

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILES

8672

388

1531.6 SCOMM 56A: JNT. SPEC. MENTAL HEALTH TRUST LAND, 1987

The Honorable Phil R. Holdsworth
Juneau, Alaska

Opinion No. 7

September 14, 1964
-3-

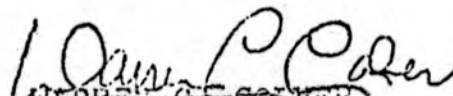
"select, administer, and dispose of
mental health lands for the support of the
mental health program;" (Emphasis added)

The Legislature has clearly established a policy that Mental Health lands continue to be dedicated for the support of the Mental Health program. Similarly, School and University lands are dedicated for the purpose of supporting schools. See Title 11, Alaska Administrative Code, Sec. 202.012-014.

In conclusion, it is our opinion that the Mental Health School and University lands of the State are not unappropriated, unreserved State lands within the meaning of AS 07.10.150 and are not subject to selection by a borough under that Act.

I trust this answers your question.

Yours very truly,


WARREN G. COEVER
ATTORNEY GENERAL

WCC/grg

cc: William A. Egan
Governor

Floyd L. Guertin, Commissioner
Department of Administration

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

JAY S. HAMMOND, GOVERNOR

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

February 8, 1982

Hon. Hugh Malone
Alaska State Legislature
Pouch V
Juneau, AK 99811

LEAD & ...

FEB 22 1982

Director's Office

Re: Mental health trust fund
Our file: J66-534-81A

Dear Representative Malone:

You have asked us to review HB 151 and HB 152 to determine whether they, if enacted, would satisfy the state's obligation to the mental health trust fund. In our opinion, the bills as drafted would not entirely satisfy the state's obligation to the mental health trust fund. In addition, the existing legislation which HB 151 would amend presents a problem under our constitutional prohibition against dedicated funds. We have also reviewed SB 710 and SB 711 which affect the mental health trust fund. We will discuss the development of the mental health trust fund, and make specific suggestions for legislative action.

The Alaska Mental Health Enabling Act, P.L. 84-830, § 202, 70 Stat. 709 (July 28, 1956) (copy attached), authorized the Territory of Alaska to select one million acres from the public lands of the United States in Alaska which were vacant, unappropriated, -unreserved at that time. The statute required that these lands be administered by the Territory "as a public trust" and that proceeds and income of these lands "first be applied to meet the necessary expenses of the mental health program of Alaska." The statute authorized the territory to sell, lease, mortgage, exchange or otherwise dispose of the land in order to obtain funds or other property to be invested, expended, or used by the territory. The committee report which accompanied that legislation stated that "amounts not needed for the mental health program can be used for other public purposes as the legislature may determine." Senate Report No. 2053, 84th Cong., 2nd Sess., reprinted in (1956) U.S. Code Congressional and Administrative News at 3639.

In 1958, Congress passed the Alaska Statehood Act, P.L. 85-508, 72 Stat. 339 (July 7, 1958). Section 6k of the

Statehood Act provided that "grants previously made to the Territory of Alaska are hereby confirmed and transferred to the State of Alaska upon its admission." That section also specifically repealed two earlier federal acts under which land had been reserved, and granted the reserved lands to the state "for the purposes for which they were reserved." This proviso applied to lands reserved for the benefit of the public schools and university under the Act of March 4, 1915, P.L. 61-330, 38 Stat. 1214; it also applied to lands within the naval petroleum reserves under the Act of February 15, 1920, P.L. 66-146, 41 Stat. 450. However, this provision did not apply to the lands reserved under the Mental Health Enabling Act.

A section of the Mental Health Enabling Act which authorized federal grants for mental health treatment in Alaska was repealed in 1959 by the Alaska Omnibus Act, P.L. 86-70, 73 Stat. 148 (June 25, 1959), § 31(b)(1). That Act did not effect the land grant or trust provisions of the Mental Health Enabling Act. The attorney general opined in 1964 that lands received pursuant to the Alaska Mental Health Enabling Act were reserved and thus could not be selected by municipalities under state land disposal law. 1964 Opin. Alaska Atty. Gen. #7. Subsequently, the attorney general advised that mental health lands could be exchanged for land of equivalent fair market value. Inf. Opin. Alaska Atty. Gen., Feb. 10, 1967.

In 1978, the Alaska Legislature redesignated mental health lands as general grant lands and established a mental health trust fund which was to receive one and one-half percent of the total receipts derived from the management of state land. 1978 Alaska Sess. L., ch. 181, §§ 3 and 4; AS 37.14.070. We understand that this percentage of state revenues was intended to approximate the value of the trust lands. However, since no appraisal was made of the fair market value of these lands, it is impossible to determine whether the substituted revenue source meets or exceeds the fair market value of the trust lands. Since the dedication of a percentage of state revenues has no termination date, it will presumably exceed the value of the trust lands at some time.

In addition, the 1978 legislation conditioned the placement of this percentage of state revenues in the mental health trust fund upon appropriation by the legislature. We understand that to date no appropriation has been made to the mental health trust fund. We also understand that the legislature has made regular appropriations for the purpose of mental health treatment in Alaska and that the Department of Health and Social Services contains a division which is responsible

for mental health treatment in the state.

Our review of the statutes and relevant cases leads us to conclude that the Alaska Mental Health Enabling Act did impose affirmative responsibilities on the Territory of Alaska to review the needs for mental health treatment in the territory and to meet those needs with revenues from the mental health trust lands before using any proceeds from those lands for other purposes. The Alaska Supreme Court has ruled that the public trust established by the federal government for the benefit of the university in territorial days still requires that the state compensate the university for the fair market value of any land reserved for the university under that trust. State v. University of Alaska, 624 P.2d 807 (Alaska 1981). The mental health trust differs greatly from the federal trusts for the public schools and university in that the use of the latter was restricted absolutely for the benefit of the public schools and university respectively. Income and proceeds of the mental health trust lands could be spent for purposes other than mental health at the discretion of the legislature, if the mental health needs in the state had been met. Nevertheless, we think it unlikely that a court would find that the Alaska Mental Health Enabling Act did not impose some affirmative trust obligation on the territory.

We also think it unlikely that a court would find that the mental health trust obligation was terminated by the Statehood Act. Section 6k of that act specifically repealed certain portions of the public school and university trust legislation and transferred to the state lands reserved under those acts "for purposes for which they were reserved." Since the Alaska Mental Health Enabling Act was not repealed, we presume that it remains effective.

The general language in section 6k of the Statehood Act confirming previous grants made to the territory could be construed to impliedly repeal any restrictions on those grants, such as were contained in the Alaska Mental Health Enabling Act. However, the act could as easily be read to reaffirm and transfer the existing trust obligations to the new state. Since the latter view reconciles the Acts, it would probably be preferred by the courts. Sands, SUTHERLAND STATUTORY CONSTRUCTION (1973) §§ 51.01, 51.02.

If the Statehood Act did not terminate the mental health trust, then the trust obligation as to those lands selected under the Alaska Mental Health Enabling Act remains in effect. If the substitution of revenue for the trust imposed

by the 1978 state legislation was not equal to the fair market value of the trust lands, then the trust has been breached. Lassen v. Arizona, 385 U.S. 458 (1967). Even if the substituted revenue source were equal to the fair market value of the trust lands, the state's failure to appropriate that money to the trust may be a breach of the trust.

In addition, the dedication of one and one-half percent of total receipts from state lands will probably at some time exceed the fair market value of the trust lands. To that extent, the dedication is prohibited by article IX, § 7, of the Alaska Constitution. */ The dedication of revenues to the mental health trust fund is permitted under the Alaska Constitution only to the extent that it is required by federal law.

Thus, our review of the history of the mental health trust fund indicates that (1) a trust obligation probably exists under federal law, and (2) the state has probably breached that trust obligation by redesignating the mental health trust lands as general grant lands, and failing to compensate the trust for the fair market value of those lands. We have identified three alternative courses of legislative action and will discuss them briefly.

First, the legislature may follow its past course and do nothing to fund the mental health trust fund. There is a risk of litigation over the state's obligations in a suit brought by either the federal government or some beneficiary of mental health programs in the state. We note that the Alaska Mental Health Enabling Act does not provide any mechanism for enforcement of the trust. Therefore, the state may be immune from any action to enforce the terms of the trust under the

*/ Alaska Constitution, article IX, section 7 provides:

DEDICATED FUNDS. The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 of this article or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.

Eleventh Amendment of the United States Constitution. Scott, Law of Trusts § 95 (1967). */ This is an issue which should be explored more thoroughly if litigation appears likely. In addition, there is the possibility that the legislative appropriations for mental health programs over the years have been adequate to meet the need for mental health treatment in the state. If past appropriations have been rationally based on reasonable assessments of mental health needs in Alaska, then the state may have fulfilled its basic trust responsibilities despite the failure to establish a separate fund with the trust lands. In that case, there may be no effective remedy for any possible breach of trust.

Second, the state may attempt to comply with the terms of the Alaska Mental Health Enabling Act. We believe that this would require:

(1) an assessment of the fair market value of the lands which were selected by the state under the Alaska Mental Health Enabling Act, as of the date of their redesignation by statute as general grant lands;

(2) some regular review (perhaps by the senate and house HESS committees) of the need for mental health treatment in the state; a report to the legislature with recommendations for appropriations for mental health treatment and facilities in the state; a legislative finding that these needs are met before money in the mental health trust fund is appropriated for any other purpose; **/

*/ The state has partially waived its immunity from suit in state courts for contract, quasi-contract and certain tort claims. AS 09.50.250. It is doubtful that a suit to enforce a federal trust obligation could be brought under this statute.

**/ The attorney general opined in 1961 that money received from the mental health trust lands in excess of the needs of the mental health program could be transferred to the general fund without specific legislative authorization. 1961 Opin. Alaska Atty. Gen. No. 11. We agree that the transfer of money into the general fund does not require an appropriation. However, we believe that the mental health trust obligation requires a rationally based legislative determination that the current needs of the state mental health program are met before trust money is expended for another purpose. We do not know whether past appropriations for the mental health program would be found to have satisfied this requirement.

(3) transfer of money to the mental health trust fund until the fund has received money equaling the fair market value of the trust lands.

We believe that these measures would satisfy the state's obligation under the Alaska Mental Health Enabling Act, while retaining flexibility as to the use of money in the mental health trust fund. At present, AS 37.14.040 provides that the principal of the fund shall be reinvested, and the income of the fund may be appropriated only for the support of a state mental health program. This section is much more restrictive than the federal trust obligation would require. Any restriction on the use of money beyond that required by federal law may violate the Alaska constitutional prohibition on dedicated funds.

We also note that the current statute requires that money be appropriated into the mental health trust fund. AS 37.14.050. Once in the fund, it must again be appropriated before it can be spent. The dual appropriation requirement is unnecessary to satisfy the federal trust obligation. In fact, it makes compliance with the federal trust obligation more difficult, by interposing the appropriation requirement before money can be placed in the fund. Money may be placed in the fund without an appropriation to the extent required by federal law, without violating our dedicated fund provision. We recommend direct transfer of money to the mental health trust fund until the fund reaches an amount indicated by an appraisal of the mental health trust lands. Under the terms of the federal law, the legislature may use money in the fund for any public purpose, once it has determined that the needs of the mental health program in the state have been met. This determination must be made by the legislature and must have a rational basis.

HB 151 and SB 710 each contain provisions consistent with some of our recommendations. HB 152 and SB 711 each contain appropriations to the mental health fund. We hope that our comments are helpful in the legislative consideration of these bills. Please let us know if we may be of further assistance in this matter.

The third alternative which may be pursued along with either one of the first two is to seek repeal of the Alaska Mental Health Enabling Act by Congress. If the restrictions of the trust unreasonably interfere with the prudent management of state resources and are unnecessary to ensure adequate funding of mental health treatment programs in the state, then Congressional repeal of the Alaska Mental Health Enabling Act may be

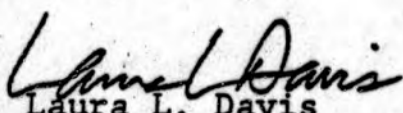
Hon. Hugh Malone
Alaska House of Representatives

February 8, 1982
Page #7

appropriate. We cannot advise you on the likelihood of obtaining such a repeal. However, we expect that Congress would be more favorably disposed toward the state if our actions demonstrated a commitment to carrying out our obligations under the Alaska Mental Health Enabling Act.

Very truly yours,

WILSON L. CONDON
ATTORNEY GENERAL

By: 
Laura L. Davis
Assistant Attorney General

LLD/pjg

cc: Hon. Charles Parr
Alaska State Senate

Carole Burger
Office of the Governor