

OPINION NO. 2006-053**Syllabus:**

1. Any document or instrument that establishes ownership of, or a right to, an investment is evidence of title of the investment for purposes of R.C. 145.11(C), R.C. 742.11(C), R.C. 3307.15(C), R.C. 3309.15(C), R.C. 5505.06(C), R.C. 4123.44, and R.C. 3334.11(D) and (M).
2. A subscription agreement to become a limited partner or a limited partnership agreement constitutes evidence of title of an investment in a limited partnership for purposes of R.C. 145.11(C), R.C. 742.11(C), R.C. 3307.15(C), R.C. 3309.15(C), R.C. 5505.06(C), R.C. 4123.44, and R.C. 3334.11(D) and (M).

3. R.C. 145.11(C), R.C. 742.11(C), R.C. 3307.15(C), R.C. 3309.15(C), R.C. 5505.06(C), R.C. 4123.44, and R.C. 3334.11(M) require the Treasurer of State to pay for an investment in accordance with written or electronic instructions authorizing the Treasurer of State to pay for the investment while awaiting receipt of the evidence of title of the investment.
4. Except as provided in R.C. 9.86, the Treasurer of State does not incur civil liability for damages for paying for an investment under R.C. 145.11(C), R.C. 742.11(C), R.C. 3307.15(C), R.C. 3309.15(C), R.C. 5505.06(C), R.C. 4123.44, or R.C. 3334.11(M) while awaiting receipt of the evidence of title of the investment when the Treasurer of State pays for the investment in accordance with written or electronic instructions authorizing the Treasurer of State to pay for the investment.
5. Whether the Treasurer of State may incur civil liability for damages for failing to pay for an investment under R.C. 145.11(C), R.C. 742.11(C), R.C. 3307.15(C), R.C. 3309.15(C), R.C. 5505.06(C), R.C. 4123.44, or R.C. 3334.11(M) when the Treasurer of State has received written or electronic instructions authorizing the Treasurer of State to pay for the investment is a question that must be determined on a case-by-case basis and cannot be determined by means of an Attorney General opinion.
6. The Treasurer of State is not responsible for recovering moneys used to pay for an investment that is purchased under R.C. 145.11, R.C. 742.11, R.C. 3307.15, R.C. 3309.15, R.C. 5505.06, R.C. 4123.44, or R.C. 3334.11 and in accordance with written or electronic instructions authorizing the Treasurer of State to pay for the investment when the Treasurer of State does not receive evidence of title of the investment.

To: Jennette B. Bradley, Treasurer of State, Columbus, Ohio
By: Jim Petro, Attorney General, December 19, 2006

You have requested an opinion on several questions pertaining to the duty of the Treasurer of State (Treasurer) to receive and retain evidences of title of investments held by the Treasurer for various entities under R.C. 145.11, R.C. 742.11, R.C. 3307.15, R.C. 3309.15, R.C. 5505.06, R.C. 4123.44, and R.C. 3334.11. Your questions are as follows:

1. What is evidence of title of an investment for purposes of R.C. 145.11(C), R.C. 742.11(C), R.C. 3307.15(C), R.C. 3309.15(C), R.C. 5505.06(C), R.C. 4123.44, and R.C. 3334.11(D) and (M)?
2. What documents or instruments constitute evidence of title of an investment in a limited partnership for purposes of R.C. 145.11(C),

R.C. 742.11(C), R.C. 3307.15(C), R.C. 3309.15(C), R.C. 5505.06(C), R.C. 4123.44, and R.C. 3334.11(D) and (M)?

3. Do R.C. 145.11(C), R.C. 742.11(C), R.C. 3307.15(C), R.C. 3309.15(C), R.C. 5505.06(C), R.C. 4123.44, and R.C. 3334.11(M) authorize the Treasurer to pay for an investment before receiving evidence of title of the investment when the Treasurer has written or electronic instructions authorizing the Treasurer to pay for the investment?
4. If the Treasurer pays or fails to pay for an investment under R.C. 145.11(C), R.C. 742.11(C), R.C. 3307.15(C), R.C. 3309.15(C), R.C. 5505.06(C), R.C. 4123.44, or R.C. 3334.11(M) before receiving evidence of title of the investment when the Treasurer has written or electronic instructions authorizing the Treasurer to pay for the investment, may the Treasurer incur civil liability for damages?
5. Is the Treasurer responsible for recovering moneys used to pay for an investment that is purchased under R.C. 145.11, R.C. 742.11, R.C. 3307.15, R.C. 3309.15, R.C. 5505.06, R.C. 4123.44, or R.C. 3334.11 and in accordance with written or electronic instructions authorizing the Treasurer to pay for the investment when the Treasurer does not receive evidence of title of the investment?

For the reasons discussed below, we reach the following conclusions:

1. Any document or instrument that establishes ownership of, or a right to, an investment is evidence of title of the investment for purposes of R.C. 145.11(C), R.C. 742.11(C), R.C. 3307.15(C), R.C. 3309.15(C), R.C. 5505.06(C), R.C. 4123.44, and R.C. 3334.11(D) and (M).
2. A subscription agreement to become a limited partner or a limited partnership agreement constitutes evidence of title of an investment in a limited partnership for purposes of R.C. 145.11(C), R.C. 742.11(C), R.C. 3307.15(C), R.C. 3309.15(C), R.C. 5505.06(C), R.C. 4123.44, and R.C. 3334.11(D) and (M).
3. R.C. 145.11(C), R.C. 742.11(C), R.C. 3307.15(C), R.C. 3309.15(C), R.C. 5505.06(C), R.C. 4123.44, and R.C. 3334.11(M) require the Treasurer to pay for an investment in accordance with written or electronic instructions authorizing the Treasurer to pay for the investment while awaiting receipt of the evidence of title of the investment.
4. Except as provided in R.C. 9.86, the Treasurer does not incur civil liability for damages for paying for an investment under R.C. 145.11(C), R.C. 742.11(C), R.C. 3307.15(C), R.C. 3309.15(C), R.C. 5505.06(C), R.C. 4123.44, or R.C. 3334.11(M) while awaiting receipt of the evidence of title of the investment when the Treasurer

pays for the investment in accordance with written or electronic instructions authorizing the Treasurer to pay for the investment.

5. Whether the Treasurer may incur civil liability for damages for failing to pay for an investment under R.C. 145.11(C), R.C. 742.11(C), R.C. 3307.15(C), R.C. 3309.15(C), R.C. 5505.06(C), R.C. 4123.44, or R.C. 3334.11(M) when the Treasurer has received written or electronic instructions authorizing the Treasurer to pay for the investment is a question that must be determined on a case-by-case basis and cannot be determined by means of an Attorney General opinion.
6. The Treasurer is not responsible for recovering moneys used to pay for an investment that is purchased under R.C. 145.11, R.C. 742.11, R.C. 3307.15, R.C. 3309.15, R.C. 5505.06, R.C. 4123.44, or R.C. 3334.11 and in accordance with written or electronic instructions authorizing the Treasurer to pay for the investment when the Treasurer does not receive evidence of title of the investment.

Duties of the Treasurer of State under R.C. 145.11(C), R.C. 742.11(C), R.C. 3307.15(C), R.C. 3309.15(C), R.C. 5505.06(C), R.C. 4123.44, and R.C. 3334.11(D) and (M)

Before we address your specific questions, we must first review the duties of the Treasurer under R.C. 145.11(C), R.C. 742.11(C), R.C. 3307.15(C), R.C. 3309.15(C), R.C. 5505.06(C), R.C. 4123.44, and R.C. 3334.11(D) and (M). The Treasurer is the custodian of all evidences of title of investments purchased by the Public Employees Retirement Board, R.C. 145.11(C), Board of Trustees of the Ohio Police and Fire Pension Fund, R.C. 742.11(C), State Teachers Retirement Board, R.C. 3307.15(C), School Employees Retirement Board, R.C. 3309.15(C), State Highway Patrol Retirement Board, R.C. 5505.06(C), Ohio Tuition Trust Authority, R.C. 3334.11(M); *see also* R.C. 3334.11(D), and Administrator of Workers' Compensation, R.C. 4123.44.¹ *See* R.C. 113.05(B); R.C. 113.051(A). In this capacity, the Treasurer and her authorized agents are required to collect the principal, interest, dividends, and distributions that become due and payable from those investments and place them when so collected into the appropriate custodial funds. R.C. 145.11(C); R.C. 742.11(C); R.C. 3307.15(C); R.C. 3309.15(C); R.C. 5505.06(C); R.C. 3334.11(M); R.C. 4123.44; *see* R.C. 113.051(A).

The Treasurer is also required to pay for an investment purchased by one of the aforementioned entities on receipt of instructions from the entity or the entity's designated agent authorizing the purchase and pending receipt of the evidence of

¹ Although the Treasurer of State (Treasurer) is designated the custodian of all evidences of title of investments purchased in accordance with R.C. 145.11, R.C. 742.11, R.C. 3307.15, R.C. 3309.15, R.C. 5505.06, R.C. 3334.11, and R.C. 4123.44, evidences of title of investments may be deposited with authorized agents of the Treasurer. R.C. 145.11(C); R.C. 742.11(C); R.C. 3307.15(C); R.C. 3309.15(C); R.C. 5505.06(C); R.C. 3334.11(D), (M); R.C. 4123.44; *see also* R.C. 113.051(B).

title of the investment. R.C. 145.11(C); R.C. 742.11(C); R.C. 3307.15(C); R.C. 3309.15(C); R.C. 5505.06(C); R.C. 3334.11(M); R.C. 4123.44; *see* R.C. 113.051(A); *see also* R.C. 113.11 (“[n]o money shall be paid out of a custodial fund of the treasurer of state except on proper order to the treasurer of state by the officer authorized by law to pay money out of the fund”). When one of these entities sells an investment, the Treasurer or her authorized agent is required to accept payment from the purchaser and deliver evidence of title of the investment to the purchaser on receipt of instructions from the entity or the entity’s designated agent authorizing the sale and pending receipt of the moneys for the investment. R.C. 145.11(C); R.C. 742.11(C); R.C. 3307.15(C); R.C. 3309.15(C); R.C. 5505.06(C); R.C. 3334.11(M); R.C. 4123.44; *see also* R.C. 113.051(A).

“Evidence of Title” Defined

We will now turn to your first question, which asks us to define “evidence of title” of an investment for purposes of R.C. 145.11(C), R.C. 742.11(C), R.C. 3307.15(C), R.C. 3309.15(C), R.C. 5505.06(C), R.C. 4123.44, and R.C. 3334.11(D) and (M).² Neither the General Assembly nor the judiciary has defined “evidence of title” for purposes of R.C. 145.11(C), R.C. 742.11(C), R.C. 3307.15(C), R.C.

² Two of the statutes about which you ask, R.C. 742.11(C) and R.C. 3307.15(C), in addition to using the phrase “evidences of title” when discussing the custodial duties of the Treasurer, use the phrase “evidences of investments.” For the purpose of this opinion, it is assumed that the General Assembly intended for these phrases, as used in R.C. 742.11(C) and R.C. 3307.15(C), to be synonymous insofar as both statutes use the phrase “evidences of title” to refer to “evidences of investments” in the custody of the Treasurer. *See, e.g.*, R.C. 742.11(C) (“[a]ll bonds, notes, certificates, stocks, or other *evidences of investments* purchased by the [Board of Trustees of the Ohio Police and Fire Pension Fund] shall be delivered to the [Treasurer] . . . or [her] authorized agent . . . *Evidences of title* of the investments may be deposited by the [Treasurer] for safekeeping with an authorized agent . . . The [Treasurer] shall pay for the investments purchased by the board on receipt of written or electronic instructions from the board or the board’s designated agent authorizing the purchase and pending receipt of the evidence of title of the investment by the [Treasurer or her] authorized agent. The board may sell investments held by the board, and the [Treasurer or her] authorized agent shall accept payment from the purchaser and deliver *evidence of title* of the investment to the purchaser on receipt of written or electronic instructions from the board or the board’s designated agent authorizing the sale, and pending receipt of the moneys for the investments” (emphasis added)); R.C. 3307.15(C) (“[a]ll bonds, notes, certificates, stocks, or other *evidences of investments* purchased by the [State Teachers Retirement Board] shall be delivered to the [Treasurer] . . . or [her] authorized agent . . . *Evidences of title* of the investments may be deposited by the [Treasurer] for safekeeping with an authorized agent . . . The [Treasurer] shall pay for the investments purchased by the board on receipt of written or electronic instructions from the board or the board’s designated agent authorizing the purchase and pending receipt of the evidence of title of the investment by the [Treasurer or her] authorized

3309.15(C), R.C. 5505.06(C), R.C. 4123.44, and R.C. 3334.11(D) and (M). It is a codified rule of statutory construction, however, that words and phrases that have not acquired a technical or particular meaning by legislative definition or otherwise must be read and understood according to their common meanings and the context in which they are used. R.C. 1.42. As defined in *Merriam-Webster's Collegiate Dictionary* 433 (11th ed. 2005), the word "evidence," as a noun, means, *inter alia*, "something that furnishes proof." *Accord Black's Law Dictionary* 595 (8th ed. 2004). Concerning the meaning of the word "title," *Merriam-Webster's Collegiate Dictionary* at 1312 defines the noun "title" to mean, among other things, "all the elements constituting legal ownership . . . a legally just cause or exclusive possession . . . the instrument (as a deed) that is evidence of a right . . . something that justifies or substantiates a claim . . . an alleged or recognized right." *Accord Black's Law Dictionary* at 1522. Thus, for purposes of R.C. 145.11(C), R.C. 742.11(C), R.C. 3307.15(C), R.C. 3309.15(C), R.C. 5505.06(C), R.C. 4123.44, and R.C. 3334.11(D) and (M), "evidence of title" of an investment simply means any document or instrument that establishes ownership of, or a right to, an investment. *See generally* R.C. 113.05(B) ("[t]he custodial funds of the treasurer of state consist of the moneys, claims, bonds, notes, other obligations, stocks, and other securities, receipts or other *evidences of ownership*, and other intangible assets that are required by law to be kept in the custody of the treasurer of state but are not part of the state treasury" (emphasis added)); *Black's Law Dictionary* 499 (5th ed. 1979) (defining "evidence of title" as "[a] deed or other document establishing the title to property, especially real estate").³

agent. The board may sell investments held by the board, and the [Treasurer or her] authorized agent shall accept payment from the purchaser and deliver *evidence of title* of the investment to the purchaser on receipt of written or electronic instructions from the board or the board's designated agent authorizing the sale, and pending receipt of the moneys for the investments" (emphasis added)).

³ We are aware that *Black's Law Dictionary* 600 (8th ed. 2004) defines the phrase "evidence of title" as "[t]he means by which the *ownership of land* is satisfactorily demonstrated within a given jurisdiction. *See DEED.*" (Emphasis added.) Because the language of R.C. 145.11(C), R.C. 742.11(C), R.C. 3307.15(C), R.C. 3309.15(C), R.C. 5505.06(C), R.C. 4123.44, and R.C. 3334.11(D) and (M) requires the Treasurer to receive and retain evidence of title in investments that do not involve land ownership, we believe that strict adherence to the definition of "evidence of title" set forth in the eighth edition of *Black's Law Dictionary* could limit the investment authority granted to the entities listed in the aforementioned statutes, and thus defeat the legislative purpose of these statutes. *See generally, e.g.,* R.C. 742.11(C) (authorizing the Board of Trustees of the Ohio Police and Fire Pension Fund to invest in "bonds, notes, certificates, [and] stocks" and requiring the delivery of evidences of title of these investments to the Treasurer or her authorized agent); R.C. 3307.15(C) (authorizing the State Teachers Retirement Board to invest in "bonds, notes, certificates, [and] stocks" and requiring the delivery of evidences of title of these investments to the Treasurer or her authorized agent). As a result, we decline

Evidence of Title of an Investment in a Limited Partnership

Your second question asks us to describe the documents or instruments that constitute evidence of title of an investment in a limited partnership for purposes of R.C. 145.11(C), R.C. 742.11(C), R.C. 3307.15(C), R.C. 3309.15(C), R.C. 5505.06(C), R.C. 4123.44, and R.C. 3334.11(D) and (M). Specifically, your concern is whether a subscription agreement to become a limited partner, a limited partnership agreement, or any other documents or instruments constitute evidence of title of an investment in a limited partnership that must be delivered to, and retained by, the Treasurer or her authorized agent under the aforementioned statutes.

As explained above, any document or instrument that establishes ownership of, or a right to, an investment is evidence of title of the investment for purposes of R.C. 145.11(C), R.C. 742.11(C), R.C. 3307.15(C), R.C. 3309.15(C), R.C. 5505.06(C), R.C. 4123.44, and R.C. 3334.11(D) and (M). Accordingly, any document or instrument that establishes ownership of, or a right to, a limited partnership is evidence of title of an investment in the limited partnership for purposes of the aforementioned statutes.⁴

Subscription agreements to become a limited partner are documents that are

to adopt this limited definition when interpreting the phrase “evidence of title” for purposes of R.C. 145.11(C), R.C. 742.11(C), R.C. 3307.15(C), R.C. 3309.15(C), R.C. 5505.06(C), R.C. 4123.44, and R.C. 3334.11(D) and (M). *See generally* R.C. 1.42 (“phrases shall be read in context”); *Lake Cty. Nat’l Bank v. Kosydar*, 36 Ohio St. 2d 189, 192, 305 N.E.2d 799 (1973) (“[t]here are at least two methods by which a court may satisfy itself that the meaning of a word used in a statute, other than its plain and ordinary meaning, is clearly indicated. One is by the use of an explicit statutory definition of the word; the other is by ascertaining that an adherence to the plain and ordinary meaning of the word would defeat the legislative purpose in the enactment of the statute. In the latter case, ‘the strict letter of an act must . . . yield to its evident spirit and purpose’” (quoting *Fleischmann Constr. Co. v. United States*, 270 U.S. 349, 360 (1926))).

⁴ R.C. 145.11(C), R.C. 742.11(C), R.C. 3307.15(C), R.C. 3309.15(C), R.C. 5505.06(C), R.C. 4123.44, and R.C. 3334.11(M) require the Treasurer or her authorized representative to receive and retain evidence of title of an investment when an investment is purchased. For example, R.C. 5505.06(C) states, in relevant part, as follows:

The treasurer of state shall pay for the investments purchased by the board on receipt of written or electronic instructions from the board or the board’s designated agent authorizing the purchase and pending receipt of the *evidence of title of the investment* by the treasurer of state or the treasurer of state’s authorized agent. The board may sell investments held by the board, and the treasurer of state or the treasurer of state’s authorized agent shall accept payment from the purchaser and deliver *evidence of title of the investment* to the purchaser on receipt of written or electronic instructions from the board or the board’s designated

used to attract and secure additional capital for a partnership. *See generally Black's Law Dictionary* at 1468 (a "subscription" is "[a]n oral or a written agreement to contribute a sum of money or property, gratuitously or with consideration, to a specific person or for a specific purpose"); Paul Lieberman, *West's Legal Forms*, vol. 1A, § 5.33 (2000) ("[t]he purpose of a Subscription Agreement is to bind a potential partner to purchase a capital interest in the partnership"). *See generally also* R.C. 1782.28(A) ("[a] promise by a limited partner to contribute to the limited partnership is not enforceable unless it is set out in a writing signed by the limited partner"). By way of example, a subscription agreement to become a limited partner provided to us by the School Employees Retirement Board reads, in part, as follows:

SUBSCRIPTION AGREEMENT

1. Agreement of Subscriber to Become a Limited Partner. The undersigned subscriber (the "Subscriber") hereby agrees to become a limited partner in [X Partners, L.P.] or any Parallel Fund (as such term is defined in the Partnership Agreement (as defined below)) of [X Partners, L.P.] formed with substantially the same terms and conditions, each a limited partnership to be formed under the laws of the State of Delaware (as applicable, the "Partnership"), and to make aggregate cash contributions to the capital of the Partnership pursuant to a commitment in the aggregate amount accepted by [Y Partners, L.P.], the general partner of the Partnership (the "General Partner"), as set forth on the signature page above the General Partner's signature on the acceptance page to this subscription agreement (this "Subscription Agreement"), which commitment shall in no event be more than the requested commitment amount set forth above the Subscriber's signature on the signature page to this Subscription Agreement, or, if the line for the commitment amount on the signature page above the General Partner's signature on the acceptance page is left blank, as set forth above the Subscriber's signature on the signature page (the "Commitment"). The Subscriber agrees to fund

agent authorizing the sale, and pending receipt of the moneys for the investments. (Emphasis added.)

Under R.C. 145.11(C), R.C. 742.11(C), R.C. 3307.15(C), R.C. 3309.15(C), R.C. 5505.06(C), R.C. 4123.44, and R.C. 3334.11(M), when an investment is purchased the Treasurer must receive evidence of title of the investment. When an investment is sold the Treasurer is required to deliver evidence of title of the investment to the purchaser.

These statutes thus require that "evidence of title" of an investment be delivered to, and retained by, the Treasurer or her authorized agent when an investment is purchased. Once a document or instrument establishing evidence of title of an investment is delivered to the Treasurer or her authorized agent, the requirement that evidence of title of an investment be delivered to the Treasurer or her authorized agent has been satisfied.

its Commitment in such amounts and in such manner as called for by the General Partner, as provided in the Agreement of Limited Partnership of the Partnership, as amended (the "Partnership Agreement"). Unless otherwise defined herein, capitalized terms used in this Subscription Agreement will have the meanings given to such terms in the Partnership Agreement. The amounts which the Subscriber and the other partners in the Partnership have agreed to contribute to the capital of the Partnership are referred to herein collectively as the "Commitments." The General Partner may accept in its sole discretion all or any portion of the requested commitment amount set forth above the Subscriber's signature on the signature page to this Subscription Agreement and may accept all or any remaining portion of such requested commitment amount at one or more subsequent closings, in each case by delivery to the Partnership of a duplicate signature page hereto with respect to such remaining portion then accepted or notice to the Partnership of the execution thereof. Prompt notice of such acceptance also will be given to the Subscriber either by delivery of this Subscription Agreement signed by the General Partner or by notice of such execution. If so accepted, this Subscription Agreement may not be canceled, terminated or revoked by the Subscriber.

....

3. Representations, Warranties and Covenants of the Subscriber.

In connection with the Subscriber's agreement to subscribe for limited partnership interests in the Partnership, the Subscriber represents, warrants and agrees as of the date hereof and through and including each date that this Subscription Agreement is accepted in whole or in part by the General Partner as follows:

....

(b) Execution; Binding Obligation. The Subscriber agrees to execute the Partnership Agreement simultaneously with the execution of this Subscription Agreement. The Partnership Agreement shall become binding upon the Subscriber on the later of (i) the date of the Partnership Agreement and (ii) the date, if any, that the General Partner accepts this subscription in whole or in part. This Subscription Agreement is a valid and binding agreement, enforceable against the Subscriber in accordance with its terms. The Subscriber understands that, except as expressly provided for by law in certain non-United States jurisdictions, the Subscriber is not entitled to cancel, terminate or revoke this subscription or any of the powers conferred herein.

A subscription agreement to become a limited partner is a document that creates a binding obligation upon a person or entity to contribute money or property to a partnership. *See generally* R.C. 1782.28(B) ("[e]xcept as otherwise provided in the partnership agreement, a partner is obligated to the limited partnership to perform any enforceable promise to contribute cash or other property . . . even if he is unable to perform because of death, disability, or any other reason. If a partner

fails to make a required contribution of property . . . , he shall be obligated, at the option of the limited partnership, to contribute cash equal to the portion of the value, as stated in the partnership records required to be kept pursuant to [R.C. 1782.05], of the stated contribution that he has failed to make. The foregoing option shall be in addition to, and not in lieu of, any other right, including the right to specific performance, that the limited partnership may have against the partner under the partnership agreement or applicable law’); Uniform Limited Partnership Act (2001) § 502(a) (‘[a] partner’s obligation to contribute money or other property or other benefit to, or to perform services for, a limited partnership is not excused by the partner’s death, disability, or other inability to perform personally’). By contributing money or property to a limited partnership under such an agreement, a person or entity may share in the profits of the limited partnership. *See generally* R.C. 1775.25 (a partner shares in the profits and surplus of the partnership); R.C. 1782.29 (‘[t]he profits, losses, income, gains, deductions, credits, or similar items of a limited partnership shall be allocated among the partners and classes of partners in the manner provided in writing in the partnership agreement. If the partnership agreement does not so provide in writing, such allocations shall be made on the basis of the value, as stated in the partnership records required to be kept pursuant to [R.C. 1782.05], of the contributions made by each partner to the extent they have been received by the partnership and have not been returned’); R.C. 1782.30 (‘[d]istributions of cash or other assets of a limited partnership shall be allocated among the partners and classes of partners in the manner provided in writing in the partnership agreement. If the partnership agreement does not so provide, distributions shall be made on the basis of the value, as stated in the partnership records required to be kept pursuant to [R.C. 1782.05], of the contributions made by each partner to the extent they have been received by the partnership and have not been returned’); Uniform Limited Partnership Act (2001) § 503 (‘[a] distribution by a limited partnership must be shared among the partners on the basis of the value, as stated in the required records when the limited partnership decides to make the distribution, of the contributions the limited partnership has received from each partner’); Uniform Partnership Act (1997) § 401(b) (‘[e]ach partner is entitled to an equal share of the partnership profits’).

A subscription agreement to become a limited partner thus is a binding contract that establishes the right of the subscriber to the money value of an interest in a limited partnership in excess of claims or liens against the partnership. *See generally* R.C. 1775.25 (‘[a] partner’s interest in the partnership is his share of the profits and surplus, and the same is personal property’); R.C. 1782.37(A) (‘[a] limited partnership shall not make a distribution to a partner to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of the limited partnership, other than liabilities to partners on account of their partnership interests and liabilities for which the recourse of creditors is limited to specified property of the limited partnership, exceed the fair value of the assets of the limited partnership’); R.C. 1782.39 (‘[a] partnership interest is personal property’); Uniform Limited Partnership Act (2001) § 508(b) (‘[a] limited partnership may not make a distribution if after the distribution: (1) the limited partnership would not be able to pay its debts as they become due in the ordinary course of the limited

partnership's activities; or (2) the limited partnership's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the limited partnership were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of partners whose preferential rights are superior to those of persons receiving the distribution"). Because a subscription agreement to become a limited partner is a document that establishes a subscriber's right to share in the profits of a limited partnership, such an agreement constitutes evidence of title of an investment in a limited partnership.

Similarly, a limited partnership agreement constitutes evidence of title of an investment in a limited partnership. A partnership agreement is "[a] contract defining the partners' rights and duties toward one another." *Black's Law Dictionary* at 1153; see R.C. 1782.01(K) ("[p]artnership agreement' means any valid written or oral agreement of the partners as to the affairs of a limited partnership and the conduct of its business"). Such an agreement also establishes and governs the relationship between a limited partner and the partnership. See Uniform Limited Partnership Act (2001) § 110(a); Uniform Partnership Act (1997) § 103(a); see also Uniform Limited Partnership Act (2001) § 301.

Moreover, a limited partnership agreement establishes a limited partner's right to the money value of an interest in the limited partnership in excess of claims or liens against the partnership. See R.C. 1775.25; R.C. 1782.29; R.C. 1782.30; R.C. 1782.37(A); R.C. 1782.39; Uniform Limited Partnership Act (2001) § 508(b). See generally Paul Lieberman, *West's Legal Forms*, vol. 1A, § 3.4(b) (2000) (a "partnership agreement should spell out how much of the profits and losses are to be allocated to the general partners, how much to the limited partners, and how to allocate within each class"). A limited partnership agreement thus is a binding contract that establishes a limited partner's right to share in the profits of a limited partnership. Accordingly, a limited partnership agreement is a document that constitutes evidence of title of an investment in a limited partnership.

Because a subscription agreement to become a limited partner and a limited partnership agreement constitute evidence of title of an investment in a limited partnership, either of these agreements may be delivered to, and retained by, the Treasurer or her authorized agent under R.C. 145.11(C), R.C. 742.11(C), R.C. 3307.15(C), R.C. 3309.15(C), R.C. 5505.06(C), R.C. 4123.44, and R.C. 3334.11(D) and (M). If either of these agreements is delivered to the Treasurer or her authorized agent, no other documents or instruments need be delivered. See note four, *supra*. Therefore, a subscription agreement to become a limited partner or a limited partnership agreement constitutes evidence of title of an investment in a limited partnership for purposes of R.C. 145.11(C), R.C. 742.11(C), R.C. 3307.15(C), R.C. 3309.15(C), R.C. 5505.06(C), R.C. 4123.44, and R.C. 3334.11(D) and (M).

Paying for an Investment Before Receiving Evidence of Title of the Investment

Your third question asks whether R.C. 145.11(C), R.C. 742.11(C), R.C. 3307.15(C), R.C. 3309.15(C), R.C. 5505.06(C), R.C. 4123.44, and R.C. 3334.11(M) authorize the Treasurer to pay for an investment before receiving evidence of title

of the investment when the Treasurer has written or electronic instructions authorizing the Treasurer to pay for the investment. Language in R.C. 145.11(C), R.C. 742.11(C), R.C. 3307.15(C), R.C. 3309.15(C), R.C. 5505.06(C), R.C. 4123.44, and R.C. 3334.11(M) states that the Treasurer is to pay for an investment on receipt of instructions from the appropriate entity and pending receipt of the evidence of title of the investment. *See* R.C. 113.051(A) (the custodial duties of the Treasurer include, among other things, “paying for, transferring, and collecting the purchase or sale price of investments”). For instance, R.C. 145.11(C) states, in part:

The treasurer of state *shall pay* for investments purchased by the retirement board on receipt of written or electronic instructions from the board or the board’s designated agent authorizing the purchase *and pending receipt of the evidence of title of the investment by the treasurer of state or the treasurer of state’s authorized agent.* (Emphasis added.)

Because no language in R.C. 145.11(C), R.C. 742.11(C), R.C. 3307.15(C), R.C. 3309.15(C), R.C. 5505.06(C), R.C. 4123.44, and R.C. 3334.11(M) indicates that the word “shall” is to be given a meaning other than its ordinary meaning, these statutes mandate that the Treasurer pay for an investment on receipt of written or electronic instructions authorizing the Treasurer to pay for the investment and pending receipt of the evidence of title of the investment.⁵ *See generally State v. Golphin*, 81 Ohio St. 3d 543, 545-46, 692 N.E.2d 608 (1998) (“use of the term ‘shall’ in a statute or rule connotes the imposition of a mandatory obligation unless other language is included that evidences a clear and unequivocal intent to the contrary”); 1999 Op. Att’y Gen. No. 99-001 at 2-5 (the Treasurer “does not have discretionary authority to refuse the payment of moneys from a custodial fund. Upon the presentation of a proper order by the official of the University of Cincinnati authorized to pay money out of the custodial fund, the Treasurer of State must disburse the money from the custodial fund” (citation omitted)).

⁵ 1982 Op. Att’y Gen. No. 82-082 addressed whether the Treasurer may examine the propriety of a voucher presented for payment on a custodial fund maintained by the Treasurer. Although the opinion concluded that the Treasurer has no duty or authority to examine the propriety of vouchers presented for payment by an officer, board, or commission that is authorized to approve expenditures from a custodial fund, *see also* 2 Ohio Admin. Code 113-2-01(G); 1999 Op. Att’y Gen. No. 99-001 at 2-5, the opinion noted that, if there is reason to believe that payment would be illegal, the Treasurer has the authority to refuse to make such payment. 1982 Op. Att’y Gen. No. 82-082 at 2-232 n.2. In addition, the Treasurer is not required to disburse moneys from a custodial fund in accordance with the terms of a properly issued voucher when there are insufficient moneys in the fund to cover the disbursement. *See* rule 113-2-01(F) (withdrawals from a custodial fund “shall be affected by the treasurer upon cash availability” in the fund); *cf.* 1985 Op. Att’y Gen. No. 85-043 (syllabus, paragraph two) (“[a] county treasurer may not . . . redeem a warrant which has been drawn upon a fund having an insufficient balance”); 1980 Op. Att’y Gen. No. 80-077 (syllabus) (“[t]he treasurer of a county has no authority to redeem a warrant which has been drawn upon a fund having a zero or insufficient balance”).

The word “pending,” as a preposition, means “while awaiting.” *Merriam-Webster’s Collegiate Dictionary* at 915; *Black’s Law Dictionary* at 1169. The plain language of the aforementioned statutes thus requires the Treasurer to pay for an investment while awaiting receipt of the evidence of title of the investment. See generally *Sears v. Weimer*, 143 Ohio St. 312, 55 N.E.2d 413 (1944) (syllabus, paragraph five) (“[w]here the language of a statute is plain and unambiguous and conveys a clear and definite meaning there is no occasion for resorting to rules of statutory interpretation. An unambiguous statute is to be applied, not interpreted”). Therefore, R.C. 145.11(C), R.C. 742.11(C), R.C. 3307.15(C), R.C. 3309.15(C), R.C. 5505.06(C), R.C. 4123.44, and R.C. 3334.11(M) require the Treasurer to pay for an investment in accordance with written or electronic instructions authorizing the Treasurer to pay for the investment while awaiting receipt of the evidence of title of the investment.

Treasurer of State’s Civil Liability for Damages When Paying for an Investment Before Receiving Evidence of Title of the Investment

Your fourth question asks whether the Treasurer incurs civil liability for damages when the Treasurer pays or fails to pay for an investment under R.C. 145.11(C), R.C. 742.11(C), R.C. 3307.15(C), R.C. 3309.15(C), R.C. 5505.06(C), R.C. 4123.44, or R.C. 3334.11(M) before receiving evidence of title of the investment when the Treasurer has written or electronic instructions authorizing the Treasurer to pay for the investment.⁶ R.C. 9.86, which grants civil immunity to the Treasurer in certain situations, provides, in relevant part, as follows:

Except for civil actions that arise out of the operation of a motor vehicle and civil actions in which the state is the plaintiff, *no officer or*

⁶ For the purpose of this question, it is assumed that the entity purchasing the investment has the authority to do so, and that the entity’s custodial fund has sufficient moneys to enable the Treasurer to pay for the investment. See rule 113-2-01(F) (withdrawals from a custodial fund “shall be affected by the treasurer upon cash availability” in the fund); rule 113-2-01(G) (an agency’s authorized signatories “will certify that the withdrawal of funds from a custodial account is for a proper and legitimate use of such funds”). See generally 2003 Op. Att’y Gen. No. 2003-029 at 2-244 n.6 (the county “auditor may face liability if she issues a warrant upon an illegal claim”); 1940 Op. Att’y Gen. No. 3199, vol. II, p. 1177 (syllabus, paragraph three) (“[a] county auditor who pays a claim contrary to law is . . . liable for all damages and loss sustained by the county to the extent of such payment”); 1937 Op. Att’y Gen. No. 930, vol. II, p. 1652 (syllabus, paragraph two) (“[w]here the county commissioners and the county auditor have in violation or neglect of their official duties permitted an unauthorized expenditure of public funds, [an audit] finding may be made against the county commissioners and county auditor”); note five, *supra* (the Treasurer is not required to disburse moneys from a custodial fund in accordance with the terms of a properly issued voucher when there are insufficient moneys in the fund to cover the disbursement).

employee⁷ shall be liable in any civil action that arises under the law of this state for damage or injury caused in the performance of his duties, unless the officer's or employee's actions were manifestly outside the scope of his employment or official responsibilities, or unless the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner. (Emphasis and footnote added.)

Thus, except for civil actions that arise out of the operation of a motor vehicle and civil actions in which the state is the plaintiff, the Treasurer, as an elected or appointed state officer, *see* Ohio Const. art. III, § 1; Ohio Const. art. III, § 18; Ohio Const. art. XVII, § 2; R.C. 113.01, is not liable in any civil action that arises under the law of this state for damage or injury caused in the performance of her duties, unless the Treasurer's actions were manifestly outside the scope of her employment or official responsibilities, or unless the Treasurer acted with malicious purpose, in bad faith, or in a wanton or reckless manner.

As explained previously, under R.C. 145.11(C), R.C. 742.11(C), R.C. 3307.15(C), R.C. 3309.15(C), R.C. 5505.06(C), R.C. 4123.44, and R.C. 3334.11(M), the Treasurer is required to pay for an investment on receipt of written or electronic instructions authorizing the Treasurer to pay for the investment and pending receipt of the evidence of title of the investment. *See* 1999 Op. Att'y Gen. No. 99-001 at 2-5; 1982 Op. Att'y Gen. No. 82-082; *cf. State ex rel. City of Reynoldsburg v. Banks*, 37 Ohio St. 2d 56, 57, 307 N.E.2d 260 (1974) (a warrant submitted to the city treasurer "for his signature having been specifically authorized by an ordinance of city council and being regular and valid on its face, [the treasurer] was required by law to sign it. Payment is, therefore, a ministerial duty of [the treasurer]" (citations omitted)); 2001 Op. Att'y Gen. No. 2001-034 at 2-204 ("[o]nce the board of library trustees determines to expend moneys for a particular purpose, the clerk-treasurer is required to pay out library moneys for that purpose"). *But see generally* note five, *supra*.

Moreover, the Treasurer is not conferred any investment authority under R.C. 145.11, R.C. 742.11, R.C. 3307.15, R.C. 3309.15, R.C. 5505.06, R.C. 4123.44, or R.C. 3334.11. Rather, this authority is bestowed upon the Public Employees Retirement Board, R.C. 145.11, Board of Trustees of the Ohio Police and Fire Pension Fund, R.C. 742.11, State Teachers Retirement Board, R.C. 3307.15, School Employees Retirement Board, R.C. 3309.15, State Highway Patrol Retirement Board, R.C. 5505.06, Ohio Tuition Trust Authority, R.C. 3334.11, and Administrator of Workers' Compensation, R.C. 4123.44.

In fact, the Treasurer may not pay for an investment under R.C. 145.11, R.C. 742.11, R.C. 3307.15, R.C. 3309.15, R.C. 5505.06, R.C. 3334.11, or R.C.

⁷ As used in R.C. 9.86, the phrase "officer or employee" means, *inter alia*, "[a] person who, at the time a cause of action against the person arises, is serving in an elected or appointed office or position with the state." R.C. 109.36(A)(1)(a); *see also* R.C. 9.85(A) (for purposes of R.C. 9.86, "officer or employee" has the same meaning as in R.C. 109.36(A)).

4123.44 unless the investment has been authorized by the Public Employees Retirement Board, R.C. 145.11(D), Board of Trustees of the Ohio Police and Fire Pension Fund, R.C. 742.11(E), State Teachers Retirement Board, R.C. 3307.15(D), School Employees Retirement Board, R.C. 3309.15(D), State Highway Patrol Retirement Board, R.C. 5505.06(E), Ohio Tuition Trust Authority, R.C. 3334.11(M), or Administrator of Workers' Compensation, R.C. 4123.44, respectively. *See* R.C. 113.11 (“[n]o money shall be paid out of a custodial fund of the treasurer of state except on proper order to the treasurer of state by the officer authorized by law to pay money out of the fund”). Nor is the Treasurer responsible for determining the propriety of investments made by these entities:

The treasurer of state or the officer who performs the duties of the office of treasurer of state is the custodian of the funds required by law to be kept in the custody of the treasurer of state. The custodial duties of the treasurer of state include safekeeping the custodial funds and investment assets of an owner; collecting principal, dividends, distributions, and interest on custodial funds and investments of an owner; and paying for, transferring, and collecting the purchase or sale price of investments. The duties of the treasurer of state do not include making investment decisions of an owner or its authorized agents or monitoring compliance with an owner's internal investment policies. The treasurer of state is not responsible for the investment decisions of an owner or agent, compliance with the owner's internal investment policies, or any unlawful activities of an owner or its authorized agents.

R.C. 113.051(A).

As custodian of moneys of the Public Employees Retirement Board, Board of Trustees of the Ohio Police and Fire Pension Fund, State Teachers Retirement Board, School Employees Retirement Board, State Highway Patrol Retirement Board, Ohio Tuition Trust Authority, and Administrator of Workers' Compensation, the Treasurer is responsible for paying for investments purchased by these entities when instructed to pay for the investments. R.C. 113.051(A); R.C. 145.11(C); R.C. 742.11(C); R.C. 3307.15(C); R.C. 3309.15(C); R.C. 5505.06(C); R.C. 4123.44; R.C. 3334.11(M). Because the Treasurer is following the instructions of one of the aforementioned entities when paying for an investment from custodial funds while awaiting receipt of the evidence of title of the investment, the Treasurer is performing a ministerial duty imposed upon her by statute. *See generally* 1999 Op. Att'y Gen. No. 99-001 at 2-5 (“the Treasurer of State does not have discretionary authority to refuse the payment of moneys from a custodial fund”); 1982 Op. Att'y Gen. No. 82-082 (syllabus, paragraph two) (“[t]he Treasurer of State has no duty or authority to examine the propriety of vouchers presented for payment by an officer, board or commission which has been authorized to approve expenditures from custodial accounts”). As a result, except as provided in R.C. 9.86, the Treasurer does not incur civil liability for damages for paying for an investment under R.C. 145.11(C), R.C. 742.11(C), R.C. 3307.15(C), R.C. 3309.15(C), R.C. 5505.06(C), R.C. 4123.44, or R.C. 3334.11(M) while awaiting receipt of the evidence of title of the investment when the Treasurer pays for the investment in ac-

cordance with written or electronic instructions authorizing the Treasurer to pay for the investment.

The Treasurer may, however, incur civil liability for damages for failing to pay for an investment under R.C. 145.11(C), R.C. 742.11(C), R.C. 3307.15(C), R.C. 3309.15(C), R.C. 5505.06(C), R.C. 4123.44, or R.C. 3334.11(M) when the Treasurer has written or electronic instructions authorizing the Treasurer to pay for the investment. Pursuant to R.C. 145.11(C), R.C. 742.11(C), R.C. 3307.15(C), R.C. 3309.15(C), R.C. 5505.06(C), R.C. 4123.44, and R.C. 3334.11(M), the Treasurer is required to pay for an investment on receipt of written or electronic instructions authorizing the Treasurer to pay for the investment and pending receipt of the evidence of title of the investment. *See also* R.C. 113.051(A). If the Treasurer fails to perform her duty to pay for an investment when required under any of these statutes, the Treasurer may incur civil liability for damages. *See generally* R.C. 9.86 (setting forth instances in which the Treasurer may incur civil liability for damages); R.C. 113.02 (“[b]efore entering upon the discharge of the duties of his office, the treasurer of state shall give a bond to the state in the sum of one million dollars, with sureties approved by the governor, conditioned for the faithful discharge of the duties of his office”).

Whether the Treasurer may incur civil liability for damages for failing to pay for an investment under R.C. 145.11(C), R.C. 742.11(C), R.C. 3307.15(C), R.C. 3309.15(C), R.C. 5505.06(C), R.C. 4123.44, or R.C. 3334.11(M) when the Treasurer has received written or electronic instructions authorizing the Treasurer to pay for the investment requires a factual determination that must be made by persons with knowledge and authority to act in particular circumstances or, ultimately, by the courts. *See generally* 2006 Op. Att’y Gen. No. 2006-028 at 2-249 and 2-250 (“the Attorney General is unable, by means of a formal opinion, . . . to determine the obligations or liabilities of county officials in particular circumstances”); 2005 Op. Att’y Gen. No. 2005-002 at 2-12 (“[w]e are not able, by means of this opinion, to make findings of fact or to determine the rights of particular parties”); 2004 Op. Att’y Gen. No. 2004-022 at 2-186 (“[c]learly, we cannot predict what a court might decide in a particular case”); 2003 Op. Att’y Gen. No. 2003-037 at 2-311 (“[q]uestions of liability are decided by the courts, in particular contexts and with consideration of specific facts”); 2000 Op. Att’y Gen. No. 2000-021 at 2-136 (“[q]uestions of liability are resolved by the courts and cannot be determined by means of an opinion of the Attorney General”); 1993 Op. Att’y Gen. No. 93-033 (syllabus, paragraph one) (questions of fact “cannot be determined by means of an Attorney General opinion”); 1983 Op. Att’y Gen. No. 83-057 at 2-232 (the office of the Attorney General “is not equipped to serve as a fact-finding body; that function may be served by your office or, ultimately, by the judiciary”). Consequently, whether the Treasurer may incur civil liability for damages for failing to pay for an investment under R.C. 145.11(C), R.C. 742.11(C), R.C. 3307.15(C), R.C. 3309.15(C), R.C. 5505.06(C), R.C. 4123.44, or R.C. 3334.11(M) when the Treasurer has received written or electronic instructions authorizing the Treasurer to pay for the investment is a question that must be determined on a case-by-case basis and cannot be determined by means of an Attorney General opinion.

Authority of the Treasurer of State to Recover Moneys Paid for an Investment When the Treasurer of State Does Not Receive Evidence of Title of the Investment

Your final question asks whether the Treasurer is responsible for recovering moneys used to pay for an investment that is purchased under R.C. 145.11, R.C. 742.11, R.C. 3307.15, R.C. 3309.15, R.C. 5505.06, R.C. 4123.44, or R.C. 3334.11 and in accordance with written or electronic instructions authorizing the Treasurer to pay for the investment when the Treasurer does not receive evidence of title of the investment. Under R.C. 113.051(A), the Treasurer is custodian of moneys placed in her possession by the Public Employees Retirement Board, Board of Trustees of the Ohio Police and Fire Pension Fund, State Teachers Retirement Board, School Employees Retirement Board, State Highway Patrol Retirement Board, Ohio Tuition Trust Authority, and Administrator of Workers' Compensation. Pursuant to R.C. 145.11(C), R.C. 742.11(C), R.C. 3307.15(C), R.C. 3309.15(C), R.C. 5505.06(C), R.C. 4123.44, and R.C. 3334.11(M), the Treasurer is responsible for paying for an investment when so instructed and while awaiting receipt of the evidence of title of the investment. *See* R.C. 113.051(A).

The Treasurer does not, however, acquire ownership of, or a right to, an investment that is to be delivered to her custody under R.C. 145.11(C), R.C. 742.11(C), R.C. 3307.15(C), R.C. 3309.15(C), R.C. 5505.06(C), R.C. 4123.44, or R.C. 3334.11(M). Instead, the entity authorizing the Treasurer to pay for an investment acquires ownership of, or a right to, the investment. *See* 1940 Op. Att'y Gen. No. 1723, vol. I, p. 55 (syllabus, paragraph one) (“[w]hen the State Teachers’ Retirement Board, the Public Employees’ Retirement Board, the Public School Employees’ Retirement Board or State Industrial Commission invests funds under their control in mortgage notes or bonds insured by the Federal Housing Administrator, as authorized by [G.C. 486-41], [G.C. 7896-16], [G.C. 7896-76,] or [G.C. 1465-58], the title to such notes and the mortgage securing the same, representing the investment, vests in the Retirement Board or the Industrial Commission making the investment”). *See generally* R.C. 145.09 (all of the securities and other property of the Public Employees Retirement Board “shall be held in the name of the board, or in the name of its nominee”); R.C. 742.11(D) (all of the securities and other property of the Board of Trustees of the Ohio Police and Fire Pension Fund “shall be held, in the name of the board or its nominee”); R.C. 5505.06(D) (all of the securities and other property of the State Highway Patrol Retirement Board “shall be held, in the name of the board or its nominee”).

Because the Treasurer does not own or have a right to an investment that is to be delivered to her custody under R.C. 145.11(C), R.C. 742.11(C), R.C. 3307.15(C), R.C. 3309.15(C), R.C. 5505.06(C), R.C. 4123.44, or R.C. 3334.11(M), the Treasurer does not have any of the rights or obligations of a purchaser of such an investment. This includes the right to make a demand upon a seller to return moneys used to pay for an investment when the seller does not place evidence of title of the investment in the possession of the Treasurer or her authorized agent. This right belongs instead to the entity that has purchased the investment. Therefore, the Treasurer is not responsible for recovering moneys used to pay for an invest-

ment that is purchased under R.C. 145.11, R.C. 742.11, R.C. 3307.15, R.C. 3309.15, R.C. 5505.06, R.C. 4123.44, or R.C. 3334.11 and in accordance with written or electronic instructions authorizing the Treasurer to pay for the investment when the Treasurer does not receive evidence of title of the investment.

Conclusions

In summary, it is my opinion, and you are hereby advised as follows:

1. Any document or instrument that establishes ownership of, or a right to, an investment is evidence of title of the investment for purposes of R.C. 145.11(C), R.C. 742.11(C), R.C. 3307.15(C), R.C. 3309.15(C), R.C. 5505.06(C), R.C. 4123.44, and R.C. 3334.11(D) and (M).
2. A subscription agreement to become a limited partner or a limited partnership agreement constitutes evidence of title of an investment in a limited partnership for purposes of R.C. 145.11(C), R.C. 742.11(C), R.C. 3307.15(C), R.C. 3309.15(C), R.C. 5505.06(C), R.C. 4123.44, and R.C. 3334.11(D) and (M).
3. R.C. 145.11(C), R.C. 742.11(C), R.C. 3307.15(C), R.C. 3309.15(C), R.C. 5505.06(C), R.C. 4123.44, and R.C. 3334.11(M) require the Treasurer of State to pay for an investment in accordance with written or electronic instructions authorizing the Treasurer of State to pay for the investment while awaiting receipt of the evidence of title of the investment.
4. Except as provided in R.C. 9.86, the Treasurer of State does not incur civil liability for damages for paying for an investment under R.C. 145.11(C), R.C. 742.11(C), R.C. 3307.15(C), R.C. 3309.15(C), R.C. 5505.06(C), R.C. 4123.44, or R.C. 3334.11(M) while awaiting receipt of the evidence of title of the investment when the Treasurer of State pays for the investment in accordance with written or electronic instructions authorizing the Treasurer of State to pay for the investment.
5. Whether the Treasurer of State may incur civil liability for damages for failing to pay for an investment under R.C. 145.11(C), R.C. 742.11(C), R.C. 3307.15(C), R.C. 3309.15(C), R.C. 5505.06(C), R.C. 4123.44, or R.C. 3334.11(M) when the Treasurer of State has received written or electronic instructions authorizing the Treasurer of State to pay for the investment is a question that must be determined on a case-by-case basis and cannot be determined by means of an Attorney General opinion.
6. The Treasurer of State is not responsible for recovering moneys used to pay for an investment that is purchased under R.C. 145.11, R.C. 742.11, R.C. 3307.15, R.C. 3309.15, R.C. 5505.06, R.C. 4123.44, or R.C. 3334.11 and in accordance with written or

electronic instructions authorizing the Treasurer of State to pay for the investment when the Treasurer of State does not receive evidence of title of the investment.