

540A.104 Appropriation for expenditure or accumulation of endowment fund — rules of construction.

1. Subject to the intent of a donor expressed in the gift instrument and to subsection 4, 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, all of the following factors:

- a. The duration and preservation of the endowment fund.
- b. The purposes of the institution and the endowment fund.
- c. General economic conditions.
- d. The possible effect of inflation or deflation.
- e. The expected total return from income and the appreciation of investments.
- f. Other resources of the institution.
- g. The investment policy of the institution.

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

3. 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 do all of the following:

a. Create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund.

b. Do not otherwise limit the authority to appropriate for expenditure or accumulate under subsection 1.

4. a. If a gift instrument uses the terms or phrases described in subsection 3, the gift instrument may also contain language substantially similar to the following:

A direction or authorization herein to use only “income”, “interest”, “dividends”, or “rents, issues, or profits”, or to “preserve the principal intact” or words of similar import, does not limit the expenditures from the endowment fund only to income, interest, dividends, or rents, issues, or profits. Expenditures may also come from other assets in the endowment fund. All expenditures from the endowment fund created hereunder shall be prudent in light of the uses, benefits, purposes, and duration of the endowment fund. In determining the amounts to be expended annually or to be accumulated, account shall be taken of the following factors: the duration and preservation of the endowment fund, the purposes of the endowment fund; general economic conditions; the possible effect of inflation or deflation; the expected total return from income and the appreciation of investments; other recourses available to carry out the charitable purposes of this gift; and the governing investment policies. Because these factors govern expenditures and accumulations from the endowment fund created hereunder, terms such as those in the first sentence of this subsection shall be interpreted, absent other express language to the contrary, as creating an endowment fund of permanent duration, and such words do not limit the authority to expend or accumulate funds in accordance with the factors listed above.

b. The absence of the foregoing language or words of similar import in a gift instrument does not invalidate the gift instrument or any gift, or portion of a gift, thereunder.

2008 Acts, ch 1066, §4, 11

[SP] Section applies to institutional funds in existence on or after July 1, 2008; 2008 Acts, ch 1066, §11