



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

ATTORNEY GENERAL OPINION NO. 14-2

To: Thomas M. Schultz, Jr., Director
Idaho Department of Lands
STATEHOUSE MAIL

Per Request for Attorney General's Opinion

INTRODUCTION

In 2002, this Office issued Attorney General Opinion No. 02-1 answering three questions from the Department of Lands concerning the Land Bank fund created by Idaho Code § 58-133. Question "C" of that opinion was:

What "expenses" of property sale/acquisition, if any, can be paid for out of the proceeds from the sale of endowment lands that are invested in the land bank fund?

The opinion concluded that the Department could not deduct expenses from the sale proceeds prior to depositing the proceeds in the land bank fund. The Department has now asked the follow-up question of whether the Department may pay expenses associated with the sale of endowment land from the land bank fund after deposit of the sale proceeds.

QUESTION PRESENTED

Whether the Department may pay expenses associated with the sale of endowment land from the land bank fund, after deposit of the sale proceeds.

CONCLUSIONS

No. Idaho Code § 58-133 states, "Moneys from the sale of lands which are a part of an endowment land grant shall be used only to purchase land for the same

endowment.” The expenses associated with the sale of endowment lands are administrative costs. Therefore, such expenses are chargeable against the Department of Lands’ appropriation from the earnings reserve fund. Idaho Code § 57-723A(3).

ANALYSIS

The land bank fund was created as part of the “endowment reform” in the late 1990s. Prior to endowment reform, all proceeds from the sale of endowment lands were required to be deposited in the appropriate permanent endowment fund. The land bank fund was created as a narrow exception to this general rule. Because the endowment fund is to “remain inviolate and intact,” the land bank fund exception must be narrowly construed.

Idaho Code § 58-133, which created the land bank fund, authorizes the Board of Land Commissioners (the “Land Board”) to deposit proceeds from the sale of endowment land in the land bank fund for temporary holding pending the purchase of other endowment land. The proceeds may be held in the land bank fund for up to five years. If the proceeds have not been encumbered to purchase other land within five years, the sale proceeds and all earnings must be deposited in the earnings reserve fund, unless the period is extended by the legislature.

Attorney General Opinion No. 02-1 concluded that the expenses associated with the sale of endowment lands cannot be deducted from the proceeds of the sale of endowment land prior to the deposit of the proceeds in the land bank fund. This conclusion was based upon the plain language of Idaho Code § 58-316, which requires that the Director of the Department of Lands deposit “**all purchase moneys** arising from the sale of state land” with the Treasurer, and that the Treasurer credit the proceeds to the Land Bank to which the land sold belonged.

Opinion No. 02-1 left open the question of whether the Department of Lands could deduct sale expenses *after* sale proceeds are deposited in the land bank fund. That question is answered by the plain language of the statute, which states: “Moneys from the sale of lands which are a part of an endowment land grant shall be used only to purchase land for the same endowment.” Idaho Code § 58-133(2). Thus, the only permissible use of endowment land sale proceeds is to purchase other land.

Accordingly, sale proceeds deposited in the land bank fund cannot be used to pay expenses associated with the sale of endowment land. Also, because Idaho Code § 58-316 requires that the Director deposit *all* purchase moneys with the Treasurer, the expenses cannot be deducted from the sale proceeds prior to deposit in the land bank fund. *See also*, Idaho Code § 58-128 (requiring land board to deposit daily with treasurer all money received); Idaho Code § 67-1302 (requiring state officers and employees to deposit money received on behalf of the state with the treasurer).

While the use of sale proceeds deposited in the land bank fund are strictly limited to the purchase of land and expenses associated with such purchases, Idaho Code § 57-723A(3) provides that the Department's administrative costs may be paid out of the earnings reserve fund. Since the expenses of selling endowment lands arise out of the Department's duty to administer endowment lands, such expenses are appropriately paid out of the Department's earnings reserve fund appropriation.

AUTHORITIES CONSIDERED

1. Idaho Code:

Idaho Code § 57-723A(3).
Idaho Code § 58-128.
Idaho Code § 58-133.
Idaho Code § 58-133(2).
Idaho Code § 58-316.
Idaho Code § 67-1302.

2. Other Authorities:

2002 Idaho Att'y Gen. Ann. Rpt. 5

Dated this 11th day of August, 2014.



LAWRENCE G. WASDEN
Attorney General

Analysis by:

EDITH L. PACILLO
Deputy Attorney General