



STATE OF IDAHO

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October 7, 1988

The Honorable Lydia Justice Edwards
Idaho State Treasurer
Statehouse
Boise, Idaho 83720

THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE

Re: Processing Deposits of Co-mingled Public School Funds
and Treasury Funds

Dear Ms. Edwards:

This is in response to your question regarding procedures for handling deposits which must be credited in part to the public school fund and in part to the state treasury. The department of lands receives many payments which must be credited in part to the public school fund and in part to the state treasury. The deposits are made to the treasurer's suspense account. However, you do not know until the following day what portion belongs to the public school fund and what portion belongs to the state treasury. Therefore, it is your practice to initially deposit funds to your suspense account. You transfer the public school fund share to the public school fund as soon as you know what portion should be transferred. You have asked if the procedure is legal in light of Idaho Const. art. 9, § 3, which provides in pertinent part:

No part of this [public school] fund, principal or interest, shall ever be transferred to any other fund, or used or appropriated except as herein provided. The state treasurer shall be the custodian of this fund, and the same shall be securely and profitably invested as may be by law directed. [Emphasis added.]

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In Moon v. State Board of Land Commissioners, 111 Idaho 389, 724 P.2d 125 (1986), the Idaho Supreme Court explained that the state manages two separate trusts for the benefit of the public schools:

The State of Idaho manages two separate trusts for the benefit of public schools. The Public School Fund is the res of the first trust, which is invested by the Investment Board. I.C. § 57-715 et seq. The State's constitutional responsibilities regarding this trust and the protection of the money corpus are found in ID. CONST. art. 9, § 3. The second trust consists of school endowment lands managed by the Land Board. The endowment lands themselves form the res of this trust and the State's constitutional duties regarding this trust and protection of the land corpus is found in ID. CONST. art 9, § 8.

111 Idaho at 391.

As the court points out, the fund referred to in Idaho Const. art. 9, § 3, is the fund invested by the investment board. Idaho Const. art. 9, § 3, provides that that fund cannot be transferred to any other fund. However, Idaho Const. art. 9, § 3, does not address the handling of funds not yet received by the investment board. Thus, those provisions are not applicable to the funds you receive from the department of lands which are not yet deposited to the public school fund.

Idaho Const. art. 9, § 8, contains the only constitutional provision relating to the transfer of endowment land proceeds to endowment funds such as the public school fund. It provides in pertinent part:

. . .the legislature shall provide for the sale of said lands from time to time and for the sale of timber on all state lands and for the faithful application of the proceeds thereof in accordance with the terms of said grants. . . [Emphasis added.]

Thus, the constitution requires endowment land proceeds to be faithfully applied. However, it does not specify the procedure to be used in doing so. The procedure you follow does result in the

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faithful application of the proceeds as required by the constitution. Your use of the suspense account until you know where the funds should be transferred is in accord with Idaho Code § 67-1209. That section provides

Any state officer, department, board or institution having or receiving money in trust or for safe-keeping pending its final disposition or distribution shall deposit the same in the state treasury in a special suspense account from which it may be withdrawn or distributed under rules and regulations promulgated by the state auditor.

In summary, the procedure you use to handle deposits which must be credited in part to the public school fund and in part to the state treasury meets constitutional and statutory requirements noted above. The deposits are initially made to the treasurer's suspense account as required by Idaho Code § 67-1209. As soon as you know what portion, if any, of the suspense account belongs to the public school fund, you transfer that portion to the public school fund. The procedure results in "the faithful application of the proceeds" from endowment lands to the public school fund.

Sincerely,



David G. High
Deputy Attorney General
Chief, Business Regulation
and State Finance Division

DGH/scw