

**The Honorable Carol Springer**  
**Arizona State Treasurer**

**March 17, 1999**  
**No. I99-008 (R99-007)**

**Question Presented**

Does Article X, § 7 of the Arizona Constitution, which requires separate funds for individual beneficiaries of the Permanent Land Fund, allow the Treasurer to commingle monies from the Permanent Land Fund in an investment pool?

**Summary Answer**

The separate funds of the Permanent Land Fund are "trust monies." The Treasurer has authority to commingle trust monies in an investment pool. Using the practice of fund accounting, the Treasurer can comply with the provisions of Article X, § 7 of the Arizona Constitution by maintaining the Permanent Land Fund monies in separate funds and preventing the removal of monies from one fund and deposit into another. The 1998 amendments to Article X, § 7 do not affect the Treasurer's authority with respect to investment pools.

**Background**

At the time of statehood, Arizona was given 10.75 million acres to hold in trust for lease and sale to produce revenues to support public schools and other public institutions.<sup>1</sup> ARIZONA STATE LAND DEPARTMENT, 1997-98 ANNUAL REPORT 32 (1998) ("Annual Report"). This program is known as the Permanent Land Fund which is composed of revenues earned from the sale of State trust land and the sale of minerals and natural products such as sand, gravel, and water. *Id.* at 10. The corpus of the Fund is invested and the interest income is transferred to the Expendable Fund for use by the beneficiaries. *Id.* The State Treasurer manages the Fund which has grown from one hundred million dollars in 1978 to approximately eight hundred eighty two million dollars in 1998. *Id.* The authority over the Permanent Land Fund emanates from three sources: the Arizona Enabling Act, the Arizona Constitution, and Arizona statutes.

The Permanent Land Fund was initially authorized by the Arizona Enabling Act, June 20, 1910, c. 310, 36, U.S. Stat. 557, 568-579, Sec. 28 (the "Enabling Act"). Under the original terms of the Enabling Act, Arizona was to establish separate funds for each beneficiary of the Permanent Land Fund. The language of the Enabling Act was rescripted in Article X, § 7 of the Arizona Constitution.

The Enabling Act was amended in 1957 to remove the requirement that each Permanent Land Fund beneficiary have a separate fund. Pub. L. No. 85-18, 71 Stat. 457 (August 28, 1957). No corresponding change was made to the Arizona Constitution in 1957. Consequently, although the Enabling Act eliminated the directive that the State Treasurer maintain separate funds for each beneficiary, the Arizona Constitution continued to impose that limitation.

In November 1998, Arizona voters approved Proposition 102, which amended Article X, § 7 of the Arizona Constitution to permit Permanent Land Fund monies to be invested in safe, interest bearing securities and prudent equity securities. ARIZ CONST. art. X, § 7(C). The amendment provides authority

and guidelines for the Treasurer and a board of investment to invest Permanent Land Fund monies in equity securities. Currently, the Enabling Act is silent on the allowable investment instruments in which Permanent Land Fund monies may be invested.

In anticipation of the passage of Proposition 102, the Arizona Legislature enacted Arizona Revised Statutes Annotated ("A.R.S.") § 35-314.01 to authorize the Treasurer to invest the Permanent Land Fund monies in interest bearing securities and equities. This statute was to become operative upon the passage of Proposition 102. On December 10, 1998, Governor Hull proclaimed Proposition 102 to be law. ARIZ. CONST. art. IV, § 1 (5); A.R.S. § 16-651. This action, in turn, made A.R.S. § 35-314.01 operative.

### Analysis

All monies held by the Treasurer are "treasury monies." A.R.S. § 35-310(4). Those treasury monies entrusted to the Treasurer for preservation and investment are "trust monies." A.R.S. § 35-310(5). The monies of the Permanent Land Fund, which are held by the Treasurer and are the subject of a trust created by the Enabling Act, are "trust monies." The Enabling Act at § 28. With respect to Permanent Land Fund monies, the Treasurer has the authority to (i) invest the monies (Enabling Act, ARIZ CONST. art. IV, § 1 (5), and A.R.S. § 35-313(A)); (ii) contract with investment managers and advisors to invest the monies (A.R.S. § 35-318(A)); and (iii) invest in investment pools. A.R.S. § 35-316. Because Arizona's Enabling Act does not yet authorize investments in equities, principles of trust law require those empowered to invest Permanent Land Fund monies to act as fiduciaries.<sup>2</sup> *Kadish v. Arizona State Land Department*, 155 Ariz. 484, 487-88, 747 P.2d 1183, 1186-87 (1987), *aff'd* 490 U.S. 605 (1989) (the State holds trust land and its proceeds, the Permanent Land Fund, in trust and must act with the fiduciary duty of a private trustee and not just as a good business manager).

The Department of Administration is the agency responsible to account for monies held by the Treasurer, including Permanent Land Fund monies. A.R.S. § 35-131(B). In that capacity, the Director of the Department of Administration has created an accounting system for all monies held by the Treasurer: the Arizona Accounting Manual (1993) (the "Manual"). A.R.S. § 35-131(A). The Manual contains procedures for "fund accounting." It provides that "[v]arious types of legal provisions require the establishment of funds. Funds may be created pursuant to constitutional provisions or Arizona Revised Statutes." GOVERNMENTAL ACCOUNTING STANDARDS BOARD, CODIFICATION OF GOVERNMENTAL ACCOUNTING AND FINANCIAL REPORTING STANDARDS, SEC. 1300.105; Manual § I, page A-1.

The practice and standards of fund accounting permit the commingling of monies from funds, while preserving the separate nature of the funds. The standards for fund accounting provide as follows:

Each fund must be accounted for in a separate self balancing set of accounts for its assets, liabilities,

equity, revenues, expenditures or expenses (as appropriate), and transfers. This requirement of a complete set of accounts for each fund refers to identification of accounts in the accounting records, and does not necessarily extend to physical segregation of assets or liabilities.

## GOVERNMENTAL ACCOUNTING STANDARDS BOARD, CODIFICATION OF GOVERNMENTAL

ACCOUNTING AND FINANCIAL REPORTING STANDARDS, SEC. 1300.109;  
Manual § 1, page

A-1.

The Treasurer is guided by the fund accounting procedures established by the Department of Administration to preserve the separate nature of each fund of the Permanent Land Fund and to prevent the removal of monies from one fund and deposit into another.

### **Conclusion**

The separate funds of the Permanent Land Fund are trust monies. Provided the Treasurer complies with the practice of fund accounting to preserve the individual nature of the separate funds of the Permanent Land Fund, and monies from one fund are not removed and deposited into another, the Treasurer has the authority to invest Permanent Land Fund monies in an investment pool.

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