

REVIEW OF ENDOWMENT LAND CONSTITUTIONAL AND STATUTORY AUTHORITY AND DUTIES

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BACKGROUND

- ✘ Endowment lands are those lands granted by the United States to the State for support of public schools, universities, and certain other public beneficiaries.
- ✘ Idaho Admission Bill §§ 4, 6, 8, 9, 10, and 11
- ✘ Article IX, § 8 of the Idaho Constitution

ENDOWMENT TRUST

- ✘ The federal grants, coupled with restrictions on disposal and use, created a trust that imposes a “**sacred obligation**” on the State to use the granted lands for the specified purpose. *Cooper v. Roberts*, 59 U.S. 173 (1855).
- ✘ “The State’s endowment lands are part of a **sacred trust** reserved for the benefit of Idaho’s public schools and public institutions.” *Wasden v. State Bd. Of Land Commissioners*, 153 Idaho at 195.

TRUST CONCEPTS

- ✘ A trust consists of three elements
 - + **Trust Property** – assets held for the benefit of another
 - + **Trustee** – person who holds title to trust property for the benefit of another
 - + **Beneficiary** – person for whom the trustee holds title
- ✘ Fiduciary duty – a duty owed by the trustee to the beneficiary

ENDOWMENT TRUST FRAMEWORK

- ✘ Land Board “to provide for the protection, sale or rental” of endowment lands.
- ✘ Lands to be managed “in such manner as will secure the maximum possible amount therefor.”
- ✘ Lands to be “carefully preserved and held in trust.”
- ✘ Lands “subject to disposal at public auction.”
- ✘ Legislature to provide for the sale of lands and for the sale of timber.
- ✘ Legislature to “provide for the faithful application” of proceeds.

CHECKS AND BALANCES

- ✘ Delegates were particularly concerned that endowment lands not be used to further political agendas.
- ✘ “[L]et us put this property in these lands in a condition that neither democrat nor republican can take it . . . the question before the convention now is how and in what manner we are going to best perpetuate the funds of the schools of this territory.” [Remarks of Alexander Mayhew, Vol. I, P. 656].

LAND BOARD IS THE TRUSTEE

- ✘ “The grant of lands for the various purposes by the federal government to the state constitutes a trust, and the State Board of Land Commissioners is the instrumentality created to administer that trust, and is **bound upon principles that are elementary to so administer it as to secure the greatest measure of advantage to the beneficiary of it.**” *Barber Lumber Co. v. Gifford*, 25 Idaho 654 (1914).

FIDUCIARY DUTY

- ✘ **Prudent Investor Rule** – “[A] trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule” **Idaho Code § 68-501.**
- ✘ “A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution.” **Idaho Code § 68-502(1).**

BUSINESS JUDGMENT RULE

- ✘ “The members of the land board “are, as it were, the trustees or business managers for the state in handling these lands, and on matters of policy, expediency and the business interest of the state, they are the sole and exclusive judges so long as they do not run counter to the provisions of the Constitution or statute.” *Pike v. State Bd. of Land Comm'rs*, 19 Idaho 268 (1911).

CONSTITUTIONAL DEBATE OVER TRUST PURPOSE

- ✘ The delegates contemplated that lands would be managed on sound business principles to maximize revenues.
 - + Delegates referred to land management decisions as “business transactions” and “business proposition[s].” [Remarks of William J. McConnell, Vol. I, pp. 661, 735, 737].
 - + The delegates recognized that “sound practical business judgment” would be needed “to get the most we possibly can from our school lands.” [Remarks of Orlando Batten, Vol. I, p. 666].
 - + Lands were to be managed for “profit.” [Remarks of William Claggett, Vol. I, p. 740].

CONSTITUTIONAL DEBATE OVER TRUST PURPOSE

- ✘ Delegates recognized that while granted lands were unimproved, the endowments would eventually include improved lands with enhanced values.
 - + I am in favor of leasing these lands . . . then the state would gain the benefit of the enhancement of the value of these lands.” [Remarks of Lycurgus Vineyard, Vol. I, p. 653].
 - + “The leasing of these lands under proper conditions and under proper restrictions . . . will increase not only the school fund but will increase the value of these lands as well.” [Remarks of Lycurgus Vineyard, Vol. I, p. 709].

LEGISLATIVE ROLE

- ✘ The legislature **may** “prescribe by law” procedures “for the location, protection, sale or rental” of endowment lands.
- ✘ “The legislature **shall** . . . Provide by law that the general grants of land made by congress to the state **shall** be judiciously located and carefully preserved and held in trust, subject to disposal at public auction for the use and benefit of the respective [beneficiaries].
- ✘ “The legislature shall provide for the sale of said lands from time to time and for the sale of timber on all state lands”
- ✘ “The legislature **shall** have power to authorize the [board] to exchange granted or acquired lands of the state on an equal value basis for other lands”

LIMITATIONS ON LEGISLATIVE AUTHORITY

- ✘ Regulations cannot remove or encroach upon the Land Board's constitutionally-vested discretion to manage lands for maximum returns to beneficiaries.
 - + *Idaho Watersheds Project v. State Bd. of Land Comm'rs*, 133 Idaho 64 (1999). Statute that "removed" Board's discretion by requiring it to focus on financial interests of entities other than beneficiaries held unconstitutional.
 - + *Wasden v. Idaho State Bd. of Land Comm'rs*, 150 Idaho 547 (2010). Dissent suggested that § 58-310A, by substituting "market rent" requirement for public auction, "encroached upon the discretion constitutionally granted to the Land Board."

LIMITATIONS ON LEGISLATIVE AUTHORITY

- ✘ Statutes that attempt to direct or limit the Board's discretion, rather than regulate its procedures, are unlikely to withstand court scrutiny.
 - + “[If a statute] is a ‘regulation’ of the powers and duties of the board, it is valid and constitutional; but if it goes beyond the scope of regulation the action of the board in the discharge of its constitutional duties, it is void.” *Rogers v. Hawley*, 19 Idaho 751 (1911).

MEANING OF “UNDER SUCH REGULATIONS AS MAY BE PRESCRIBED BY LAW”

- ✘ The Court has not interpreted the meaning of the phrase “under such regulations as may be prescribed by law,” as used in Article IX §8.
- ✘ The Court interpreted this phrase as used in Article IX § 10, as it relates to regents of University of Idaho authority over “control and direction of all the funds of, and appropriations to, the university, under such regulations as may be prescribed by law.” *Dreps v. Bd. of Regents of University of Idaho*, 65 Idaho 88 (1943).
 - + The Court held that “regulate” does not mean to prohibit, or destroy or change, but rather refers more to the manner, method, procedural and orderly conduct of business than to mandatory or prohibitive legislation.
 - + The Court held that legislative regulations of a Board’s constitutional powers “must not be of a character to interfere essentially with the constitutional discretion of the board, under the authority granted by the Constitution.”

CONCLUSION

Questions