VOLUME 32 **Opinion No. 8**

CONSTITUTIONAL LAW; School lands — SCHOOLS AND SCHOOL DISTRICTS; Funds, use of school land revenues to improve land— STATE BOARD OF LAND COMMISSIONERS; School lands, use of revenues for land improvement—STATE LANDS; School lands, use of revenues for land improvement— Article XI, Section 12, Montana Constitution— Article XVII, Montana Constitution—Chapter 295, Laws of 1967—Sections 81-2401 through 81-2408, R.C.M. 1947.

HELD: 1. Chapter 295, Laws of 1967, does not violate the terms of the grant of school lands under the Enabling Act.
2. Chapter 295, Laws of 1967, does not violate the Montana Constitutional provisions with respect to school lands.

June 30, 1967

Mr. Mons L. Teigen, Commissioner
State Lands and Investments
Capitol Building
Helena, Montana

Dear Mr. Teigen:

You have requested my opinion concerning the validity of Chapter 291, Laws of 1967, providing that a maximum of 2½% of school land revenues may be used to improve and develop the land in order to increase the value of the land or the revenue therefrom.

For the purpose of this opinion I have rephrased your inquiry as follows:

> May school lands granted to the State of Montana under the provisions of sections 10 and 11 of the Enabling Act be made subject to Chapter 295, Laws of 1967, without violating either: (1) The terms of the grant, or (2) The provisions of our Constitution which

direct that school land revenues or funds remain inviolate and sacred for school purposes, guaranteed against loss or diversion.

(1) Chapter 295 does not violate the terms of the grant of school lands under the Enabling Act.

On admission of the State of Montana to the Union, Congress granted to it certain sections in each township for the support of the common schools. Enabling Act, Section 10. The State has accepted the grant and now holds title to the lands as trustee to fulfill the purposes of the grant. **Toomey v. State Board of Land Commissioners,** 106 Mont., 547, 81 P. 2d 407 (1938); Constitution, Article XVII and Ordinance I, paragraph 7. These are trust lands. **Newton v. Weiler,** 87 Mont. 164, 286 Pac. 133 (1930).

In the execution of the trust imposed under such a grant, it is now well settled that a state, acting in its role as trustee, has an inherent equitable right to reimbursement from the trust for all charges and expenses necessarily incurred in the execution of the trust where there is no provision to the contrary in the grant creating the trust. **U. S. v. Swope,** (C.C.A. 8th—1926) 16 F. 2d 215; **State ex rel. Greenbaum v. Rhoades,** 4 Nev. 312 (1868); **Betts v. Commissioners of the Land Office,** 27 Okl. 64, 110 Pac. 766 (1910); **Bourne v. Cole,** 53 Wyo. 31, 77 P. 2d 617 (1938). This rule applies to the trust imposed by the grant of school lands to Montana for there is no provision in the Enabling Act which requires the state to bear the costs of improvement, development, administration or land conservation measures from its general revenues.

Chapter 295 simply relieves other state funds from the burden of costs of improving and developing the trust lands to derive increased revenue and support for the schools. Its application to grant lands does no violation to the terms of the grant in the Enabling Act. Also, our history shows that there has never existed any other adequate law or system calculated to provide funds for improving, developing, and conserving our school lands so that they may attain and hold their highest and best use. For this reason our support of schools from the trust has not reached its highest potential. Also, a universally recognized and accepted principle of land ownership is that a portion of the proceeds must be plowed back into the land. Under Chapter 295 the same may finally be applied to the lands held in trust for our school children.

(2) Chapter 295, Laws of 1967, does not violate our Constitutional provisions which direct that school land revenues remain inviolate and sacred for school purposes, guaranteed against loss or diversion.

First it is significant to note that the federal government, the grantor of these lands in trust, is not concerned with this question and leaves it for the contemplation of our state courts. In **Montana ex rel. Haire v. Rice,** 27 S.Ct. 281, 204 U.S. 291, 51 L.Ed. 490 (1907) it was held that the question of whether a state statute relating to the disposition of school lands and their proceeds is or is not repugnant to

the state constitution is for the state court to determine and its decision is conclusive. This affirmed our courts decision in **State v. Rice,** 33 Mont. 365, 83 Pac. 874 (1906).

The legislature may make provisions for these lands under the supervision of the board of land commissioners as long as the legislation is not inconsistent or in conflict with the trust provisions contained in the Enabling Act or State Constitution. **Toomey,** supra. See also to the same effect Section 11 of the Enabling Act.

It is clear that any use of the proceeds from school lands must not be inconsistent with or contradict the primary intention of the grant which is the attainment of funds for the maintenance of schools and institutions. Chapter 295 is entirely consistent with and promotes that intention since the legislative intent expressed in Section 1 thereof is to increase those funds.

We have found no provision that indicates that our constitutional framers intended to place restrictions upon the trustees right to require payment for the expense of administration, conservation, improvement and development, of the trust lands out of the proceeds of the lands themselves. In the absence of a showing of such intent, it must be concluded that the contrary is true, as it is with any other trust where a denial of that right does not appear in its provisions.