

# The Senate of The State of Texas

SENATE COMMITTEES:

Criminal Justice, Chair  
Business & Commerce  
Finance

Senator John Whitmire

Dean of the Texas Senate

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February 27, 2020

RQ-0334-KP

FILE# ML-48711-20

I.D.# 48711

The Honorable Ken Paxton  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

**Re: Request for legal opinion about the legality of the Teacher Retirement System of Texas ownership of real estate**

Dear General Paxton:

According to recent news reports and presentations to the Teacher Retirement System of Texas (TRS) Board of Trustees, TRS has increased its real estate holdings both in the United States and internationally.

**Prohibition from investing in real estate**

Under Section 67(3), Article XVI, the Texas Constitution, "Each statewide benefit system must have a board of trustees to administer the system and to invest the funds of the system in such **securities** as the board may consider prudent investments."

According to Tex. Gov't Code, Sec, 825.301(a), "...securities" includes any investment instrument within the meaning of the term as defined by Section 4, The Securities Act (Article 581-4, Vernon's Texas Civil Statutes), 15 U.S.C. Section 77b(a)(1), or 15 U.S.C. Section 78c(a)(10), any derivative instrument, and any other instrument commonly used by institutional investors to manage institutional investment portfolios. An interest in a limited partnership or investment contract is considered a security without regard to the number of investors or the control, access to information, or rights granted to or retained by the retirement system. Any instrument or contract intended to manage transaction or currency exchange risk in purchasing, selling, or holding securities is considered to be a security. Investment decisions are subject to the standard provided in the Texas Trust Code by Section 117.004(b), Property Code."

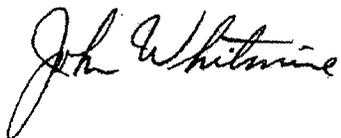


## Request

1. Are any investments in or ownership of real estate either directly or indirectly by the Teacher Retirement System of Texas a violation of the Texas Constitution or Texas Government Code?
2. If the investments are in violation of the Texas Constitution and/or state statute, what is the remedy?

Thank you for consideration of this request. Please feel free to contact my office should you need any additional information or details regarding this request.

Sincerely,

A handwritten signature in cursive script, appearing to read "John Whitmire".

Senator John Whitmire  
Chair, Texas Criminal Justice Committee