

Comparison of Common Schools and University Trusts

Montana has certain land trusts dedicated to the support of its educational institutions --- the common schools and the units of the Montana University System. The land trusts are created by the Enabling Act and are governed by the language of the Montana Constitution. The language governing the common school trust and the various university trusts are not identical. This paper is intended to show how the wording and operation of the common school trust and the university trusts are distinguishable.

Enabling Act. The common school trust is governed by the Enabling Act provisions contained in Sections 10, 11 and 13. Section 10 provides for the dedication of certain lands “for the support of common schools.” Section 11 provides that the income from such lands shall “constitute a permanent school fund, the interest of which only shall be expended in support of said schools.” Section 13 specifies that 5% of the proceeds of the sale of public lands “after deduction of all expenses incident to the same” shall be used as a permanent fund, the interest of which only shall be expended for the support of common schools . . .”

The University land trusts are created under Section 14, “the proceeds shall constitute a permanent fund . . ., the income thereof used exclusively for university purposes.” Section 16 governs the Morrill Act lands granted by Congress “for the use and support” of the agricultural college [Montana State University]. Section 17 provides for specific grants to “the establishment and maintenance of a school of mines [Montana Tech of the University of Montana]; “for agricultural colleges” in addition to the grant under Section 16; “for state normal schools” [University of Montana – Dillon and Montana State University – Billings].

The language of each grant is specific and not identical. The Section 14 lands are dedicated to be used exclusively for university purposes. The Section 17 lands are dedicated to the “establishment and maintenance of the various universities. The Section 16 lands are dedicated for the use and support of the agricultural colleges and are also governed by the language of the Morrill Act [7 USC §§ 301 *et seq.*] which specifies that “[a]ll the expenses of management, superintendence, and taxes” and “all expenses incurred in the management and disbursement of the moneys which may be received therefrom” shall be paid from the state treasury “so that the entire proceeds of the sale of said lands shall be applied without any diminution whatever.” The Morrill Act further specifies that the interest of the permanent fund shall be “inviolably appropriated, by each State . . . to the endowment, support, and maintenance of “ the college selected by the state legislature [Montana State University-Bozeman].

Montana Constitution. The language of the Montana Constitution is also implicated in the support of education from trust land proceeds. Again, the language for the common schools and the university system is not identical. Mont. Const., Art. X § 3, provides: “The public school fund shall forever remain inviolate, guaranteed by the state against loss or diversion.” Art. X §5 specifies that 95% of all income, interest and rent “received on the public school fund shall be equitably apportioned annually to public elementary and secondary school districts as provided by law.” The remaining 5% “shall annually be added to the public school fund and become and forever remain an inseparable and inviolable part thereof.”

As to the university land trusts, the Montana Constitution, Art. X, Sec. 10, states:

The funds of the Montana university system and of all other state institutions of learning, from whatever source accruing, shall forever remain inviolate and sacred to the purpose for which they were dedicated. The various funds shall be respectively invested under such regulations as may be provided by law, and shall be guaranteed by the state against loss or diversion. The interest from such invested funds, together with the rent from leased lands or properties, shall be devoted to the maintenance and perpetuation of the respective institutions.

Distribution of Trust Proceeds. The actual distribution of trust fund income for common schools occurs by the distribution of the funds as part of the entire appropriation for the support of all of the schools. The trust funds are distributed and are commingled as part of the overall appropriation which is later distributed to each school district according to the funding formula. At least one Montana Supreme Court case has determined that the co-mingling of general fund and trust income did not violate the Constitution or Enabling Act in light of the fact that the funds were properly identified and accounted for and the appropriation to the common schools far exceeded the trust income distributed. *Montanans for the Responsible Use of the School Trust v. Darkenwald*, 2005 MT 190, ¶31, 328 Mont. 105, 119 P.3d 27.

The university trust distributions are dedicated to the particular units identified in the Enabling Act. Therefore, the distribution of trust income is not co-mingled with the appropriation to the Montana University System and is instead distributed directly to the beneficiary institution for the exclusive use of that unit through a journal voucher transaction between the beneficiary institution and DNRC. Each of the beneficiary institutions has pledged its trust income to the repayment of bonds issued for the construction of campus buildings or acquisition of major equipment.

Once the distribution is received, it is applied to the repayment of the bonds along with other revenues, such as dormitory rent, concessions, etc. All pledged income is subject to annual audit in accordance with the bond indenture. In addition to regular debt service, bond covenants for MSU require that the units adequately fund operations and maintenance of revenue-generating facilities within the indenture, maintain net revenues of at least 110% of annual debt service requirements, and maintain at least \$1.5 million in reserve for the repair and replacement of revenue-generating facilities. If any funds remain after the payment of debt service, the funds may be used for “other lawful purposes” as defined in the bond documents. By maintaining a strong debt service coverage ratio, the units assure an above average credit rating resulting in lower costs of financing than would have been obtained with an inferior rating.

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