

September 3, 1992

Mr. Stanley F. Hamilton, Director  
Idaho Department of Lands  
**STATEHOUSE MAIL**

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

Dear Mr. Hamilton:

This letter is in response to your inquiry seeking legal clarification on the Department of Lands' use of interest-bearing accounts for receipts not immediately deposited with the state treasurer's office. Based upon the representation in your letter, approximately 90% of the money placed in the interest-bearing accounts is generated from state endowment lands. The interest on the funds contained in the accounts is ultimately credited to the public school improvement account.

The issues raised by your inquiry are as follows:

1. Is it appropriate to credit interest earned on endowment land receipts to the general account?
2. Does the Department of Lands have authority to place receipts earned from endowment accounts into interest-bearing accounts?
3. If receipts earned from endowment fund lands and placed in interest-bearing accounts are intermingled with other Department of Lands receipts, how is the interest to be distributed?

**CONCLUSION**

In response to your first question, crediting interest earned on endowment land receipts to the general account would be a violation of the terms of the school endowment grants in the Idaho Admission Bill and art. 9, § 8 of the Idaho Constitution. With reference to the second question, the Board of Land Commissioners has a duty to maximize the profits which can be obtained from endowment lands. If money received from endowment lands would otherwise remain idle pending transfer to the state treasurer, it would be appropriate to place the money into interest-bearing accounts to secure better return on the investment pending transfer to the treasurer's office. However, with today's technology, in most, if not all, circumstances, transfer of receipts to the state treasurer can occur immediately. Finally, where receipts earned from

endowment lands are placed in interest-bearing accounts which are intermingled with other Department of Lands receipts, the interest must be segregated for deposit into the general account or other appropriate account(s) as specified by statute.

#### **A. Historical Analysis**

The Organic Act of the Territory of Idaho and the Idaho Admissions Bill established grants of land to be used for the financing of public schools in Idaho. *See* Organic Act of the Territory of Idaho, § 14; Idaho Admission Bill §§ 4, 5 and 7. The Idaho Admission Bill elaborated on the grants of land provided by the Organic Act of the Territory of Idaho, providing for certain sections in every township of the state to be set aside for support of the common schools with the proceeds of the sale of such sections to constitute a permanent school fund. It was also provided that the interest from such funds would only be expended for the support of the common schools. Art. 9, § 3 of the Idaho Constitution, incorporated the Idaho Admission Bill provisions into the constitution, providing as follows:

Public school fund to remain intact.—The public school fund of the state shall forever remain inviolate and intact; the interest thereon only shall be expended in the maintenance of the schools of the state, and shall be distributed among the several counties and school districts of the state in such manner as may be prescribed by law. No part of this 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. The state shall supply all losses thereof that may in any manner occur.

Thus, this provision of the constitution provides for the creation of one of two separate trusts managed by the state of Idaho for the benefit of the public schools. *See Moon v. State Board of Land Commissioners*, 111 Idaho 389, 724 P.2d 125 (1986). The public school fund, as provided in art. 9, § 3, Idaho Constitution, consists of proceeds from the sale of endowment lands. These proceeds are invested by the Investment Board pursuant to the provisions of Idaho Code §§ 57-715, *et seq.*

The second trust managed by the state for the benefit of public schools 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 Idaho Constitution, art. 9, § 8:

Location and disposition of public lands.—It shall be the duty of the state board of land commissioners to provide for the location, protection,

sale or rental of all the lands heretofore, or which may hereafter be granted to the state by the general government, under such regulations as may be prescribed by law, and in such manner as will secure the maximum possible amount therefor: provided, that no school lands shall be sold for less than ten dollars (\$10) per acre. No law shall ever be passed by the legislature granting any privileges to persons who may have settled upon any such lands, subsequent to the survey thereof by the general government by which the amount to be derived by the sale, or other disposition of such lands, shall be diminished, directly or indirectly. The legislature shall, at the earliest practicable period, 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 objects for which said grants of land were made, and 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: provided, that not to exceed one hundred (100) sections of school lands shall be sold in any one (1) year, and to be sold in subdivisions of not to exceed three hundred and twenty (320) acres of land to any one (1) individual, company or corporation. The legislature shall have power to authorize the state board of land commissioners to exchange granted lands of the state for other lands under agreement with the United States.

In Moon v. State Board of Land Commissioners, *supra*, the Idaho Supreme Court found that where the endowment land continues to be owned by the state and held in trust for the use and benefit of the public schools, it remains a part of the trust res, and the State Land Board, as trustee, is constitutionally and statutorily required to provide for the protection of said land. 111 Idaho at 393. Thus, the state of Idaho manages two separate trusts for the benefit of the public schools; (1) the Public School Fund consisting of the proceeds from the sale of endowment fund lands which are invested by the Investment Board; and, (2) the endowment lands, which, as provided by art. 9, § 8 of the Idaho Constitution, are managed by the State Land Board, as trustee for the benefit of the public schools. The issues addressed by this opinion relate to the management of the second trust.

## LEGAL ANALYSIS

The first issue presented by your inquiry is whether it is proper to credit the interest earned on endowment land receipts to the public school improvement account. In *Moon v. State Board of Land Commissioners*, the Idaho Supreme Court considered whether it was proper to credit the general fund with interest earnings from a state account used for the management of school endowment lands. The funds in the account

came from revenues from endowment lands. Idaho Constitution, art. 9, § 8, requires the legislature to provide for:

[T]he faithful application of the proceeds therefore in accordance with the terms of said grants;

The state treasurer argued that she was statutorily required to credit the general account with interest earnings from the Land Board's account. The court disagreed, holding:

We hold in accordance with the position of the Land Board that the interest earned on the agency asset accounts is an integral part of the total monies received from school lands and must be used for the protection of the lands constituting the trust res or for school purposes in accordance with the terms of the trust established by our Constitution. Crediting such interest generated by the agency asset accounts to the general fund is a violation of the terms of the school endowment grants and our Constitution.

111 Idaho at 394 (emphasis added). *See also* Evans v. Van Dusen, 31 Idaho 614, 174 P. 122 (1918); Opinion of the Attorney General, No. 85-3. Thus, interest earnings should be used exclusively for the protection of the trust res, *i.e.*, the endowment lands, or for the benefit of public schools.

The second issue presented is whether it is appropriate for the Department of Lands to place endowment land receipts in an interest-bearing account. Idaho Code § 67-1302 requires that:

[A]ll officers and employees of the state of Idaho receiving . . . money, bonds, debentures or other securities on behalf of the state shall, when not otherwise provided by law, deliver the same to the State Treasurer.

Thus, the receipts earned from endowment lands should be forwarded to the state treasurer for appropriate distribution to the proper program accounts. However, the Land Board, as trustee of the endowment lands, has a duty to secure the maximum possible returns on investment from the endowment lands. *See* Idaho Constitution, art. 9, § 8. Therefore, it would appear appropriate to place endowment land receipts in interest-bearing accounts where receipts from endowment lands would otherwise remain idle pending transfer to the state treasurer. However, in most, if not all circumstances, transfer to the state treasurer can be accomplished by immediate wire transfer, and particularly since investment by the state treasurer would typically yield a higher return on the receipts, the money should be transmitted to the treasurer's office in the most expeditious manner possible.

The final question presented is whether the interest earned on moneys placed in the interest-bearing accounts which were not from receipts on state endowment lands may be credited to the public school improvement account. Pursuant to § 67-1210, Idaho Code, "interest received . . . unless otherwise specifically required by law, shall be paid into the general account of the state of Idaho." Unless there is a specific statutory provision allowing for payment of the interest earned to the public school improvement account, the interest earned should be segregated for deposit into the general account or other appropriate account(s) as specified by statute.

Very truly yours,

TERRY B. ANDERSON  
Chief, Business Regulation  
and State Finance Division