

ORIGINAL

DEPT. OF LANDS
MAY 29 2018
BOISE, IDAHO

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BEFORE THE STATE BOARD OF LAND COMMISSIONERS

SHARLIE-GROUSE NEIGHBORHOOD)	
ASSOCIATION, INC.,)	
)	PETITION FOR DECLARATORY
Petitioner,)	RULING
)	
vs.)	
)	
IDAHO STATE BOARD OF LAND)	
COMMISSIONERS,)	
)	
Respondent.)	

1. Sharlie-Grouse Neighborhood Association, Inc., an Idaho non-profit corporation (“SGNA” or “Petitioner”), by and through undersigned counsel, files this Petition for Declaratory Ruling (“Petition”) pursuant to Idaho Code Sections 67-5232 and 67-5255 and the Department of Lands Rules of Practice and Procedure before the State Board of Land Commissioners, IDAPA 20.01.01.400.

I.

FACTS RELEVANT TO PETITION FOR DECLARATORY RULING

The Disposition of State Lands in Question

2. On or about April 23, 2014, the State Board of Land Commissioners (“Board”) executed State Deed No. SD13867, a Quitclaim Deed (the “Deed”) disposing of various parcels of state-owned endowment lands in Valley County, Idaho (the “State Land”). The Deed, recorded as Valley County Instrument No. 384477, purports to convey all right, title and interest of the Board in such State Land to Payette Lakes Cottage Sites Owners Association, Inc. (“PLCSOA”).

3. On or about January 28, 2015, the Board executed State Deed No. SD13867, an Amended Quitclaim Deed relating to the State Land (the “Amended Deed”). The Deed, recorded as Valley County Instrument No. 389629, again purports to convey all right, title and interest of the Board in such State Land to PLCSOA.

4. On information and belief, the State Lands constituted endowment lands, for the benefit of Idaho’s public schools and institutions.

Petitioner’s Interest in State Lands, in Particular, the SGN Property

5. Petitioner is a homeowners’ association consisting of owners of real property immediately adjacent to various parcels of State Land conveyed by the Deed and Amended Deed.

6. On September 23, 2013, in advance of the disposal or disposition of the above-referenced State Lands, Petitioner made known via letter to the Department its interest in obtaining title to certain of such lands. Specifically, Petitioner sought the opportunity to own Sharlie Lane, Sharlie Way, Community Beach Access Road, Grouse Way and the Community Beach (collectively, the “SGN Property”).

7. Petitioner's members' interest in acquiring rights over the SGN Property had a significant historical and practical basis. The SGN Property is entirely located within an enclave of land controlled by and within Petitioner's members' respective properties. For example, the roadways within the SGN Property only serve Petitioner's members' properties. The Community Beach, located at Lot 1, Block 2 of the SW Payette Cottage Sites Subdivision, is central to Petitioner's members' neighborhood and the use thereof.

8. Petitioner's members have for decades maintained all of the SGN Property, including roadways and the Community Beach, and had an interest in continuing to do so. Petitioner's members have assigned significant value to the SGN Property and would have been willing to enter into a competitive auction, if necessary, and to invest funds in order to maintain their historical maintenance, use, and oversight of the SGN Property.

*Petitioner's Actions Evidence Financial Value Associated
with the SGN Property that the Board Failed to Capture*

9. Petitioner's members' actions evidence clear financial value to the SGN Property that could have been captured by the Department if it had been willing to enter into a competitive auction prior to disposing of the SGN Property.

10. The Department, unfortunately, has not recognized the value of the SGN Property. Instead, on October 8, 2013, counsel for the Board responded, stating that "a majority of the roads, easements and common areas" will be transferred to PLCSOA, and that the Board did "not intend to further fragmentize ownership or control of the roads, easements and common area among other homeowners associations such as SGNA."

11. In short, notwithstanding a competing offer from a homeowners' association with an expressed interest in owning and maintaining the SGN Property (property Petitioner's members have traditionally maintained for the benefit of themselves and the public), the Board

declined to afford Petitioner or any other person the right to participate in an auction of the SGN Property.

12. On information and belief, the Board conveyed the State Lands, including the SGN Property, to PLCSOA by and through the Deed and Amended Deed, respectively, without holding a public auction and without receiving any financial consideration whatsoever.

13. Given Petitioner's competing offer for the SGN Property, it should have been obvious to the Department that there is financial value associated with the SGN Property. The Board has ignored these competing offers and failed to recognize or acquire the financial interest in the SGN Property in connection with its liquidation of these endowment lands, in contravention of its constitutional and statutory duties.

The Board's Actions in this Regard Violate its Constitutional and Statutory Duties

14. Article IX, Section 8 of the Idaho Constitution provides:

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 object 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 . . .

IDAHO CONST., ART. IX, § 8.

15. "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 Com'rs*, 153 Idaho 190, 195, 280 P.3d 693, 698 (2012). State endowment lands are to be held in trust to secure the maximum long term financial return, subject only to "disposal" at public auction. *Id.*

16. "The 'disposal' or 'disposition' of public lands obviously includes the sale thereof and just as obviously includes other types of disposal or disposition. . . . The language of Article

IX, §8, unambiguously requires that any disposal of endowment land must be at public auction.”

Wasden , 153 Idaho at 197-98, 280 P.3d at 700-01.

17. These important responsibilities are detailed throughout Idaho Code. This includes, for example, the advertisement and basic auction requirements. Idaho Code Section 58-313 provides, in pertinent part:

The state board of land commissioners may at any time direct the sale of any state lands, in such parcels as they shall deem for the best interests of the state. All sales of state land shall be advertised in four (4) consecutive issues of some weekly newspaper in the county in which the land is situated, if there be such paper, if not, then in some newspaper published in an adjoining county, and in such other paper or papers as the board may direct. The advertisement shall state the time, place and terms of sale, a description of land and value of the improvements, if any, thereon, and the minimum price per acre of each parcel as fixed by the board, below which no bid shall be received. . . . When lands on which improvements have been made, as above, are sold, the purchaser, if other than the owner or former owner of said improvements, shall pay the appraised value of said improvements to the owner thereof. . . .

IDAHO CODE § 58-313.

18. Even if the Department determines that property is “surplus,” Idaho Code ensures that the property is not simply given away. For example, Idaho Code Section 58-332 provides, in pertinent part:

If no tax-supported agency or unit of the state of Idaho or the United States acquires the surplus property, the state board of land commissioners may offer at public sale, after notice of publication for four (4) consecutive weeks in a newspaper published in the county in which the property is situated, and sell the same to the highest and best bidder upon terms and conditions to be determined by the board and specified in the notice of sale. If the property does not sell at public auction, the board may have the property appraised and enter into negotiations with any party(s) to effect disposition of the property for adequate and valuable consideration.

IDAHO CODE § 58-332.

19. There is no statutory exemption from, or exception to, the public auction requirement that applied to the Board’s disposal of the State Land, including the SGN Property.

The Board did not comply with the Idaho Administrative Procedures Act.

20. Upon information and belief, the Board did not engage in a rulemaking, nor issue any rule, that purported to allow it to dispose of the State Land, including the SGN Property, without a public auction. Interested parties were not afforded the requisite opportunity to participate in a rulemaking relating to the disposal.

21. Upon information and belief, the Board did not issue any order that purported to allow it to dispose of the State Land, including the SGN Property, without a public auction. Interested parties were not afforded the requisite opportunity to participate in a contested case relating to the disposal.

Administrative actions taken without authority or jurisdiction are void.

22. The Board, as an administrative agency, has no authority other than that given to it by the legislature. *See Wash. Water Power Co. v. Kootenai Env'tl. Alliance*, 99 Idaho 875, 879, 591 P.2d 122, 126 (1979). “Administrative agencies are ‘creature[s] of statute’ and, therefore, are ‘limited to the power and authority granted [them] by the Legislature.’” *Henderson v. Eclipse Traffic Control*, 147 Idaho 628, 632, 213 P.3d 718, 722 (2009) (quoting *Welch v. Del Monte Corp.*, 128 Idaho 513, 514, 915 P.2d 1371, 1372 (1996)). Such authority “is primary and exclusive in the absence of clearly manifested expression to the contrary.” *Roberts v. Idaho Transp. Dep’t*, 121 Idaho 727, 732, 827 P.2d 1178, 1138 (Ct. App. 1991). An agency “may not exercise its sub-legislative powers to modify, alter, enlarge or diminish the provisions of the legislative act which is being administered.” *Id.*

23. An administrative agency “exercises limited jurisdiction, and nothing is presumed in favor of its jurisdiction.” *Henderson*, 147 Idaho at 632, 213 P.3d at 722; *see also United States v. Utah Power & Light Co.*, 98 Idaho 665, 570 P.2d 1353 (1977). An agency’s authority and jurisdiction is “dependent entirely upon the statutes reposing power in them and they cannot

confer it upon themselves. . . .” *Wash. Water Power Co.*, 99 Idaho at 879, 591 P.2d at 126. If the provision of governing rules or statutes are not met and complied with, no authority or jurisdiction exists.” *Id.* (citing *Arrow Transp. Co. v. Idaho Pub. Util. Comm’n*, 85 Idaho 307, 379 P.2d 422 (1963)).

24. Acts taken by an agency without statutory authority or jurisdiction are void and must be set aside. *See Arrow Transp. Co.*, 85 Idaho at 314-15, 379 P.2d at 426-27; *A&B Irrigation Dis. V. Idaho Dep’t of Water Res.*, 153 Idaho 500, 505, 284 P.3d 225, 230 (2012).

II.

REQUEST FOR DECLARATORY RELIEF

25. Pursuant to Idaho Code Sections 67-5232 and 67-5255 and the Department of Lands Rules of Practice and Procedure before the State Board of Land Commissioners, IDAPA 20.01.01.400, Petitioner seeks a declaratory ruling that:

- a. The conveyance of the State Lands set forth in the Deed and Amended Deed constituted the disposal or disposition of state endowment lands
- b. The disposal or disposition of state endowment lands required the Board to employ a public auction process.
- c. Idaho law sets forth in clear terms the procedural requirements for the disposal of state lands by public auction.
- d. There was no exemption from, or exception to, the public auction requirement, statutory or otherwise, that applied to the State Lands, including the SGN Property.
- e. The Board failed to abide by the statutes and laws governing the disposition of state lands when it conveyed the State Lands to PLCSOA.

- f. The Board had no authority or jurisdiction to dispose of the State Lands without a public auction.
- g. Because the Board lacked authority and jurisdiction to convey the State Lands without a public auction, the Deed and Amended Deed are void and without effect.
- h. Because the Deed and Amended Deed are void and without effect, the Board continues to hold title to the State Lands, and may commence with a public auction thereof in accordance with the requirements of state law.

DATED this 29 day of May 2018.

SPINK BUTLER, LLP

By: 

T. Hethe Clark
Matthew J. McGee
Attorneys for Sharlie-Grouse Neighborhood
Association, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29 day of May 2018, I caused a true and correct copy of the above to be served upon the following individuals in the manner indicated below:

Payette Lakes Cottage Sites
Owners Association, Inc.
P.O. Box 4226
McCall, Idaho 83638

- U.S. Mail
- Hand-Delivery
- Federal Express
- Via Facsimile
- Via E-Mail



Matthew J. McGee