



STATE OF WISCONSIN
Department of Employee Trust Funds
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CORRESPONDENCE MEMORANDUM

DATE: March 24, 2006
TO: David A. Stella, DETF Deputy Secretary
FROM: Robert Weber, DETF Chief Counsel
SUBJECT: Comparison of ETF Board and DETF Secretary Powers and Duties

Agency Powers, Generally.

The duties and powers of the Employee Trust Funds (ETF) Board and the Secretary of the Department of Employee Trust Funds (DEFT) are established by statute. It is well-established law that, like all other administrative agencies, both the Board and the Department have only the powers that are expressly conferred upon them by the statutes under which they operate, plus any powers necessarily implied from those statutes.¹ Any reasonable doubt as to the existence of an implied power in an agency should be resolved against the exercise of such authority.² Courts will strictly construe an agency's enabling statute and resolve any reasonable doubt about implied powers against the agency.³

Employee Trust Funds Board.

The Employee Trust Funds Board's powers and duties are, for the most part, regulatory, advisory and policy-making, and not administrative. The ETF Board:

- Appoints the DETF Secretary to serve at the Board's pleasure.
- Retains actuaries and has some authority to hire medical, legal and other contractors.
- Is charged with directing and supervising the Department.
- Members are trustees of the Public Employee Trust Fund.
- Has limited equity power to adjust annuity benefit computations.
- Approves the DETF budget.

¹ *Wisconsin Builders Association v. Wisconsin Department of Transportation*, ___ Wis. 2d ___, 702 N.W.2d 433, 438 (Ct. App. 2005).

² *Kimberly-Clark Corp. v. Public Service Commission of Wisconsin*, 110 Wis.2d 455, 462, 329 N.W.2d 143, 146 (1983).

³ *Wisconsin Citizens Concerned for Cranes and Doves v. Wisconsin Dept. of Natural Resources*, 270 Wis.2d 318, 335, 677 N.W.2d 612, 620 (2004).

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- Sets the assumed rate and salary assumption.
- Approves most proposed administrative rules.
- May compel witnesses to attend Board meetings and testify.

DETF Secretary.

The Secretary of the DETF is vested with all the administrative powers and duties of the Department. The principal duty of the Department is to administer the benefit plans of ch. 40 so as to assure that the right person is paid the correct benefit in a timely manner. The Secretary's powers and duties are, for the most part, administrative.

The Secretary:

- Is in charge of administering the Department.
- Has limited equity powers concerning correcting DETF administrative errors and creating new employment categories to achieve fairness in current service contributions.
- Develops the Department budget.
- Employs a deputy, executive assistant and other employees required for administration.
- Determines the annual effective rates.
- Is responsible for writing necessary administrative rules.
- May request necessary information from employees and employers.

A more detailed comparison of the powers and duties of the ETF Board and the DETF Secretary, organized in a table by topic, is attached to this memorandum.