

DEPARTMENT OF LAW
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February 25, 2010

The Honorable Cathy Munoz
House of Representatives
Co-Chair of House Community and Regional Affairs Committee
State Capitol, Room 409
Juneau, AK 99801-1182

The Honorable Bob Herron
House of Representatives
Co-Chair of House Community and Regional Affairs Committee
State Capitol, Room 415
Juneau, AK 99801-1182

Re: Committee Substitute for House Bill 295(EDC)

Dear Representative Munoz and Representative Herron:

At the close of the February 18, 2010 Community and Regional Affairs Committee hearing on House Bill 295, you requested a written response from the Department of Law to testimony by Legislative Counsel Donald Bullock. Mr. Bullock testified that CSHB 295 (EDC) failed to address the Alaska Supreme Court's decision in *Southeast Alaska Conservation Council v. State*¹ that prior University land grant legislation was unconstitutional. Mr. Bullock testified that under the Alaska Supreme Court's holding in *SEACC v. State*, the Board of Regents lack the authority to set policy regarding the administration and disposal of University land. We have reviewed Mr. Bullock's materials from the February 18, 2010 hearing, as well as his March 30, 2009 memorandum to Representative Ramras regarding "Alaska Supreme Court decision on the conveyance of lands to the University of Alaska (Work Order No. 26-LS0818)."

¹ 202 P.3d 1162 (2009).

We disagree with Mr. Bullock's testimony. Article VII, section 2 of the Alaska Constitution states that the University "shall have title to all real and personal property now or hereafter set aside for or conveyed to it. Its property shall be administered and disposed of according to law." Article VII, section 3 of the Alaska Constitution empowers the Board of Regents as the governing body of the University, and states that "[t]he board shall, in accordance with law, formulate policy." In accordance with these constitutional mandates, the Legislature has established a statutory framework for administration and disposal of University land and University interests in land. Alaska Statute 14.40.170(a)(4) specifies that the Board of Regents "have the care, control, and management of all the real and personal property of the university" as well as land that would be conveyed under CSHB 295(EDC). This statute also requires that the Board of Regents "provide public notice of sales, leases, exchanges, and transfers of the land of the university or of interests in land of the university." AS 14.40.170(a)(8). Furthermore, the Legislature has established specific requirements for administration of University land in various sections of AS 14.40 (*see, e.g.*, AS 14.40.291 (specifying that University land is not public domain land); AS 14.40.350 and .360 (authorizing the Board of Regents to administer federal University land grant land); AS 14.40.366 (requiring land development and disposal plans as well as public notice and comment for development, exchange, or sale of University land)). Additionally, the Legislature has specifically exempted University land from the Alaska Land Act (*see* AS 38.05.030(f)) and the requirements of AS 30.04 (*see* AS 38.04.005(f)). The validity of these statutes has not been challenged.

In *SEACC v. State*, the Alaska Supreme Court held that University land is state land and therefore generates revenue subject to Article IX, section 7 of the Alaska Constitution.² In reaching this conclusion, the Court relied in part on its 1981 decision that the Legislature has ultimate authority to dispose of University trust land,³ but it must reconstitute the trust.⁴ In deciding that University land is state land subject to the dedicated funds clause, the Court stated that:

[E]ven when the University has title to land, only the legislature can make laws effecting the disposal of land, not the Board of Regents. We further observed that the Alaska Constitution grants extensive powers to the legislature to control lands, which makes clear that the University lands received under the 1929 act 'belong' to the state. The

² 202 P.3d at 1172.

³ The University received two federal land grants in 1915 and 1929. This land was conveyed from the federal government to the state in trust for the University. This trust land was at issue in the Alaska Supreme Court's 1981 decision.

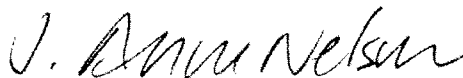
⁴ *See State v. University of Alaska*, 624 P.2d 807 (Alaska 1981).

conclusion we reached in *State v. University of Alaska*, that University land is state land, applies even more readily to the present case because the University land involved here is not shielded by a federal trust obligation. Statutory language treating University lands differently from other state land does not overcome this constitutionally based conclusion.⁵

In other words, the Court held that conveyance of state land to the University did not remove the land from the ultimate control of the Legislature, nor did it exempt University land revenue from the dedicated funds clause. The Court did *not* hold that University land must be managed under the same statutory framework as other state land, nor did the Court hold that the Legislature could not delegate to the Board of Regents the authority to develop policy for the day-to-day implementation of the University land program, including decisions regarding development and disposal of individual parcels. Because University land is state land, University land management practices must comply with the requirements of Article VIII, Natural Resources, of the Alaska Constitution. However, there is no basis for the conclusion that the Legislature may not enact separate laws governing the administration of University land, including delegation of day-to-day land administration responsibilities to the Board of Regents.

Sincerely,

DANIEL S. SULLIVAN
ATTORNEY GENERAL

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Wendy Redman, Vice President, University Relations
Larry Zervos, University General Counsel

⁵ *SEACC v. State*, 202 P.3d 1162, 1171 (Alaska 2009) (internal citations and quotations omitted).