithful discharge of its duties and the discharge of its trust, it shall be entitled to reasonable compensation or such amount as has been or may be agreed upon by the parties and all necessary expenses, with legal interest thereon.

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In the absence of an express prohibition in the trust instrument, the trustee may acquire and retain securities of any open-end or closed-end management type investment company or investment trust registered under the Federal Investment Company Act of 1940. The fact that the banking institution, or any affiliate of the banking institution, is providing services to the investment company or trust as investment advisor, sponsor, broker, distributor, custodian, transfer agent, registrar, or otherwise, and receiving compensation for the services shall not preclude the trustee from investing in the securities of that investment company or trust. The banking institution shall disclose to all current income beneficiaries of the trust the rate, formula, and method of the compensation. This paragraph does not alter the degree of care and judgment required of trustees by section ~~501B.10~~, subdivision 4 501B.151.

No compensation or commission paid or agreed to be paid to it for the negotiation of any loan or the execution of any trust shall be deemed interest within the meaning of the law, nor shall any excess thereof over the legal rate be deemed usury.

Sec. 2. Minnesota Statutes 1994, section 48.84, is amended to read:

48.84 CORPORATE TRUSTEE; TRUST FUNDS, INVESTMENT, COMMINGLING.

Any trust company or state bank which is permitted to exercise trust powers under the provisions of sections 48.37 to 48.47 inclusive may invest all moneys received by it in trust in authorized securities, and shall be responsible to the owner or cestui que trust for the validity, regularity, quality, value, and genuineness of these investments and securities so made, and for the safekeeping of the securities and evidences thereof. In the absence of an express prohibition in the trust instrument, the trustee may acquire and retain securities of any open-end or closed-end management type investment company or investment trust registered under the Federal Investment Company Act of 1940. The fact that the banking institution, or any affiliate of the banking institution, is providing services to the investment company or trust as investment advisor, sponsor, broker, distributor, custodian, transfer agent, registrar, or otherwise, and receiving compensation for the services shall not preclude the trustee from investing in the securities of that investment company or trust. The banking institution shall disclose to all current income beneficiaries of the trust the rate, formula, and method of the compensation. This paragraph does not alter the degree of care and judgment required of trustees by section ~~501B.10~~, subdivision 4 501B.151. When special directions are given in any order, judgment, decree, will, or other written instrument as to the particular manner or the particular class or kind of securities or property in which any investment shall be made, it shall follow such directions, and in such case it shall not be further responsible by reason of the performance of such trust. In all other cases it may invest funds held in any trust capacity in authorized securities using its best judgment in the selection thereof, and shall be responsible for the validity, regularity, quality, and value thereof at the time made, and for their safekeeping. Whether it be the sole trustee or one of two or more cotrustees, it may invest in fractional parts of, as well as in whole, securities, or may commingle funds for investment. If it invests in fractional parts of securities or commingles funds for investment, all of the fractional parts of such securities, or the whole of the funds so commingled shall be owned and held by the trust company or state bank in its several trust capacities, and it shall be liable for the administration thereof in all respects as though separately invested; provided, that not more than \$100,000, at the cost price of such investments, shall be so in-

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vested for any one trust at any one time in fractional parts or as commingled funds for investment by a trust company or state bank having capital and surplus of less than \$500,000, unless the authority to invest in fractional parts or as commingled funds be given in the order, judgment, decree, will, or other written instrument governing such trust. Funds so commingled for investment shall be designated collectively as a common trust fund. Such trust company or state bank shall maintain such common trust fund in conformity with the rules and regulations prevailing from time to time of that federal governmental agency which regulates the collective investment of trust funds by national banks. It may, in its discretion, retain and continue any investment and security or securities coming into its possession in any fiduciary capacity. The foregoing shall apply as well whether a corporate trustee is acting alone or with an individual cotrustee.

Sec. 3. Minnesota Statutes 1994, section 317A.161, subdivision 24, is amended to read:

Subd. 24. **MAY INVEST TRUST PROPERTY.** Except where the trust instrument prescribes otherwise, a corporation may invest trust property or its proceeds in accordance with section ~~501B.10~~ 501B.151.

Sec. 4. **[501B.151] INVESTMENT AND MANAGEMENT OF TRUST ASSETS.**

Subdivision 1. PRUDENT INVESTOR RULE. (a) Except as otherwise provided in subsection (b), a trustee who invests and manages trust assets shall comply with the prudent investor rule set forth in this section.

(b) The prudent investor rule, a default rule, may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.

Subd. 2. STANDARD OF CARE; PORTFOLIO STRATEGY; RISK AND RETURN OBJECTIVES. (a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(b) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(c) The circumstances that a trustee may consider in making investment decisions include, without limitation, the following:

- (1) general economic conditions;
- (2) the possible effect of inflation;
- (3) the expected tax consequences of investment decisions or strategies;
- (4) the role that each investment or course of action plays within the overall trust portfolio;

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(5) the expected total return from income and the appreciation of capital;

(6) other resources of the beneficiaries known to the trustee, including earning capacity;

(7) needs for liquidity, regularity of income, and preservation or appreciation of capital; and

(8) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries if consistent with the trustee's duty of impartiality.

(d) A trustee may invest in any kind of property or type of investment consistent with the standards of this section.

(e) A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.

Subd. 3. DIVERSIFICATION. A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

Subd. 4. DUTIES AT INCEPTION OF TRUSTEESHIP. Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of this section.

Subd. 5. INVESTMENT COSTS. In investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of the trustee.

Subd. 6. REVIEWING COMPLIANCE. Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight. The prudent investor rule is a test of conduct and not of resulting performance.

Subd. 7. LANGUAGE INVOKING STANDARD. The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under this section: "investments permissible by law for investment of trust funds," "legal investments," "authorized investments," "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital," "prudent man rule," "prudent trustee rule," "prudent person rule," and "prudent investor rule."

Subd. 8. DISPOSAL OF PROPERTY. Unless the trust instrument or a court order specifically directs otherwise, a trustee need not dispose of any property, real, personal, or mixed, or any kind of investment, in the trust, however acquired, until the trustee determines in the exercise of a sound discretion that it is advisable to dispose of the property. Nothing in this subdivision excuses the trustee from the duty to exercise discretion at rea-

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sonable intervals and to determine at those intervals the advisability of retaining or disposing of property.

Subd. 9. NO LIMITATION ON POWERS OF COURT. This section does not restrict the power of a court of proper jurisdiction to permit a trustee to deviate from the terms of a will, agreement, court order, or other instrument relating to the acquisition, investment, reinvestment, exchange, retention, sale, or management of trust property.

Subd. 10. TRUSTEES DEFINED. As used in this section, "trustee" means individual trustees and corporations having trust powers acting under wills, agreements, court orders, and other instruments, whether existing on the effective date of this section or made at a later time.

Subd. 11. INVESTMENT COMPANIES. (a) In the absence of an express prohibition in the trust instrument, the trustee may acquire and retain securities of any open-end or closed-end management type investment company or investment trust registered under the Federal Investment Company Act of 1940. The fact that a trustee which is a banking institution, as defined in section 48.01, subdivision 2, or any affiliate of a trustee which is a banking institution, is providing services to the investment company or trust as investment advisor, sponsor, broker, distributor, custodian, transfer agent, registrar, or otherwise, and receiving compensation for the services shall not preclude the trustee from investing in the securities of that investment company or trust. A trustee which is a banking institution shall disclose to all current income beneficiaries of the trust the rate, formula, and method of the compensation.

(b) This subdivision does not alter the degree of care and judgment required of trustees under this section.

Subd. 12. APPLICATION TO EXISTING TRUSTS. This section applies to trusts existing on and created after its effective date. As applied to trusts existing on its effective date, this section governs only decisions or actions occurring after that date.

Subd. 13. SHORT TITLE. This section may be cited as the "Minnesota prudent investor act."

Sec. 5. [501B.152] AGENTS OF TRUSTEE.

(a) Unless prohibited or otherwise restricted by the terms of the trust instrument, a trustee may delegate to any person, even if the person is associated with the trustee, any trust function that a prudent person of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

- (1) selecting an agent;
- (2) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
- (3) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

(b) In performing a delegated trust function, an agent owes a duty to the trust to comply with the terms of the delegation and to act in a manner consistent with the purposes and terms of the trust. This duty shall be enforced by the trustee.

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(c) A trustee who complies with the requirements of paragraph (a) is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the trust function was delegated.

(d) By accepting the delegation of a trust function from the trustee of a trust that is subject to the laws of this state, an agent submits to the jurisdiction of the courts of this state.

Sec. 6. Minnesota Statutes 1994, section 525.56, subdivision 4, is amended to read:

Subd. 4. DUTIES OF GUARDIAN OR CONSERVATOR OF THE ESTATE.

The court may appoint a guardian of the estate if it determines that all the powers and duties listed in this subdivision are needed to provide for the needs of the incapacitated person. The court may appoint a conservator of the estate if it determines that a conservator is necessary to provide for the needs of the incapacitated person through the exercise of some, but not all, of the powers and duties listed in this subdivision. The duties and powers of a guardian or those which the court may grant to a conservator include, but are not limited to:

(1) The duty to pay the reasonable charges for the support, maintenance, and education of the ward or conservatee in a manner suitable to the ward's or conservatee's station in life and the value of the estate. Nothing herein contained shall release parents from obligations imposed by law for the support, maintenance, and education of their children. The guardian or conservator has no duty to pay for these requirements out of personal funds. Wherever possible and appropriate, the guardian or conservator should meet these requirements through governmental benefits or services to which the ward or conservatee is entitled, rather than from the ward's or conservatee's estate. Failure to satisfy the needs and requirements of this clause shall be grounds for removal, but the guardian or conservator shall have no personal or monetary liability;

(2) The duty to pay out of the ward's or conservatee's estate all just and lawful debts of the ward or conservatee and the reasonable charges incurred for the support, maintenance, and education of the ward's or conservatee's spouse and dependent children and, upon order of the court, pay such sum as the court may fix as reasonable for the support of any person unable to earn a livelihood who is legally entitled to support from the ward or conservatee;

(3) The duty to possess and manage the estate, collect all debts and claims in favor of the ward or conservatee, or, with the approval of the court, compromise them, institute suit on behalf of the ward or conservatee and represent the ward or conservatee in any court proceedings, and invest all funds not currently needed for the debts and charges named in clauses (1) and (2) and the management of the estate, in accordance with the provisions of sections 48.84 and ~~501B.10, subdivision 1~~ 501B.151, or as otherwise ordered by the court. The standard of a fiduciary shall be applicable to all investments by a guardian or conservator. A guardian or conservator shall also have the power to purchase certain contracts of insurance as provided in section 50.14, subdivision 14, clause (b);

(4) Where a ward or conservatee has inherited an undivided interest in real estate, the court, on a showing that it is for the best interest of the ward or conservatee, may authorize an exchange or sale of the ward's or conservatee's interest or a purchase by the ward or conservatee of any interest other heirs may have in the real estate.

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Sec. 7. Minnesota Statutes 1994, section 529.06, is amended to read:

529.06 GENERAL DUTIES OF CUSTODIAL TRUSTEE.

(a) If appropriate, a custodial trustee shall register or record the instrument vesting title to custodial trust property.

(b) If the beneficiary is not incapacitated, a custodial trustee shall follow the directions of the beneficiary in the management, control, investment, or retention of the custodial trust property. In the absence of effective contrary direction by the beneficiary while not incapacitated, the custodial trustee shall observe the standard of care set forth in section ~~501B.10~~ 501B.151. However, a custodial trustee, in the custodial trustee's discretion, may retain any custodial trust property received from the transferor.

(c) Subject to subsection (b), a custodial trustee shall take control of and collect, hold, manage, invest, and reinvest custodial trust property.

(d) A custodial trustee at all times shall keep custodial trust property of which the custodial trustee has control, separate from all other property in a manner sufficient to identify it clearly as custodial trust property of the beneficiary. Custodial trust property, the title to which is subject to recordation, is so identified if an appropriate instrument so identifying the property is recorded, and custodial trust property subject to registration is so identified if it is registered, or held in an account in the name of the custodial trustee, designated in substance: "as custodial trustee for (name of beneficiary) under the Minnesota uniform custodial trust act."

(e) A custodial trustee shall keep records of all transactions with respect to custodial trust property, including information necessary for the preparation of tax returns, and shall make the records and information available at reasonable times to the beneficiary or legal representative of the beneficiary.

Sec. 8. REPEALER.

Minnesota Statutes 1994, sections 501B.10; and 501B.11, are repealed.

Sec. 9. EFFECTIVE DATE.

Sections 1 to 8 are effective January 1, 1997.

Presented to the governor March 14, 1996

Signed by the governor March 15, 1996, 11:50 a.m.

CHAPTER 315—S.F.No. 2760

An act relating to agriculture; providing an exception to alien ownership of agricultural land for production of timber and forestry products; amending Minnesota Statutes 1994, section 500.221, subdivision 2.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1994, section 500.221, subdivision 2, is amended to read:

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