

# Constitutional and Statutory Duties of Endowment Trustees

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## Idaho Admissions Act, 26 Stat 215-219 (July 3, 1890)

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- Section 4: “That sections numbered sixteen and thirty six in every township of said State, and where such sections, or any parts thereof have been sold or otherwise disposed of by or under the authority of any act of Congress other lands equivalent thereto, in legal subdivisions of not less than one quarter section, and as contiguous as may be to the section in lieu of which the same is taken are hereby granted to said State for the support of common schools, such indemnity lands to be selected within said State in such manner as the legislature may provide, with the approval of the Secretary of the Interior.

## Idaho Admissions Act, 26 Stat 215-219 (July 3, 1890)

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- Section 5: That all lands herein granted for education purposes shall be disposed of only at public sale, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in the support of said schools. But said lands may, under such regulations as the legislature shall prescribe, be leased for periods of not more than five years, and such lands shall not be subject to pre-emption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes.

# Article IX – Education and School Lands

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- Section 4. PUBLIC SCHOOL FUND DEFINED. The public school fund of the state shall consist of the proceeds of such lands as have heretofore been granted, or may hereafter be granted, to the state by the general government, known as school lands, and those granted in lieu of such; lands acquired by gift or grant from any person or corporation under any law or grant of the general government; and of all other grants of land or money made to the state from the general government for general educational purposes, or where no other special purpose is indicated in such grant; all estates or distributive shares of estates that may escheat to the state; all unclaimed shares and dividends of any corporation incorporated under the laws of the state; all other grants, gifts, devises, or bequests made to the state for general educational purposes

# Endowment Reform

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# Idaho Admission Bill Amendments

## 1998 Pub. L. 105-296

The Act of July 3, 1890 (commonly known as the 'Idaho Admission Act') (26 Stat. 215, chapter 656), is amended by striking section 5 and inserting the following:

**'SEC. 5. SALE, LEASE, OR EXCHANGE OF SCHOOL LAND.**

'(a) SALE-

'(1) IN GENERAL- Except as provided in subsection (c), all land granted under this Act for educational purposes shall be sold only at public sale.

'(2) USE OF PROCEEDS-

'(A) IN GENERAL- Proceeds of the sale of school land--

'(i) except as provided in clause (ii), shall be deposited in the public school permanent endowment fund and expended only for the support of public schools; and

'(ii)(I) may be deposited in a land bank fund to be used to acquire, in accordance with State law, other land in the State for the benefit of the beneficiaries of the public school permanent endowment fund; or

'(II) if the proceeds are not used to acquire other land in the State within a period specified by State law, shall be transferred to the public school permanent endowment fund.

'(B) EARNINGS RESERVE FUND- Earnings on amounts in the public school permanent endowment fund shall be deposited in an earnings reserve fund to be used for the support of public schools of the State in accordance with State law.

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# Article IX – Education and School Lands

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- Section 4. PUBLIC SCHOOL PERMANENT ENDOWMENT FUND DEFINED. The public school permanent endowment fund of the state shall consist of the proceeds from the sale of such lands as have heretofore been granted, or may hereafter be granted, to the state by the general government, known as school lands, and those granted in lieu of such; lands acquired by gift or grant from any person or corporation under any law or grant of the general government; and of all other grants of land or money made to the state from the general government for general educational purposes, or where no other special purpose is indicated in such grant; all estates or distributive shares of estates that may escheat to the state; all unclaimed shares and dividends of any corporation incorporated under the laws of the state; all other grants, gifts, devises, or bequests made to the state for general educational purposes; and amounts allocated from the public school earnings reserve fund. Provided however, that proceeds from the sale of school lands may be deposited into a land bank fund to be used to acquire other lands within the state for the benefit of endowment beneficiaries. If those proceeds are not used to acquire other lands within a time provided by the legislature, the proceeds shall be deposited into the public school permanent endowment fund along with any earnings on the proceeds.

# Creation of the Trust

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# Article IX – Education and School Lands

- Section 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 or acquired by the state by or from the general government, under such regulations as may be prescribed by law, and in such manner as will secure the maximum long term financial return to the institution to which granted or to the state if not specifically granted; provided, that no state lands shall be sold for less than the appraised price. No law shall ever be passed by the legislature granting any privileges to persons who may have settled upon any such public 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 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 in accordance with the terms of said grants; provided, that not to exceed one hundred sections of state lands shall be sold in any one year, and to be sold in subdivisions of not to exceed three hundred and twenty acres of land to any one individual, company or corporation. The legislature shall have power to authorize the state board of land commissioners to exchange granted or acquired lands of the state on an equal value basis for other lands under agreement with the United States, local units of government, corporations, companies, individuals, or combinations thereof.

# Article IX – Education and School Lands

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- Section 7. STATE BOARD OF LAND COMMISSIONERS. The governor, superintendent of public instruction, secretary of state, attorney general and state controller shall constitute the state board of land commissioners, who shall have the direction, control and disposition of the public lands of the state, under such regulations as may be prescribed by law.

## *Cooper v. Roberts*, 59 U.S. 173, 181-2 (1855)

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“The trusts created by these compacts relate to a subject certainly of universal interest, but of municipal concern, over which the power of the State is plenary and exclusive. In the present instance, the grant is to the State directly, without limitation of its power, though there is a sacred obligation imposed on its public faith.”

*Barber Lumber v. Gifford,*  
25 Idaho 654, 139 P. 557 (1914)

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“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. To that end, and of necessity, the board must have a large discretionary power over the subject of the trust.”

*Wasden v. State Bd. Of Land Com'rs,*  
153 Idaho 190, 280 P.3d 693 (2012)

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- The State's endowment lands are part of a sacred trust reserved for the benefit of Idaho's public schools and public institutions. The Board, which manages those endowment lands, is the epitomic public trustee.

*Pike v. State Board of Land Com'rs,*  
19 Idaho 269, 113 P. 447 (1911)

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- “...the Constitution vests the control, management and disposition of state lands in the State Board of Land Commissioners. Section 8, art. 9. They 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.

*Allen v. Smylie,*  
92 Idaho 846, 452 P.2d 343 (1969)

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- The Idaho Constitution, Art. IX, Sec. 8, provides that, ‘It shall be the duty of the state board \* \* \* to provide for \* \* \* rental of all the lands \* \* \* under such regulations as may be prescribed by law, and in such manner as will secure the maximum possible amount therefor.’ This enjoins a duty upon the Board to lease for maximum return under procedural regulation of the legislature. The constitutional duty of the board is self-executing. Therefore, if the legislature has not specified the procedure the Board may adopt appropriate procedures to carry out its constitutional duties.

*Moon v. State Board of Land Commrs.,*  
111 Idaho 389, 724 P.2d 125 (1986)

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“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.”

*Tobey v. Bridgewood,*  
22 Idaho 566, 127 P. 178 (1912)

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“The question of policy and business expediency which may have been pursued by the state board in the past, and which might be pursued in the future, should not control or guide this court in upholding and sustaining a policy, where such policy is *absolutely prohibited by the provisions of the constitution and the laws of this state*. The constitution and laws of the state should at all times be followed and upheld and sustained by the courts, and should not be ignored by public officers in the administration of public affairs of the state.”

*East Side Blaine Co. Livestock Ass'n v. State Board of Land Com'rs.,*  
34 Idaho 807, 198 760 (1921)

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- Board violated obligation to hold public auction and award lease to highest bidder, when it refused to hold an auction and awarded land to adjoining landowner.
- “The provisions of the Constitution and statutes above referred to made it the duty of the State Board of Land Commissioners, under the facts and circumstances of this case, to offer the lease of said lands at auction to the highest bidder, and the Board, in refusing to do so, failed in the performance of an act which the law enjoins as a duty resulting from its official position. In refusing to do so, its action ran counter to the provisions of the Constitution and statutes.”

# TRUST CONCEPTS

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- 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
  - Loyalty
  - Prudence

# Undivided Loyalty

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- A trustee must act with undivided loyalty to the trust beneficiaries, to the exclusion of all other interests. G. Bogert, *Trusts and Trustees* § 543, at 197–98 (2d ed. 1978). In the context of this case this means that when the state transfers trust assets such as contract rights it must seek full value for the assets. Const. art. 16, § 1. It may not sacrifice this goal to pursue other objectives, no matter how laudable those objectives may be.
- *County of Skamania v. State*, 685 P.2d 576 (Wa. 1984).

## CHECKS AND BALANCES

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- Delegates to the Idaho Constitutional Convention 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].

*Idaho Watersheds Project v. State Bd. Of Land Comm'rs.,*  
133 Idaho 64, 982 367 (1999)

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- Provision of Idaho Code directing the Board to consider factors other than the maximum long term financial return to endowments held unconstitutional.
- “We acknowledge that “[t]he Board is granted broad discretion in determining what constitutes the maximum long term financial return for the schools.” (citation omitted) Section 58–310B removes much of the Board's broad discretion, however, by impermissibly directing the Board to focus on the schools, the state, and the Idaho livestock industry in assessing lease applications, all to the detriment of other potential bidders like IWP, which might provide “maximum long term financial return” to the schools, but not to the state and the Idaho livestock industry.”

# FIDUCIARY DUTY

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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).

# CONSTITUTIONAL DEBATE OVER TRUST

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- 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].