ATTORNEY GENERAL OPINION NO. 01-2

To: Winston A. Wiggins
Director
Idaho Department of Lands
STATEHOUSE MAIL

Per Request for Attorney General's Opinion

QUESTION PRESENTED

Are all lands acquired or owned by the State of Idaho ("State") subject to the provisions of art. 9, sec. 8 of the Idaho Constitution, or do the provisions apply only to endowment lands?

CONCLUSION

Article 9, sec. 8 of the Idaho Constitution applies to lands granted to the State by the federal government upon admission to the Union (endowment lands) and lands acquired by the State from the federal government after 1982. Other lands acquired or owned by the State of Idaho are not subject to the provisions of art. 9, sec. 8.

ANALYSIS

A. Introduction

In 1982, art. 9, sec. 8 of the Idaho Constitution was amended to prohibit the sale of "state lands" for less than the appraised price, to limit the sale of "state lands" to no more than one hundred sections in any one year, and to prohibit the sale of more than three hundred and twenty acres of "state lands" to any one individual, company or corporation. Prior to the 1982 amendment, the above prohibitions and limitations applied only to "school lands." The question is whether the term "state lands" encompasses *all* lands owned or acquired by the State of Idaho. It should be noted at the outset that no Idaho appellate court has considered the meaning of the term "state lands" as used in art. 9, sec. 8. If presented with this question, an appellate court could, based on the identical evidence set forth below, reach a different conclusion than that contained herein.

B. Constitutional Framework

The State of Idaho owns and manages several million acres of land granted to the State for the purpose of financing public institutions ("trust" or "endowment" lands). By far, the majority of trust lands were granted to the state for the purpose of providing financing for public schools. The original grant occurred in the Organic Act of the

Territory of Idaho (Organic Act), which granted to the Idaho Territory sections sixteen and thirty-six of each township for the support of public schools. Act of March 3, 1863, § 14, 12 Stat. 808, 814. The Organic Act referred to these lands as "school lands." The grant of school lands was confirmed in the Idaho Admission Act (Admission Act). Act of July 3, 1890, § 4, 26 Stat. 215, 215. In addition to school lands, the Admission Act granted lands to the State for the purposes of financing public buildings and universities. Act of July 3, 1890, §§ 6, 8, 26 Stat. 215, 216. The Admission Act also granted lands to the State to finance a scientific school, state normal schools, an insane asylum, a penitentiary, and "other state, charitable, education, penal and reformatory institutions." *Id.,* § 11, 26 Stat. 215, 217.

The drafters of the Idaho Constitution created the State Board of Land Commissioners ("land board"), Idaho Const. art. 9, sec. 7, and charged it with the duty "to provide for the location, protection, sale or rental of all lands . . . granted to the state by the general government . . . ." I.W. Hart, Proceedings and Debates of the Constitutional Convention of Idaho, 2071 (1912) (hereinafter "Proceedings and Debates"). Concurrently, the legislature was charged with the duty to "provide by law that the general grants of land made by congress to the state shall be judiciously located and carefully preserved and held in trust, subject to disposal at public auction, for the use and benefit of the respective objects for which said grants of land were made." *Id.* at 2072. The transcript of the constitutional convention clearly shows that the general terms of sec. 8 were intended to apply to all state trust lands, not just school lands. The first draft of sec. 8 provided that the land board would have management responsibilities for "all the school lands heretofore, or which may hereafter be granted to the state by the general government." *Id.* at 830 (emphasis added). The limitation of the section to school lands was based on the fact that at the time of the convention in 1889, the only trust lands held by the Territory of Idaho were school lands; the grant of lands for other purposes did not occur until the 1890 Admission Act. The grant of additional lands at statehood was anticipated, however, and several delegates objected to the limitation of sec. 8 to "school lands." *Id.* at 837, 845. Thus, the convention adopted a resolution amending sec. 8 to apply to all lands granted to the State from the federal government. *Id.* at 847.

Article 9, sec. 8, also established certain provisos limiting the land board's authority to dispose of lands. Section 8 provided that no "school lands" could be sold for less than ten ($10) dollars an acre, and put a limitation upon the number of sections of school lands that could be sold in any one year or to any one individual, company or corporation. The limitation of these provisos to school lands was intentional. *Id.* at 845-47. In the words of one delegate, the "board may go to work and sell the university lands, and sell the agricultural lands, without any restrictions." *Id.* at 845-46.[1]

The term "state lands" also appeared in the original version of sec. 8. The section provided that the legislature shall provide for the sale of timber "on all state lands." The

context of the sentence, however, made it clear that the term "state lands" referred only to lands granted to the State by the federal government, since proceeds from timber sales were to be faithfully applied "in accordance with the terms of said grants." *Id.* at 2072. Notably, the sentence, as originally drafted, applied only to timber sales on "public school lands." *Id.* at 848. It was later amended to read "state lands" for the stated purpose of providing "conformity" with the previous parts of sec. 8. *Id.* at 1450.

In 1982, art. 9, sec. 8, was amended in the following manner:

> It shall be the duty of the state board of land commissioners to provide for the location, protection, sale or rental of all the lands heretofore, or which may hereafter be granted to or acquired by the state by or from the general government, under such regulations as may be prescribed by law, and in such manner as will secure the maximum ~~possible amount therefor~~ long term financial return to the institution to which granted or to the state if not specifically granted; provided, that no ~~school~~ state lands shall be sold for less than ~~ten dollars per acre~~ the appraised price. * * * The legislature shall, at the earliest practicable period, provide by law that the general grants of land made by congress to the state shall be judiciously located and carefully preserved and held in trust, subject to disposal at public auction for the use and benefit of the respective object for which said grants of land were made, and the legislature shall provide for the sale of said lands from time to time and for the sale of timber on all state lands and for the faithful application of the proceeds thereof in accordance with the terms of said grants~~:~~; provided, that not to exceed one hundred sections of ~~school~~ state land shall be sold in any one year, and to be sold in subdivisions of not to exceed three hundred and twenty acres of land to any one individual, company or corporation. The legislature shall have power to authorize the state board of land commissioners to exchange granted or acquired lands of the state on an equal value basis for other lands under agreement with the United States, local units of government, corporations, companies, individuals, or combinations thereof.[2]

The 1982 amendment broadened the terms of art. 9, sec. 8, so that it would apply not only to lands granted to the state by the federal government, but also to all lands "acquired" from the federal government. It also altered the restrictions on the sale of lands so that they applied to "state lands" rather than "school lands."[3] In addition, the 1982 amendment expanded the entities with which the State could exchange lands and required that the exchange be on an equal value basis.

C. Internal Construction

The question presented is whether the term "state lands" in the 1982 amendment encompasses *all* lands owned by the State or merely those granted by or acquired from the federal government. Rules of statutory construction apply to constitutional provisions generally, including constitutional amendments. Sweeney v. Otter, 119 Idaho 135, 138, 804 P.2d 308, 311 (1990); Westerberg v. Andrus, 114 Idaho 401, 403, n.2, 757 P.2d 664, 666, n.2 (1969). Interpretation of the term "state lands" thus turns on traditional rules of statutory construction.

1. Plain Meaning

The examination of the question presented must begin with the literal wording of art. 9, sec. 8. Ada County Assessor v. Roman Catholic Diocese of Boise, 123 Idaho 425, 428, 849 P.2d 98, 101 (1993). It is well settled that in construing the constitution words are to be given their ordinary meaning. State ex rel. Wright v. Gossett, 62 Idaho 521, 529, 113 P.2d 415, 417-18 (1941). The threshold question in the analysis of any constitutional provision is whether the meaning of the constitutional language in question is clear and plain or is ambiguous and uncertain. Armstrong v. County of San Mateo, 194 Cal. Rptr. 294, 301 (Cal. Ct. App. 1983). *See also* Caminetti v. United States, 242 U.S. 470, 485 (1917).

The term "state lands" is not defined in art. 9, sec. 8, nor is it self-defining. The term "state lands," by its nature, is so general it could potentially refer to a number of categories of land. In addition to the phrase in question, the amendment contains numerous descriptors of the lands it addresses. Accordingly, the term "state lands" as utilized in the amendment is ambiguous and its meaning must be derived by placing it in the context of the more specific descriptors of land found in art. 9, sec. 8.

2. Textual Analysis

An analysis of the amendment as a whole is necessary to determine whether the meaning of the term can be deciphered from the context of art. 9, sec. 8. This is known as "whole act interpretation," and requires that the entire amendment be read together because no part of it is superior to any other. 2A Norman J. Singer, Sutherland Statutes and Statutory Construction, § 47:02 (6th ed. 2000) ("Sutherland").

Article 9, sec. 8, as amended, consists of three general provisions. The first general provision establishes the duties of the land board to manage lands "granted to or acquired by the state by or from the general government," and provides the manner in which such lands will be managed (to secure the maximum long-term financial gain). The first general provision is followed by the proviso that no "state lands" shall be sold for less than the appraised price.

The second general provision requires the legislature to "provide by law that the general grants of land made by congress to the state shall be judiciously located and carefully preserved and held in trust, subject to disposal at public auction for the use and benefit of the respective object for which said grants of land were made . . . ." It also requires the legislature to "provide for the sale of said lands from time to time and for the sale of timber on all state lands and for the faithful application of the proceeds thereof in accordance with the terms of said grants . . . ." The legislature's authority to provide for the sale of "general grants of land made by congress to the state" is limited by the proviso that no more than one hundred sections of "state lands" shall be sold in any one year and no more than three hundred twenty acres be sold to any one individual, company or corporation.

The third general provision grants the legislature the power to authorize the exchange of "granted or acquired" lands with a number of specified entities on an equal value basis. The most natural reading of the term "granted or acquired" is to read it to refer to the same granted or acquired lands addressed in the initial provisions of the section, namely, lands granted by, or acquired from, the federal government.

In short, the general provisions are self-defining and limited to lands granted or acquired from the federal government. The term "state lands" appears only in the provisos to the general provisions. Provisos "serve the purpose of restricting the operative effect of statutory language to less than what its scope of operation would be otherwise." 2A Sutherland, § 47:08 (6th ed. 2000). Accordingly, the term "state land" in each proviso must be read in conformance with the operative language of the general provision that it follows.

In the first general provision, the operative language applies to lands "granted to or acquired by the state by or from the general government." Thus, the term "state land" in the proviso necessarily refers to those same lands. In the second general provision, the operative language applies to the sale of "general grants of land made by congress to the state." Thus, the term "state lands" in the proviso limiting the amount of land that may be sold in any one year or to any one individual, company or corporation necessarily applies *only* to lands granted from Congress to the State. These lands are a smaller subset of those "granted to or acquired by" the state by or from the federal government. This limitation is consistent with the interpretation of the first proviso. Accordingly, a court could look to the context within which the term "state lands" is used in the amendment and conclude that the term means only lands granted to or acquired from the federal government.

D. Legislative Considerations

As demonstrated above, the term "state lands" can be defined to mean lands granted by or acquired from the federal government solely by analyzing the context of its use in the amendment and by using rules of statutory construction concerning provisos. Typically, a court's inquiry into the meaning of a constitutional term would be at an end after reaching such a conclusion. As stated above, however, no Idaho appellate court has yet considered this issue. Therefore, in an abundance of caution, this analysis looks both to the circumstances surrounding the proposed constitutional amendment as well as to the legislature's subsequent interpretation of the term "state lands" in analysis of the meaning of the term in the 1982 amendment.

1. Surrounding Circumstances

The legislature's impetus for proposing the 1982 amendment to art. 9, sec. 8, must be considered because "[i]n construing constitutional amendments, consideration should be given to the circumstances leading to their adoption and the purpose sought to be accomplished." School District of Seward Educ. Ass'n v. School District of Seward in the County of Seward, 199 N.W.2d 752, 755 (Neb. 1972), *quoting* Engelmeyer v. Murphy, 142 N.W.2d 342 (Neb. 1966). *See* Girard v. Diefendorf, 54 Idaho 467, 475, 34 P.2d 48, 50 (1934) ("A constitutional amendment should be interpreted in the light of the conditions under which it was framed, the ends which it was designed to accomplish, the benefits which it was expected to confer and the evils which it was hoped to remedy."). Mazzone v. Attorney General, 736 N.E.2d 358, 368 (Mass. 2000). A review of the motivation of the legislature supports the conclusion that the term "state lands" as used in art. 9, sec. 8 of the Idaho Constitution refers only to those lands granted by or acquired from the federal government.

The legislative history of the 1982 amendment to art. 9, sec. 8, demonstrates that the 1982 amendments were focused on the management of federal lands that the State then considered acquiring from the federal government, and in this context the Idaho Legislature established a Public Lands Committee. S. Con. Res. 144, 45th Leg. (1980). The committee was assigned the task of "gathering accurate information to assist the Idaho Legislature in properly addressing the issue of the management and control of the unappropriated public lands in the state of Idaho." *Id.* Indeed, the committee confined its work to the consideration of the acquisition of the "unappropriated public lands." Minutes of the Leg. Council Comm. on the Public Lands ("Comm. Minutes"), August 25, 1980, at 136.[4]

The 1982 amendment came about, in part, because of the committee's work and was based, in part, on the committee's report to the legislature. Given the legislature's understanding of the purpose of the 1982 amendment to art. 9, sec. 8, the term "state

lands" would be interpreted by an Idaho appellate court to encompass only those lands granted to or acquired by the federal government.

2. Statutory Framework

In addition to its motivation in proposing the 1982 amendment, the legislature's interpretation of the term "state lands" must be considered. A fundamental rule of construction of any legal document is that the main object of the interpretation is to ascertain the intent of the parties who made the instrument and to give that intent the fullest effect possible consistent with the related body of law. Armstrong, 194 Cal. Rptr. at 306. When interpreting constitutional language, Idaho courts have looked to the understanding the legislature had of the terms contained in a constitutional amendment. Girard, 54 Idaho at 475, 34 P.2d at 50.

At the time art. 9, sec. 8, was drafted and ratified, there was a host of specific provisions in the Idaho Code relative to the disposition of lands owned or occupied by state agencies. For example, state agencies and the land board were granted the power, codified in Idaho Code §§ 58-331 through 58-335, to dispose of surplus real property. These management and sale criteria are separate and distinct from those contained in art. 9, sec. 8. This body of statutory law was first codified in 1951 and, thus, existed at the time of the amendment. *See* 1951 Idaho Sess. Laws §§ 1 through 4 at 452. Pursuant to these statutes, the land board was authorized to relinquish control and custody of surplus property to any state agency it determined could best use the property, or, more importantly, the land board could sell the property "to the highest and best bidder upon terms and conditions to be determined by the board." Nothing in the material provided to the voters indicated the 1982 amendment would overturn this body of statutory law.

Furthermore, a plethora of other statutes existed at the time of the 1982 amendment granting various state agencies the power to acquire and dispose of real property. For example, since 1965, pursuant to Idaho Code § 42-1734, the State Water Resource Board has had the authority to "acquire, purchase, lease, or exchange land." *See* 1965 Idaho Sess. Laws, ch. 320, § 4 at 907. In 1970, pursuant to Idaho Code § 33-107, the State Board of Education was granted the power to "acquire, hold and dispose of title to or interest in real property." *See* 1970 Idaho Sess. Laws, ch. 79, § 1 at 199. In 1974, both the Idaho Department of Health and Welfare—Idaho Code § 39-106—and the Idaho State Building Authority—Idaho Code § 67-6409—were granted the power to acquire and dispose of real property. *See* 1974 Idaho Sess. Laws, ch. 23, § 50 at 669 (health and welfare); 1974 Idaho Sess. Laws, ch. 111, § 9 at 1268 (building authority). Yet another statute in existence at the time of the 1982 amendment distinguished endowment lands from other real property owned by state agencies. Idaho Code § 21-142(14) gave the Idaho Transportation Board the power to sell, exchange, or otherwise dispose of, for aeronautical purposes, any real or personal property, "not placed under the jurisdiction of the state land board." It must be assumed that the legislature was fully

aware of the existence of these laws at the time it proposed the 1982 amendment to Idaho Const. art. 9, sec. 8.

Given the wealth of statutory law in place at the time of the 1982 amendment, it is reasonable to conclude that the legislature did not intend for the amendment to render void the above-referenced statutes. If the legislature had intended to render these statutes void, there would have been some evidence of such an intent in the legislative history of the amendment. A court would not likely imply such intent on the part of the legislature based on the available evidence.

Furthermore, the term "state lands" contained in art. 9, sec. 8, must be viewed in light of the statutes enacted by the legislature *following the ratification* of the 1982 amendment. Where a constitutional provision "may well have either of two meanings, it is a fundamental rule of constitutional construction that, if the Legislature by statute has adopted one, its action in this respect is well nigh, if not completely controlling." Armstrong, 194 Cal. Rptr. at 310. A court will "give much, though not conclusive, weight to legislative interpretation, and although the legislature's interpretation of the constitution is not binding on . . . [a court, it] would be loathe to interpret the constitution otherwise." Geringer v. Bebout, 10 P.3d 514, 522 (Wyo. 2000).

In 1985, while recodifying the laws pertaining to highways, bridges and ferries, the legislature expressly granted the Idaho Transportation Board the power to purchase and sell, exchange or otherwise dispose of "any real property, other than public lands which by the constitution and laws of the state of Idaho are placed under the jurisdiction of the state land board." *See* 1985 Idaho Sess. Laws, ch. 253, § 2 at 601. This express reservation by the legislature makes it abundantly clear it did not interpret the term "state lands" as used in art. 9, sec. 8, to apply to *all* lands owned by the state.

Thereafter, in 1986, the legislature enacted Idaho Code § 58-335A permitting the Idaho Transportation Department to promulgate rules governing the sale of its surplus real property with a value of less than a certain amount. *See* 1986 Idaho Sess. Laws, ch. 129, § 1 at 336. Furthermore, in 1989, the legislature created the "park land trust" within the Idaho Department of Parks and Recreation ("IDPR"), and granted IDPR the power to acquire, exchange and sell property in the land trust. *See* 1989 Idaho Sess. Laws, ch. 386, §§ 2, 3 at 962-63.

Based on its enactment of the aforementioned statutes, the legislature did not interpret the 1982 amendment to art. 9, sec. 8, as affecting *all* state lands, otherwise its 1986 and 1989 acts would have been patently unconstitutional. However, construing the term "state lands" contained in the 1982 amendment to art. 9, sec. 8, to mean only those lands "granted to or acquired by the state from the general government," the legislature's acts do not offend the language of the constitutional provision.

Lending support to the conclusion that the term "state lands" refers only to lands acquired from or granted by the federal government is the fact that the legislature has the authority to review rules promulgated by the various state agencies. *See* Idaho Code § 67-5223 (requiring any rules promulgated by state agencies to be submitted to the legislature for review), and Idaho Code § 67-5291 (the legislature has the power to reject administrative rules if they violate the intent of the statute under which they are made). In 1997, the Idaho Department of Transportation enacted rules governing the disposal of its surplus property. IDAPA 39.03.45. The legislature did not revoke these rules and, thus, must not have interpreted the term "state lands" as used in Idaho Const. art. 9, sec. 8, as applying to *all* lands owned by the State of Idaho.

E. Intent of the Voters

Although the meaning of the term "state lands" can be derived from the context of art. 9, sec. 8, it is worthwhile to examine the intent of the voters ratifying the constitutional amendment to ensure that they had a similar understanding of the amendment.[5] The people, not the legislature, amend the Idaho Constitution. Idaho Const. art. 20, sec. 1; Idaho Mut. Benefit Ass'n v. Robison, 65 Idaho 793, 799, 154 P.2d 156, 159 (1944). When interpreting a constitutional amendment, the intent of the voters adopting it must be given effect. Hibernia Bank v. California Bd. of Equalization, 166 Cal. App. 3d 393, 401 (Cal. Ct. App. 1985); Tivolino Teller House, Inc. v. Fagan, 926 P.2d 1208, 1211 (Colo. 1996); De Mere v. Missouri State Highway and Transp. Comm'n, 876 S.W.2d 652, 655 (Mo. Ct. App. 1994). The California Supreme Court, in interpreting a constitutional amendment, has stated, "the intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act." State Bd. of Equalization v. Board of Supervisors of the County of San Diego, 164 Cal. Rptr. 739, 744 (Cal. Ct. App. 1980), *quoting* Bakkenson v. Superior Court, 241 P. 874, 877 (Cal. 1925). Accordingly, if voter intent regarding the meaning of the term "state lands" can be gleaned from an analysis of the materials provided them, that intent will govern, even over the letter of the amendment.

Explanations about a proposed constitutional amendment, made available to the public before referendum elections, are relevant legislative history for construing a measure after its enactment. Sutherland, § 48:19. The materials provided to the voters prior to their ratification of the 1982 amendment to art. 9, sec. 8, Section 2 of H.J.R. No. 18, required the following question be submitted to the voters:

> Shall Section 8, Article IX, of the Constitution of the State of Idaho be amended to require that endowment lands be managed to secure the maximum long term financial return for the institution to which granted; to provide the acquired lands be managed to secure the maximum long term financial return to the state; to prohibit the sale of state lands for less than

> the appraised price; and to authorize the exchange of state lands on an equal value basis?

1982 Idaho Sess. Laws, H.J.R. No. 18, § 2 at 936. Pursuant to Idaho Code § 67-913, and as required by § 4 of H.J.R. No. 18, the Secretary of State caused to be published the statement of meaning and purpose, the presentation of major arguments submitted by the legislative council, and the text of the proposed amendment. Accordingly, these materials will be reviewed in an attempt to discern what meaning voters ascribed to the term "state lands."

The Statement of Meaning and Purpose declared:

> The purpose of this proposed amendment to Section 8, Article IX, of the Constitution of the State of Idaho is to require the State Board of Land Commissioners to manage endowment lands and other lands acquired by the State of Idaho from the United States government for the maximum long term financial return, to prohibit the sale of state lands for less than the appraised price of those lands, and to authorize the exchange of state lands for other lands on an equal value basis with private and governmental entities.

In addition, the legislative council issued a statement regarding the Effect of Adoption of the amendment, which stated:

> If this amendment is adopted, the constitutional standard for managing endowment and other lands granted to or acquired by the State of Idaho from the federal government will change. At present, endowment lands are managed to "secure the maximum possible amount therefor." This amendment will change that standard and require management to secure the "maximum long term financial return." This amendment will also add a constitutional standard for sales and exchanges of state lands.

Neither the Statement of Meaning and Purpose nor the statement regarding the Effect of Adoption defines the term "state lands." A natural reading of both of these statements, however, leads us to conclude that the term "state lands" concerned only those lands previously referred-to—endowment lands or other lands granted to or acquired by the State from the federal government. However, voter intent is far from clear based on these two statements and, therefore, there is some question whether these statements would be sufficient for a court to conclude voters intended the term "state lands" to encompass all lands owned by the State.

In addition to the above-referenced materials, the voters were provided the following Statements FOR Proposed Amendment:

1. This amendment will formally spell out in the State Constitution a management practice that the State Board of Land Commissioners uses in managing the State's ***endowment lands***. The State Board of Land Commissioners manages the ***endowment lands*** to receive the maximum long-term financial return instead of the short-term benefit.

2. The maximum long-term financial return to the State of Idaho from the management of ***state-owned lands*** could be significantly different than the maximum possible amount received from the lands. Requiring that the State Board of Land Commissioners manage lands to receive the maximum amount of return over a period of years will promote efficient, cost-effective far-sighted management practices, and allow the State of Idaho to realize the maximum financial return possible from the sale or rental of ***state lands***.

3. By providing that ***state lands*** shall not be sold for less than the appraised price, the State of Idaho will avoid subsidizing individuals or institutions by selling lands for less than the appraised price when the sale of particular lands generates little interest or few bidders.

4. The provision allowing exchanges of ***state lands*** on an equal value basis for lands owned by entities other than the State of Idaho will allow the State Board of Land Commissioners to exchange lands so that blocks of land could be put together for wildlife management, parks, recreation areas or resource development areas which otherwise might not occur. Lands received through these exchanges must be equal in value to the lands given up.

(Emphasis added.)

In the first two statements, the proponents of the amendment appear to have used the term "state lands" virtually interchangeably with the term "endowment lands." Statement 1 refers to the management of "endowment lands" for maximum long-term financial return. Immediately thereafter, Statement 2 details why it is more prudent to manage "state-owned lands" in such a fashion. Furthermore, in Statements 3 and 4, the proponents continue to refer to "state lands." Insofar as Statement 3—sale of "state lands"—is concerned, the text of the amendment identified the restriction on sales as concerning lands granted by the federal government. Statement 4 addressed exchanges of "state lands;" the text of the amendment refers to exchanges of "granted or acquired lands." A comparison of the language in the Statements FOR the Proposed Amendment and the text of the amendment suggests voters intended the term "state lands" to mean lands granted by or acquired from the federal government.

Finally, the following Statements AGAINST the Proposed Amendment were provided to the voters:

1. This proposed amendment is unnecessary as the State Board of Land Commissioners now administers the State's ***endowment lands*** in a manner that will secure the maximum long-term financial return to the institution for which they are granted. It is provided by statute that the State Board of Land Commissioners shall not sell ***state lands*** under bid for less than the minimum price set by the board. This has traditionally been for at least the appraised price. It is statutorily provided that the State Board of Land Commissioners may exchange ***state lands*** on an equal basis with private and governmental entities.

2. While it is not the intent of the amendment, wording in this amendment may preclude the State of Idaho from acquiring land from the federal government and devoting it to a purpose that would not secure the maximum long-term financial return to the State. This could prevent the State of Idaho from acquiring land from the federal government and converting that land into a state park or a fish and game preserve if that use does not secure the maximum long-term financial return to the State of Idaho.

3. This amendment substitutes the phrase "maximum long-term financial return" for a phrase that has been interpreted by the courts. This substitution may eliminate nearly a century of case law regarding the State's ***endowment lands***. Also, the phrase "maximum long-term financial return" is highly ambiguous.

4. While not the intent of the amendment, the wording of this proposed amendment could possibly endanger certain existing state parks and wildlife refuges which had been granted to the State of Idaho by the United States government. Lands containing certain state parks and wildlife refuges were granted to the State of Idaho by the United States specifically for use as parks or wildlife refuges. If a court were to find that the use of these lands as state parks or wildlife refuges is not securing the maximum long-term financial return to the State and hence in violation of the State Constitution, title to the lands could revert to the United States Government.

(Emphasis added.)

It is clear from the Statements AGAINST the Proposed Amendment that the opponents were focused only on lands granted to or acquired from the federal government. There is no hint that the opponents thought the amendment applied to lands acquired from other entities.

The opponents of the amendment appear to have used the terms "endowment lands" and "state lands" interchangeably. In Statement 1, for instance, they argue that the amendment is not necessary because the land board already administered "endowment lands" in a manner that would secure the maximum long-term financial return. In support of this argument, those in opposition pointed to the land board's statutory duty not to sell "state lands" for less than the set price, which, they asserted, was traditionally the appraised price. In further support for their argument, the opponents pointed to the land board's statutory authority to exchange "state lands" with other private and governmental entities. Based on the language utilized in this statement, it is not possible to determine whether voters attached some significance to the use of the term "state lands," as opposed to "endowment lands" in the amendment.

Statement 3 argues against the adoption of the amendment because the phrase "maximum long-term financial return" was "highly ambiguous," and changing the land board's express management standard would do away with "nearly a century of case law" in which Idaho courts had interpreted art. 9, sec. 8. Statements 2 and 4 both begin with the caveat "*[w]hile not the intent of the amendment*." Therefore, voters were cautioned the amendment might have unintended consequences when subjected to court interpretation. It is difficult to fathom how any of these three statements, either separately or in combination, could assist a court in determining the intent of the voters with regard to the meaning of the term "state lands" contained in the amendment.

Analysis of the materials before the voters prior to their ratification of the 1982 amendment leads to the conclusion that the intent of the voters vis-à-vis the meaning they assigned to the term "state lands" cannot readily be discerned. Importantly, however, as noted in section IV.B. above, *none of the materials* before the voters indicated the amendment would overturn the significant statutory authority then possessed by state agencies to purchase and sell land. If such a result had been intended by the voters, a court would require some form of concrete evidence to that end. Accordingly, it is reasonable to conclude that voters did not intend for the 1982 amendment to art. 9, sec. 8, to have such an effect.

CONCLUSION

Prior to the 1982 amendments, this Office opined that art. 9, sec. 8, applied only to the original grants of land outlined in the Idaho Admission Bill and any lands received from the federal government in exchange or in lieu of the originally granted lands. *See* 1982 Idaho Att'y Gen. Ann. Rpt. 52. A 1984 Attorney General Guideline stated, in

passing, that "[o]ne of the effects of the 1982 amendments is to make applicable to all state lands some of the restrictions which originally applied only to school lands." 1984 Idaho Att'y Gen. Ann. Rpt. 129, 130. For the reasons discussed above, it is the opinion of this office that the phrase "state lands," now found in art. 9, sec. 8 of the Idaho Constitution, merely extended the section's prohibitions to any unreserved, unappropriated lands that might be acquired by the State from the federal government in the future. This conclusion is supported by the context in which the term is used within the amendment itself, the legislature's motivation in proposing the amendment, and the legislature's post-hoc interpretation of the term. Finally, statutory authority existed for various state agencies to acquire and dispose of lands owned by the State prior to the 1982 amendment, and voters were not informed that the amendment would do away with those laws. Viewing the evidence as a whole, a reviewing court is likely to conclude that the prohibitions of art. 9, sec. 8, on the disposition of "state land" do not apply to other categories of land owned by the State of Idaho or in the name of any of its agencies. To the extent that the 1984 Attorney General Guideline is inconsistent with this Opinion, that Guideline is hereby withdrawn.

AUTHORITIES CONSIDERED

1. Idaho Constitution:

Article 9, § 7.
Article 9, § 8.
Article 20, § 1.

2. Statutes and Rules:

Act of March 3, 1863, Organic Act of the Territory Of Idaho, 12 Stat. 808.
Act of July 3, 1890, Idaho Admission Bill, 26 Stat. 215.
IDAPA 39.03.45.
Idaho Code § 21-142(14).
Idaho Code § 33-107.
Idaho Code § 39-106.
Idaho Code § 42-1734.
Idaho Code § 58-331.
Idaho Code § 58-332.
Idaho Code § 58-333.
Idaho Code § 58-334.
Idaho Code § 58-335.
Idaho Code § 58-335A.
Idaho Code § 67-913.
Idaho Code § 67-5223.
Idaho Code § 67-5291.

Idaho Code § 67-6409.

3. Legislative Materials:

1951 Idaho Sess. Laws 452.
1965 Idaho Sess. Laws 907.
1970 Idaho Sess. Laws 199.
1974 Idaho Sess. Laws 669.
1974 Idaho Sess. Laws 1268.
1982 Idaho Sess. Laws 936 (House Joint Resolution 18).
1985 Idaho Sess. Laws 601.
1986 Idaho Sess. Laws 336.
1989 Idaho Sess. Laws 962.
Minutes of the Leg. Council Comm. On the Public Lands, August 25, 1980, and October 27, 1980.
S. Con. Res. 144, 45th Leg. (1980).
Secretary of State's Abstract of Votes Cast at the General Election, November 2, 1982.
Legislative Council's Statement of Effect of Adoption of H.J.R. No. 18, pub. by Secretary of State (1982).
Legislative Council's Statement of Meaning and Purpose of H.J.R. No. 18, pub. by Secretary of State (1982).
Legislative Council's Statements AGAINST the Proposed Amendment, pub. by Secretary of State (1982).
Legislative Council's Statements FOR Proposed Amendment, pub. by Secretary of State (1982).

4. Idaho Cases:

Ada County Assessor v. Roman Catholic Diocese of Boise, 123 Idaho 425, 849 P.2d 98 (1993).
American Exp. Travel Related Services Co., Inc. v. Tax Com'n, 128 Idaho 902, 920 P.2d 921 (1996).
City of Sun Valley v. Sun Valley Co., 123 Idaho 665, 851 P.2d 961 (1993).
Girard v. Diefendorf, 54 Idaho 467, 34 P.2d 48 (1934).
Idaho Mut. Benefit Ass'n v. Robison, 65 Idaho 793, 154 P.2d 156 (1944).
Local 1494 of the Int'l Ass'n of Firefighters v. City of Coeur d'Alene, 99 Idaho 630, 586 P.2d 1346 (1978).
State ex rel. Wright v. Gossett, 62 Idaho 521, 113 P.2d 415 (1941).
Sweeney v. Otter, 119 Idaho 135, 804 P.2d 308 (1990).
Westerberg v. Andrus, 114 Idaho 401, 757 P.2d 664 (1969).

5. Federal Cases:

Caminetti v. United States, 242 U.S. 470 (1917).

6. Other Cases:

Armstrong v. County of San Mateo, 194 Cal. Rptr. 294 (Cal. Ct. App. 1983).
Bakkenson v. Superior Court, 241 P. 874 (Cal. 1925).
De Mere v. Missouri State Highway and Transp. Comm'n, 876 S.W.2d 652 (Mo. Ct. App. 1994).
Engelmeyer v. Murphy, 142 N.W.2d 342 (Neb. 1966).
Geringer v. Bebout, 10 P.3d 514 (Wyo. 2000).
Hibernia Bank v. California Bd. of Equalization, 166 Cal. App. 3d 393 (Cal. Ct. App. 1985).
Mazzone v. Attorney General, 736 N.E.2d 358 (Mass. 2000).
School District of Seward Educ. Ass'n v. School District of Seward in the County of Seward, 199 N.W.2d 752 (Neb. 1972).
State Bd. of Equalization v. Board of Supervisors of the County of San Diego, 164 Cal. Rptr. 739 (Cal. Ct. App. 1980).
Tivolino Teller House, Inc. v. Fagan, 926 P.2d 1208 (Colo. 1996).

7. Other Authorities:

1982 Idaho Att'y Gen. Ann. Rpt. 52.
1984 Idaho Att'y Gen. Ann. Rpt. 129.
2A Norman J. Singer, Sutherland Statutes and Statutory Construction, (6th ed. 2000).
I.W. Hart, Proceedings and Debates of the Constitutional Convention of Idaho (1912).

DATED this 9th day of July, 2001.

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[1] The delegate's statement that the land board could sell lands other than school lands "without restrictions" was not correct, since the section, by its terms, requires all state lands to be sold at public auction. Proceedings and Debates at 847.

[2] Section 8 now reads as follows:

> Location and disposition of public lands.— It shall be the duty of the state board of land commissioners to provide for the location, protection, sale or rental of all the lands heretofore, or which may hereafter be granted to or acquired by the state by or from the general government, under such regulations as may be prescribed by law, and in such manner as will secure the maximum long-term financial return to the institution to which granted or to the state if not specifically granted; provided, that no state lands shall be sold for less than the appraised price. No law shall ever be passed by the legislature granting any privileges to persons who may have settled upon any such public lands, subsequent to the survey thereof by the general government, by which the amount to be derived by the sale, or other disposition of such lands, shall be diminished, directly or indirectly. The legislature shall, at the earliest practicable period, provide by law that the general grants of land made by congress to the state shall be judiciously located and carefully preserved and held in trust, subject to sale at public auction for the use and benefit of the respective object for which said grants of land were made, and the legislature shall provide for the sale of said lands from time to time and for the sale of timber on all state lands and for the faithful application of the proceeds thereof in accordance with the terms of said grants; provided, that not to exceed one hundred sections of state lands shall be sold in any one year, and to be sold in subdivisions of not to exceed three hundred twenty acres of land to any one individual, company or corporation. The legislature shall have power to authorize the state board of land commissioners to exchange granted or acquired lands of the state on an equal value basis for other lands under agreement with the United States, local units of government, corporations, companies, individuals, or combinations thereof.

[3] Other amendments were made to art. 9, sec. 8, in 1916, 1935, 1941 and in 1951. The amendments, *inter alia*, increased the amount of school lands that could be sold, changed the amount per acre for which they could be sold, and empowered the legislature to exchange granted lands for other lands under agreement with the federal government. Those amendments are not relevant to the current opinion.

[4] Courts often rely on committee reports to determine legislative intent. Sutherland, § 48:10; *see, e.g.,* American Exp. Travel Related Services Co., Inc. v. Tax Comm'n, 128 Idaho 902, 904, 920 P.2d 921, 923 (1996); City of Sun Valley v. Sun Valley Co., 123 Idaho 665, 668, 851 P.2d 961, 964 (1993). Idaho, like many states, does not keep a verbatim record of most committee hearings. Thus, courts are generally hesitant to resort to statements reportedly made by committee members to determine legislative intent. Sutherland, § 48:10. The Idaho Supreme Court has, however, relied upon the testimony of the proponent of a proposed bill in construing a statute. Local 1494 of the Int'l Ass'n of Firefighters v. City of Coeur d'Alene, 99 Idaho 630, 641, 586 P.2d 1346, 1357 (1978).

[5] According to the Secretary of State's Abstract Of Votes Cast At The General Election, November 2, 1982, 177,188 Idahoans, or 64.1%, voted in favor of the constitutional amendment.