



Montana Legislative Services Division

Legal Services Office

September 13, 2004

Representative Rosalie Buzzas
233 University Avenue
Missoula, Montana 59801

Dear Representative Buzzas:

I am writing in response to your request for information concerning the fiduciary responsibility of the state with respect to state land held for the benefit of the public schools. You have asked a series of questions, which I will respond to in order.

Your first question is what are the legal fiduciary responsibilities of the state towards the school districts, with respect to the assets the state holds and manages on the districts' behalf?

Article X, section 2, of the Montana Constitution establishes the public school fund and describes the money and land constituting the fund. Article X, section 3, of the Montana Constitution provides that the public school fund is inviolate, guaranteed by the state against loss or diversion. Article X, section 4, of the Montana Constitution establishes the Board of Land Commissioners (Board) and grants the Board the authority to direct, control, lease, exchange, and sell school lands and lands that have been or may be granted for the support and benefit of the various state educational institutions, under regulations and restrictions provided by law. Article X, section 5, of the Montana Constitution addresses the use of the interest and income derived from the public school fund. Article X, section 11, of the Montana Constitution establishes the public lands of the state as a trust and provides for their classification and disposition.

One of the best discussions of fiduciary responsibility of the state with regard to school trust land occurred in Montanans for Responsible Use of School Trust v. State ex rel. Board of Land Commissioners, 1999 MT 263, 296 Mont. 402, 989 P.2d 800 (1999) (Montrust). In that case, Montrust challenged the constitutionality of 14 statutes that concern Montana's school trust lands. The Montana Supreme Court determined that under The Enabling Act, chapter 180, 25 Stat. 676 (1889), the federal government granted Montana the sixteenth and thirty-sixth sections of each township in Montana "for the support of common schools". The federal government's grant of those lands to Montana constitutes a trust. The terms of the trust are set forth in Montana's Constitution and The Enabling Act. The State of Montana is a trustee of those lands. The Board, as the instrumentality created to administer that trust, is bound, upon principles that are elementary, to administer the trust in a manner that secures the largest measure of legitimate advantage to the beneficiary of the trust. The Board owes a higher duty to the public than does an ordinary businessman. Montana's constitutional provisions are limitations on the power of disposal by the Legislature. One limitation on the Legislature's power of disposal is the trust's requirement that full market value be obtained for trust lands.

A trustee has a duty of undivided loyalty to the beneficiary of the trust. In Montrust, the Court cited Wild West Motors, Inc. v. Lingle, 224 Mont. 76, 728 P.2d 412 (1986), for the proposition that the undivided loyalty of a trustee is jealously insisted on by the courts that require a standard with a "punctilio of an honor the most sensitive". A trustee must act with the utmost good faith towards the beneficiary and may not act in the trustee's own interest or in the interest of a third person. The Board and the Department of Natural Resources and Conservation (DNRC) have discretion in the management of trust lands. In State ex rel. Evans v. Stewart, 53 Mont. 18, 161 P. 309 (1916), the Court noted that the Board must have a large discretionary power over the subject of the trust. However, this discretion is not unlimited but must conform to the requirements of the trust. See Toomey v. State Board of Land Commissioners, 106 Mont. 547, 81 P.2d 407 (1938). The discretionary powers of the Board must be consistent with the Constitution. State ex rel. Thompson v. Babcock, 147 Mont. 46, 409 P.2d 808 (1966).

Your second question is whether state trust lands are considered as being held in trust for the benefit of the school districts, with a trustee/beneficiary relationship existing between the state and the schools?

As discussed in response to your first question, the state trust lands are held in trust for the benefit of the public elementary and secondary schools.

Your third question is if a trustee/beneficiary relationship exists, what entity is the trustee and what entity or entities are the beneficiaries? If they are seen as a group, is there a single entity who would represent them on legal matters regarding these assets?

As discussed under your first question, the State of Montana is a trustee of the public school lands and the Board is the instrumentality created to administer that trust. Section 77-1-202, MCA, provides that the Board is required to exercise general authority, direction, and control over the care, management, and disposition of state lands and, subject to the investment authority of the Board of Investments, the funds arising from the leasing, use, sale, and disposition of those lands or otherwise coming under its administration. In the exercise of these powers, the guiding principle is that these lands and funds are held in trust for the support of education and for the attainment of other worthy objects helpful to the well-being of the people of this state as provided in The Enabling Act. The Board is directed to administer this trust to secure the largest measure of legitimate and reasonable advantage to the state. Section 77-1-301, MCA, provides that under the direction of the Board, DNRC has charge of the selecting, exchange, classification, appraisal, leasing, management, sale, or other disposition of the state lands. DNRC is directed to perform other duties as directed by the Board, as the purpose of DNRC demands, or as the statutes require. DNRC is directed to collect and receive all money payable to the state through its office as fees, rentals, royalties, interest, penalties, or payments on mortgages or lands purchased from the state or derived from any other source. The Board and DNRC are under a fiduciary duty to manage the school lands according to the highest standards. Therefore, DNRC's power when administering the trust is discretionary, and a writ of mandamus may not be issued to compel DNRC to approve an assignment of a lease. Jeppeson v. State, 205 Mont. 282, 667

P.2d 428 (1983). Section 2-15-501(1), MCA, provides that the Attorney General has the duty to prosecute or defend all causes in the Supreme Court in which the state or any officer of the state in the officer's official capacity is a party or in which the state has an interest.

Your fourth question asks if the state is required to manage these assets for maximum income to the beneficiary, subject to rules commonly applied to the management of trust funds, such as the Coal Tax Trust Fund?

Section 77-1-203, MCA, provides that the Board shall manage state lands under the multiple-use management concept. That concept is defined as the management of all the various resources of the state lands so that: (1) they are utilized in that combination best meeting the needs of the people and the beneficiaries of the trust, making the most judicious use of the land for some or all of those resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions and realizing that some land may be used for less than all of the resources; and (2) harmonious and coordinated management of the various resources, each with the other, will result without impairment of the productivity of the land, with consideration being given to the relative values of the various resources. In Ravalli County Fish & Game Association, Inc. v. Department of State Lands, 273 Mont. 371, 903 P.2d 1362 (1995), the Montana Supreme Court also held that maximizing income is "a" consideration but not "the" consideration regarding school trust lands and is not paramount to the exclusion of wildlife or environmental considerations.

You have also asked that I send you bills from last session and previous memoranda that apply to the issues discussed. I am enclosing a copy of Senate Bill No. 200 and House Bill No. 594 from the 2003 legislative session and four documents that I have previously written on related matters. If you have additional questions, please feel free to contact me.

Sincerely,

Gregory J. Petesch
Director of Legal Services

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