

Background on Public Schools Land Trust in Alaska

Under the Morrill Act, the Homestead Act of 1862, Congress set aside Sections 16 and 36 of every township of federal land granted to states and territories. This was to provide income (rents, leases, and sales— at market value) with the money going into a trust to provide school funding.¹

March 4, 1915--President Woodrow Wilson signed the Alaska School Lands bill turning over to the Territory sections 16 and 36 of all surveyed townships² to be used as territorial school trust lands and Section 33 in each township in the Tanana Valley for university support. To be transferred, however, the sections had to be surveyed and thus only about 106,000 acres of school lands and 15,000 acres of university lands were transferred under this act. Most of these lands were leased to private parties or turned into other non-school uses. Subsequently, when the university was formed in 1917 it was given the right to select an additional 100,000 acres from the federal domain. Since then the university has purchased, leased, or received donations of land totaling 144,821 acres.³

Following World War II the influx of population into the Territory created a stressful boom in school attendance. Dr. James Ryan, former head of the teacher education department at the University of Alaska, who had been appointed Commissioner of Education by Governor Ernest Gruening, created the Permanent School Fund with the income from the Morrill Act School Lands. He further lobbied Congress, which created a two-cent-per-package cigarette tax, which went to the Permanent School Fund.⁴

In 1959 when Alaska became a state those lands became state public school trust lands under the supervision of the department of natural resources. DNR called these properties school lands. "School land" means those rectangular sections 16 and 36 within each township surveyed on or before January 3, 1959, and confirmed and transferred to the State of Alaska upon its admission under sec. 6(k), Alaska Statehood Act, 72 Stat. 339, and any other land designated solely for school revenues⁵;

In 1976 the Alaska Department of Education was named as trustee.

In 1978 the legislature converted the school trust land to "state lands" to be compensated by .5% of all of the income generated by all general state lands. That legislation (Ch. 182 SLA 1978/ authorized in AS 37.14.150) made the same arrangement available to the University of Alaska. The University Regents were given the option to surrender the 100,000 acres they had selected under the 1929 Congressional Act together with the section 33's the University had received in the Tanana Valley under the 1915 Congressional Act in exchange for a dedication

¹ The Schools Trust: the Homestead Act of 1862 and Public Education in Alaska © 2003 by Niilo Koponen The Ester Republic Volume 5 number 3, April 2003
<http://esterrepublic.com/Archives/nkoponen2.html>

² This Month in History is compiled by Robert N. DeArmond of Sitka
<http://www.alaskahistoricalsociety.org/calendar%20March.htm>

³ The Alaska Public Land Planning Directory prepared by Susan Todd Agricultural & Forestry Experiment Station University of Alaska Fairbanks Misc. Publication 2001-1 December 2001 http://www.uaf.edu/snras/afes/pubs/misc/MP_01_01.pdf

⁴ The Schools Trust: the Homestead Act of 1862 and Public Education in Alaska © 2003 by Niilo Koponen The Ester Republic Volume 5 number 3, April 2003
<http://esterrepublic.com/Archives/nkoponen2.html>

⁵ Alaska Statutes – Title 29 2004 Version Chapter 65. General Grant Land. Sec. 29.65.130. Definitions
<http://www.legis.state.ak.us/folhome.htm>

of one half of one percent (0.5%) of State land revenue. The Board of Regents decided to retain the land rather than accept the revenue dedication.⁶

A public school trust fund was created with the public school advisory board, and the commissioner of revenue was made the trustee and official custodian of the fund. The Public School Trust Fund (the Trust) is a non-expendable trust fund the income of which is dedicated to the benefit of Alaska's public schools. The Public School Permanent Fund was originally created as a consequence of the March 15, 1915 Act of Congress. The applicable state statutes include AS 37.14.110-170 and related statutes. In 1988, the Trust was relabeled as an "endowment trust" (the name was changed to the Public School Trust Fund) and the Commissioner of Revenue was made the fiduciary. Monthly, Treasury transfers an amount equal to amortization/accretion and all of the interest and dividend income earned by the Trust to a separate account within the Trust. From there, the legislature appropriates the funds to meet the purposes of the Trust.⁷

The Public School Advisory Board consists of Commissioner of Revenue (Tom Irwin), Commissioner of Education (Roger Sampson) and 3 members of the Board of Education. The Advisory board is to meet annually.

A portion of this fund was first invested in domestic common stock in 1986; prior to that time, the Public School Fund Advisory Board had not granted the necessary authority to the Commissioner.⁸

The Commissioner of Revenue, after consulting with the Public School Advisory Board in February 1996, explored various investment options, however, the Commissioner rejected an investment allocation presented by the Department of Revenue in part due to considerable doubt that the Trust can rely on the continuing dedicated flow of contributions from state general grant land revenue (the dedicated one half of one percent of the state's general grant land revenue). The Department concluded that resolving the uncertainty concerning when and if these payments will come is in the best interest of the Trust and their commitment to finding a way to resolve this uncertainty as expeditiously as possible.⁹

In a lawsuit filed due to the trust lands being taken by the state, and although the court said the land should not have been taken, the lands were not restored. *Kasayulie v. State*, 3 AN-97-3782 CI required valuation of the public school trust lands that were designated as general grant lands in 1978 completed before the court will determine the appropriate remedy. *Kasayulie* is a case that includes allegations of breach of trust regarding former school trust lands. The appraisal of the school lands is anticipated to develop information that the superior

⁶ Policies And Procedures Applicable To The Treasury Division, Department Of Revenue, State Of Alaska History of the University of Alaska Endowment Trust Fund Page AE - 1 4/6/1999 10:10 AM J:\DEBBIEM\INV-BOOK\NEWEST\2-99 edition\4app-ae.doc http://www.revenue.state.ak.us/treasury/policies/App_V1.2/AEv1_2.pdf

⁷ Policies And Procedures Applicable To The Treasury Division, Department Of Revenue, State Of Alaska Decision and Justification for Asset Allocation for the Public School Trust Fund Updated March 2000, Effective April 1, 2000 Effective 4/1/00 Page AB- 1 http://www.revenue.state.ak.us/treasury/policies/App_V1.3/4app-ab%20Version%201.3.pdf

⁸ Policies And Procedures Applicable To The Treasury Division, Department Of Revenue, State Of Alaska Decision and Justification for Asset Allocation for the Public School Trust Fund Updated March 2000, Effective April 1, 2000 Effective 4/1/00 Page AB- 1 http://www.revenue.state.ak.us/treasury/policies/App_V1.3/4app-ab%20Version%201.3.pdf

⁹ Policies And Procedures Applicable To The Treasury Division, Department Of Revenue, State Of Alaska Decision and Justification for Asset Allocation for the Public School Trust Fund Updated March 2000, Effective April 1, 2000 Effective 4/1/00 Page AB- 1 http://www.revenue.state.ak.us/treasury/policies/App_V1.3/4app-ab%20Version%201.3.pdf

court in *Kasayulie* will use to determine whether the state has fully compensated the trust for lands designated in 1978.¹⁰

In addition attorney general opinions in 1985 and 1988 say that the payments to the fund should cease at the point that the state has paid in the equivalent of the 1978 value of the land. Appropriations would cease if the appraised (1978) value of the lands has been reached.

In 1998, 1999 and 2001 the attorney general communicated opinions on approved (re)appropriations for the appraisal of redesignated public school land that were vetoed in a previous session or unexpended. The funds would have provided financing necessary to determine whether the dedication of state receipts authorized in AS 37.14.150 equaled or exceeded the value of the school land taken from trust status. Yet to be decided was whether the dedication of these receipts could continue if the dedication equaled or exceeded the value of the former public school trust land.¹¹

In 2002 the attorney general communicated an opinion on the approved bill increasing appropriation noting the court found that the state breached the public school trust when public school trust lands were legislatively designated general grant lands in 1978. The litigation also involved matters related to construction and maintenance of school facilities in rural Alaska. The trial court ordered that a valuation of all public school trust lands be completed before the trial court would address the appropriate remedy in either the public school trust or rural school facilities sides of the case. The Department of Natural Resources determined that appropriations previously made available were inadequate to complete the valuation effort. The bill appropriates additional money to complete the public school trust land valuation effort for fiscal years 2002, 2003, and 2004. Section 47(b) of the bill amends prior legislation reappropriating funds for the land valuation effort, so that the funding will be available through the fiscal year ending June 30, 2004. The bill makes these appropriations from the public school trust fund (AS 37.14.110), a funding source that the trial court in *Kasayulie v. State* found appropriate for the public school trust land valuation effort. The attorney general saw no legal problems with these appropriations¹²

In 2004 the attorney general communicated an opinion on the approved bill amending prior legislation appropriating funds for the land valuation effort, so that the funding will be available through the fiscal year ending June 30, 2006.¹³

¹⁰ June 28, 1999 Attorney General to Governor Knowles HCS CSSB 32(FIN) am H (reengrossed) --

Making and Amending Appropriations and Re-Appropriations; Making and Amending Appropriations under Art. IX, Sec. 17(c), Constitution of the State of Alaska, from the Constitutional Budget Reserve Fund A.G. file no: 883-99-0061 http://www.law.state.ak.us/doclibrary/opinions_index.html

¹¹ June 17, 1998 Attorney General to Governor Knowles HCS CSSB 231(FIN) am H (brf sup maj pfl d S) -- Relating to the FY 99 Capital Budget A.G. file no: 883-98-0135; June 28, 1999 Attorney General to Governor Knowles HCS CSSB 32(FIN) am H (reengrossed) -- Making and Amending Appropriations and Re-Appropriations; Making and Amending Appropriations under Art. IX, Sec. 17(c), Constitution of the State of Alaska, from the Constitutional Budget Reserve Fund A.G. file no: 883-99-0061; and June 27, 2001 Attorney General to Governor Knowles HCS CSSB 29(FIN) am H - making and amending appropriations and reappropriations; making appropriations under art. IX, sec. 17(c), Constitution of the State of Alaska, from the constitutional budget reserve fund Our file: 883-01-0035 http://www.law.state.ak.us/doclibrary/opinions_index.html

¹² June 28, 2002 Attorney General to Governor Knowles HCS CSSB 2006(FIN) am H -- making and amending appropriations and reappropriations and making appropriations under art. IX, sec. 17(c), Constitution of the State of Alaska, from the constitutional budget reserve fund Our file No. 883-02-0058 http://www.law.state.ak.us/doclibrary/opinions_index.html

¹³ June 11, 2004 Attorney General to Governor Murkowski FCCS SB 283(Corrected) -- making, amending, and repealing appropriations, including capital appropriations, supplemental appropriations, reappropriations, and appropriations to capitalize funds; making appropriations under article IX, section 17(c), the constitutional budget reserve fund Our file: 883-04-0037 http://www.law.state.ak.us/doclibrary/opinions_index.html