

PROBLEMS RELATED TO THE STATE
PERMANENT SCHOOL FUND



Bulletin No. 77-15

LEGISLATIVE COMMISSION
OF THE
LEGISLATIVE COUNSEL BUREAU
STATE OF NEVADA

September 1976

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Senate Concurrent Resolution No. 37—Committee on Legislative Functions

FILE NUMBER 137

SENATE CONCURRENT RESOLUTION—Directing the legislative commission to study problems related to the state permanent school fund.

WHEREAS, Section 3 of article II of the constitution of the State of Nevada pledges proceeds from certain sources for educational purposes and specifies that they not be used for other purposes; and

WHEREAS, Chapter 387 of the Nevada Revised Statutes provides a framework for the administration of these proceeds within a fund known as the state permanent school fund; and

WHEREAS, The legislative commission directed that a financial postaudit of the state permanent school fund be accomplished by the legislative auditor; and

WHEREAS, The legislative auditor initiated a financial postaudit of the state permanent school fund but reported to the legislative commission that he was unable to perform a financial postaudit because of lack of sufficient legal definitions, fragmented administration of the fund, violations of statutes, conflicting statutes and dated statutes; and

WHEREAS, The judgments required to establish solutions to the problems set forth by the legislative auditor are properly the prerogative of the legislature, since these problems affect agencies of state government and various local governments; now, therefore, be it

Resolved by the Senate of the State of Nevada, the Assembly concurring, That the legislative commission is hereby directed to study the problems related to the state permanent school fund, such study to include:

1. A determination of the purpose of the state permanent school fund; and
 2. Constitutional or statutory revisions necessary to achieve such purpose;
- and be it further

Resolved, That the legislative commission report the results of the study to the 59th session of the legislature, together with any recommendations for necessary and appropriate legislation.

REPORT OF THE LEGISLATIVE COMMISSION

To the Members of the 59th Session of the Nevada Legislature:

This report is submitted in compliance with Senate Concurrent Resolution No. 37 of the 58th session which directed the Legislative Commission to study problems related to the state permanent school fund.

Assemblyman Donald R. Mello served as chairman of the subcommittee with Senator B. Mahlon Brown as vice chairman and Assemblyman D. Roger Bremner and Melvin B. Howard as members.

The report of the subcommittee was accepted by the legislative commission on September 15, 1976.

Respectfully submitted,

Legislative Commission
Legislative Counsel Bureau
State of Nevada

Carson City, Nevada

REPORT TO THE LEGISLATIVE COMMISSION OF
ITS SUBCOMMITTEE TO STUDY PROBLEMS
RELATED TO THE STATE PERMANENT
SCHOOL FUND

I. INTRODUCTION

In 1974 the legislative commission directed the legislative auditor to make a financial postaudit of the state permanent school fund. The audit for fiscal 1974 was completed in February 1975. The auditor was unable to express an opinion on the financial condition of the fund because of "fragmented administration, violations of statutes, conflicting statutes, dated statutes, and inconsistent criteria for the remittance of penal fines." Appendix A to this report contains pertinent excerpts from the audit report--the "Environment of Operations" and "Legislative Study."

The auditor recommended that the legislature conduct a study of the state permanent school fund to recommend resolution and correction for the deficiencies noted in the audit report. S.C.R. 37, 1975, directed the legislative commission to study the problems related to the state permanent school fund including a determination of the purpose of the fund and constitutional or statutory revisions necessary to achieve such purpose.¹

II. LEGAL FRAMEWORK FOR THE PERMANENT SCHOOL FUND

The state permanent school fund was created to comply with congressional mandates that the proceeds from donated federal lands be used exclusively for educational purposes.

Section 3 of article 11 of the Nevada constitution, NRS 387.010 et seq. and NRS 355.050 et seq. provide the basic legal framework for the state permanent school fund. Nev. Art. 11, § 3 is quoted below:²

Section 3. Pledge of public lands, certain moneys for educational purposes; apportionment of interest and investments of principal. All lands, including the sixteenth and thirty-sixth sections in any township donated for the benefit of public schools in the act of the Thirty-eighth Congress, to enable the people of Nevada Territory to form a state government, the

thirty thousand acres of public lands granted by an act of Congress, approved July second, A.D. eighteen hundred and sixty-two, for each senator and representative in Congress, and all proceeds of lands that have been or may hereafter be granted or appropriated by the United States to this state, and also the five hundred thousand acres of land granted to the new states under the act of Congress distributing the proceeds of the public lands among the several states of the union, approved A.D. eighteen hundred and forty-one; provided, that Congress make provision for or authorize such diversion to be made for the purpose herein contained; all estates that may escheat to the state; all of such per centum as may be granted by Congress on the sale of lands; all fines collected under the penal laws of the state; all property given or bequeathed to the state for educational purposes, and all proceeds derived from any or all of said sources shall be and the same are hereby solemnly pledged for educational purposes, and shall not be transferred to any other funds for other uses; and the interest thereon shall, from time to time, be apportioned among the several counties as the legislature may provide by law; and the legislature shall provide for the sale of floating land warrants to cover the aforesaid lands, and for the investment of all proceeds derived from any of the above-mentioned sources, in United States bonds, or the bonds of this state, or the bonds of other states of the union, or the bonds of any county in the State of Nevada; or in loans at a rate of interest of not less than six per cent per annum, secured by mortgage on agricultural lands in this state of not less than three times the value of the amount loaned, exclusive of perishable improvements, of unexceptional title and free from all encumbrances, said loans to be under such further restrictions and regulations as may be provided by law; provided, that the interest only of the aforesaid proceeds shall be used for educational purposes, and any surplus interest shall be added to the principal sum; and provided further, that such portion of said interest as may be necessary may be appropriated for the support of the state university.

NRS 387.010 et seq. creates an irreducible state permanent school fund consisting of:

1. Moneys accruing to the State of Nevada from the sale of lands given for public school purposes;
2. All fines collected under the penal laws of the state;
3. All estates which may escheat to the state.

The state board of finance is directed to invest the income of the permanent school fund and interest earned from such investment is deposited in the state distributive school fund.

Since the distributive school fund is the mechanism for allocating state aid for public education (K-12), the proceeds from the permanent school fund resources are used for educational purposes as specified in the constitution and NRS. The state treasurer is the legal custodian of permanent school fund securities and the state controller is required to report quarterly on the financial status of the fund. NRS 355.050 et seq. detail the allowable investments for the permanent school fund and the duties of the state board of finance and the attorney general in the selection of investments.

Over the past century, the Federal Government has donated approximately 2.6 million acres to Nevada and the state has disposed of all but 2,976.55 acres. The land has been sold or transferred to state agencies. NRS 232.158, enacted in 1965, places a moratorium on the sale, lease or exchange of these open lands without the specific authorization of the legislature. Table 1 (page 6) is a schedule of the disposition of the donated federal lands. Table 2 (page 7) displays the counties where open school lands remain.

III. FINANCIAL CHARACTERISTICS OF THE STATE PERMANENT SCHOOL FUND

Table 3 (page 8) displays the statement of financial condition for the permanent school fund as of March 26, 1976.

As can be seen from Table 3, the permanent school fund balance is approximately \$11 million. In addition to land sales, penal fines and escheated estates, there are several other potential

Table 1

PERMANENT SCHOOL FUND
SCHEDULE OF THE DISPOSITION OF LANDS GRANTED TO THE
STATE OF NEVADA BY THE UNITED STATES OF AMERICA
THROUGH MARCH 31, 1976

SCHEDULE NO. 2

	<u>Date of Grant</u>	<u>Acres Granted</u>	<u>Acres Approved</u>
<u>ACRES SELECTED BY STATE</u>			
Sixteenth & Thirty-Sixth Sections	2-26-1859	63,249.00	63,249.00
Mining & Mechanics Arts College	7- 2-1862	90,000.00	90,065.31
Indemnity (Lieu Lands)	3-21-1864	9,228.62	9,228.62
Public Buildings	3-21-1864	12,800.00	12,704.79
State Prison	3-21-1864	12,800.00	12,732.96
University Grant	7- 4-1866	46,080.00	46,062.51
Two Million Acres	6-16-1880	2,000,000.00	2,000,005.50
Internal Improvement	9- 4-1841	500,000.00	499,998.50
Totals		<u>2,734,157.62</u>	<u>2,734,047.19</u>
<u>Less: Adjustments</u>			
State Approved Acreage Lost Due to Selection of Double Minimum Lands (Central Pacific Railroad Grant Lands)		(99,801.96)	
Section 8, Taylor Grazing Act Acreage Lost Due to Equal Value Exchange		(403.89)	
Exchange Grant, 6-8-26-Acres to be Selected		(90.29)	
Acreage Discrepancies in the Original Clear List of Land Grants		(107.68)	(100,403.82)
Total Acres Selected by the State of Nevada			<u>2,633,643.37</u>
<u>LAND WITHDRAWALS BY STATE</u>			
Humboldt County - Act of 1936 (Chapt. 69)		(40.00)	
Rye Patch Reservoir		(1,519.13)	
State Highway Dept. - Gravel Pit - Act of 1935		(40.00)	
State Parks - Act of 1935		(9,249.75)	
State Prison - Act of 1963		(80.00)	
State Building & Grounds - Act of 1965		(20.00)	
State Building & Grounds - Act of 1969		(11.08)	
State Prison - Act of 1969		(78.50)	
Northern Nevada Community College - Act of 1971		(80.00)	(11,118.46)
<u>ACRES AVAILABLE FOR SALE</u>			<u>2,622,529.91</u>
<u>SALE OF LANDS AND LAND CONTRACTS REMAINING</u>			
Acres Sold & Patented as of March 31, 1976		(2,609,591.91)	
Land Contracts of Sale as of March 31, 1976		(12,938.00)	
<u>NUMBER OF ACRES OF OPEN STATE LANDS. MARCH 31, 1976</u>			<u>2,976.55</u>

Table 2

STATE PERMANENT SCHOOL FUND
OPEN LANDS AT MARCH 31, 1976

<u>COUNTY</u>	<u>ACRES</u>
Clark	200
Elko	40
Lyon	80
Nye	440
Carson City	400
Washoe	<u>1,816.55</u>
TOTAL	2,976.55

Table 3

PERMANENT SCHOOL FUND
STATEMENT OF FINANCIAL CONDITION
MARCH 26, 1976

ASSETS

CASH WITH STATE TREASURER	\$ 2,671,492.54*
INVESTMENTS	
Par Value	\$ 8,109,000.00
Unamortized Premium	46,026.34
Unamortized Discount	(<u>39,518.62</u>)
Book Value of Investments	8,115,507.72
LAND CONTRACTS RECEIVABLE	22,846.70
UNENCUMBERED SCHOOL LAND	2,976.55**
DUE FROM DISTRIBUTIVE SCHOOL FUND	<u>115,661.60</u>
Total Assets	<u><u>10,928,485.11</u></u>
FUND BALANCE	<u><u>10,928,485.11</u></u>

* The cash with state treasurer is "pooled" and invested with the General Fund and the pro-rata interest earned credited to the distributive school fund.

** Arbitrarily assigned valuation of \$1.00 per acre.

revenue sources to the fund scattered throughout NRS. Table 4 (page 11) lists the various revenue sources and the NRS reference.

Now that nearly all of the donated lands have been disposed of and paid for, the major revenue source to the permanent school fund are the fines collected under the penal laws of the state--primarily justice's court fines and to a much smaller extent district court fines. Tables 5 and 6 (pages 12 and 13) display the remittances from justices' courts and district courts to the permanent school fund from fiscal 1970 to 1975.

As previously discussed, earnings from permanent school fund investments are deposited to the distributive school fund. Table 7 (page 14) displays the deposits to the distributive school fund from the permanent school fund for fiscal years 1972-75.

IV. PROBLEMS DISCUSSED IN AUDIT REPORT

The audit report discussed a number of problems in the operations and activities of the permanent school fund. Several of these have been remedied by the responsible officials since the report was presented. Two major problems, one concerning the appropriate party to administer the fund and one concerning the penal fines, remain.

The audit found, "a major problem confronting prudent administration of the Fund is the fragmented assignments of responsibility made by the Nevada Revised Statutes."³ The audit listed the following "parties" with duties to the permanent school fund:

1. Officials of the justices' courts.
2. Officials of the district courts.
3. County treasurers.
4. County auditors.
5. State attorney general.
6. State controller.
7. State treasurer.

8. State board of education.
9. State board of examiners.
10. State board of finance.
11. Director, department of conservation and natural resources.
12. Superintendent of public instruction.

The fragmented assignments of responsibility has resulted in general neglect of the Statutes pertaining to the Fund which in turn has led to:

1. Violations of Statutes.
2. Conflicting Statutes.
3. Dated Statutes.

It is imperative that a single entity be given the responsibility and authority to administer the Fund.⁴

A second remaining major problem concerns misunderstanding and confusion on the remittance of penal fines. The audit reviewed several counties and found at least five different criteria to determine what court collections are remitted to the state permanent school fund. Some courts send all fines and forfeitures. Some send all fines but no forfeitures. Some send only fines resulting from violations cited under NRS but not municipal or county ordinance violations. At least one court has not sent anything to the state permanent school fund for a number of years. The audit concluded, "If all were remitting on the same basis, the amount received each year could be significantly increased or decreased depending upon which county's system was used."⁵

Legal staff to the subcommittee examined the penal fines aspect and is of the opinion that the courts need not submit forfeitures since these are legally distinct from fines. Also, the legislative counsel is of the opinion that the counties may retain moneys collected for violations of properly enacted county ordinances which are within the scope of authority granted by the legislature.⁶

A.C.R. 84, 1975, directed the legislative commission to study the systems of court funding and disposition of court revenues. The resolution of the problems with penal fines should be considered in light of the findings and recommendations of the A.C.R. 84 subcommittee.

Table 4

POTENTIAL REVENUE SOURCES TO THE
STATE PERMANENT SCHOOL FUND

<u>Revenue Source</u>	<u>NRS Reference</u>
1. Surplus on sale of unclaimed freight to pay checks of common carriers and warehousemen	108.430
2. Surplus on sale of property to pay charges of bailees for hire	108.460
3. Escheated estates	154.140*
4. Fees of the State Land Registrar	321.065
5. All moneys accruing to the State of Nevada from the sale of lands heretofore given or bequeathed, or that may hereafter be given or bequeathed, for public school purposes	387.010
6. All fines collected under the penal laws of the state	387.010
7. All estates which may escheat to the state	387.010*
8. Portion of gross receipts from toll roads and bridges	406.060
9. Fines imposed by courts-martial	412.086
10. Fines resulting from suits on excavations	455.050
11. All fines and penalties for violations of the Unemployment Compensation Act laws	612.585
12. Penalties imposed on banks for failure to make certain reports	665.115

* Revenue source referenced by two statutes.

Table 5

STATE PERMANENT SCHOOL FUND
JUSTICE'S COURT FINES REMITTED BY COUNTY
FISCAL YEARS 1970-1975

<u>County</u>	<u>Fiscal Year</u> <u>1969-70</u>	<u>Fiscal Year</u> <u>1970-71</u>	<u>Fiscal Year</u> <u>1971-72</u>	<u>Fiscal Year</u> <u>1972-73</u>	<u>Fiscal Year</u> <u>1973-74</u>	<u>Fiscal Year</u> <u>1974-75</u>
Churchill	\$ 6,330	\$ 15,780	\$ 11,930	\$ 9,660	\$ 8,560	\$ 11,380
Clark	120,310	108,130	117,200	66,050	117,730	144,920
Douglas	12,900	12,670	18,360	20,980	32,630	53,393
Elko	37,880	40,640	31,700	47,560	58,930	66,704
Esmeralda	1,010	690	1,360	900	1,500	825
Eureka	310	1,250	1,630	1,500	3,120	2,680
Humboldt	3,210	2,000	850	1,540	820	2,350
Lander	300	--	--	--	--	--
Lincoln	5,320	4,580	2,260	1,620	1,800	5,207
Lyon	8,950	10,820	9,550	16,310	21,310	24,745
Mineral	10,340	9,060	10,920	18,660	23,150	12,095
Nye	8,120	7,220	4,170	4,290	5,970	8,081
Ormsby (Carson City)	8,860	12,200	10,040	15,620	17,250	14,808
Pershing	4,090	6,560	4,890	6,490	9,300	21,256
Storey	1,460	570	980	470	650	1,221
Washoe	111,490	162,540	148,940	139,720	170,590	183,857
White Pine	13,660	15,160	13,890	14,060	18,600	14,392
Other (State Parole Board)	--	--	--	150	--	--
Totals	\$ 354,540	\$ 409,870	\$ 388,670	\$ 365,580	\$ 491,910	\$ 567,914

Table 6

STATE PERMANENT SCHOOL FUND
DISTRICT COURT FINES REMITTED BY COUNTY
FISCAL YEARS 1970-1975

<u>County</u>	<u>Fiscal Year</u> <u>1969-70</u>	<u>Fiscal Year</u> <u>1970-71</u>	<u>Fiscal Year</u> <u>1971-72</u>	<u>Fiscal Year</u> <u>1972-73</u>	<u>Fiscal Year</u> <u>1973-74</u>	<u>Fiscal Year</u> <u>1974-75</u>
Churchill	\$ 500	\$ 50	\$ 20	\$ 200	\$ 10	\$ 2,160
Clark	230	350	3,170	2,680	1,930	7,517
Douglas	2,530	70	580	500	50	1,300
Elko	1,210	1,030	770	3,050	6,150	6,328
Esmeralda	--	--	--	--	--	300
Eureka	160	--	--	--	--	--
Humboldt	540	200	2,180	250	1,000	1,450
Lander	--	160	--	--	--	301
Lincoln	--	380	750	--	--	898
Lyon	--	--	2,470	--	1,000	300
Mineral	2,010	300	520	1,140	210	829
Nye	100	190	50	130	100	427
Ormsby (Carson City)	510	1,000	300	2,010	110	100
Pershing	420	700	--	150	--	--
Storey	--	--	--	--	--	225
Washoe	2,310	1,000	3,120	5,590	3,770	10,470
White Pine	50	--	--	--	450	--
Totals	<u>\$ 10,570</u>	<u>\$ 5,430</u>	<u>\$ 13,930</u>	<u>\$ 15,700</u>	<u>\$ 14,780</u>	<u>\$ 32,605</u>

Table 7

STATE PERMANENT SCHOOL FUND INVESTMENT EARNINGS
DEPOSITED TO THE DISTRIBUTIVE SCHOOL FUND
FISCAL YEARS 1972-1975

<u>Fiscal Year</u>	<u>Deposits</u>
1972	\$491,762
1973	\$586,352
1974	\$627,578
1975	\$755,905

V. SUMMARY OF FINDINGS

The state permanent school fund was developed as a result of federal lands donated to Nevada with the stipulation that the proceeds from the sale of these lands be used for the benefit of public schools. The fund is an irreducible fund with income invested by the state board of finance and earnings deposited to the distributive school fund. Of 2.6 million acres donated to Nevada, there remains 2,976 acres open. Since 1965, the legislature has placed a moratorium on the sale, lease or exchange of open lands. The land contracts of sale outstanding are small (13,000 acres representing \$22,846). The fund balance is approximately \$11 million and the current major source of income is fines remitted from Nevada justices' courts--\$568,000 in fiscal 1975. Investment earnings to the distributive school fund in fiscal 1975 were \$755,000. The administration of the fund is somewhat fragmented, some statutes relating to fund administration are obsolete and the several counties are not using a consistent criterion in the remittance of penal fines.

VI. RECOMMENDATIONS

1. The basic operation of the permanent school fund remains as established in the constitution and defined in NRS. That is, the fund remains irreducible with corpus earnings deposited to the distributive school fund.

The state board of finance will invest the principal, the treasurer will hold the securities and the controller will account for the fund transactions. The state land registrar will maintain the records on open lands and land contracts outstanding. These procedures are typical for the operation of all state funds and the officials are qualified and staffed to maintain their responsibilities.

2. Amend section 3 of article 11, of the Nevada constitution, (a) to delete escheated estates and fines collected under penal laws of the state as permanent school fund income and (b) to delete the references to agricultural loans. By removing the penal fines provisions from the constitution, the legislature will have the flexibility to determine the appropriate remittance procedure and modern distribution of the penal fines. For example, they may remain in the permanent school fund, be remitted directly to the distributive school fund, be remitted to the states' general fund

or be retained by the court. This determination can be made in the light of the recommendations of the A.C.R. 84, 1975, subcommittee studying court funding and the disposition of court revenues. The constitutional provisions relating to the agricultural loans appear obsolete. Recommendations 1 and 2 will honor the federal stipulations on donated lands, remove the obsolete provisions for agricultural loans and provide flexibility in dealing with remittances from penal fines. If the amendment is successful the appropriate statutory changes can be introduced at subsequent sessions to further clarify the administration of the fund.

3. Amend NRS 387.013 to delete the requirement that the board of examiners be physically present when the state treasurer clips the coupons on permanent school fund securities. The requirement is not followed in practice and appears obsolete.

APPENDIX A

EXCERPTS FROM STATE OF NEVADA

PERMANENT SCHOOL FUND AUDIT

REPORT FISCAL YEAR ENDED

JUNE 30, 1974

LEGISLATIVE AUDITOR, 1975

1. "Environment of Operations".....pages 15.14 and 15.15
2. "Legislative Study".....page 15.21

STATE OF NEVADA
STATE PERMANENT SCHOOL FUND

ENVIRONMENT OF OPERATIONS

We were unable to establish a comprehensive and clear presentation of all the elements effecting the State Permanent School Fund. Two important, but missing elements are:

1. A clear definition of "all the fines collected under the penal laws of the State".
2. Determination of the appropriate party to administer the Fund.

CLEAR DEFINITION OF FINES COLLECTED

A detailed review of the following sources failed to provide a clear definition of "all the fines collected under the penal laws of the State".

1. Constitution of the State of Nevada
2. Statutes of Nevada
3. Nevada Revised Statutes
4. Legal interpretations made by the Attorney General and the Legislative Counsel.
5. Discussions with officials of State and County governments.

The lack of a clear definition has resulted in general confusion of the amounts due the Fund from the Courts and other sources. A survey taken of several counties disclosed at least five different definitions used to determine the amount due to the Fund. This results in inequities among the counties remitting to the State. We included the State Controller's summary statements on pages 15.10 and 15.11 to demonstrate the amounts remitted for the fiscal years ended June 30, 1969 through 1974. If all counties were remitting on the same basis, the amount received each year could be significantly increased or decreased depending upon which county's system was used.

STATE OF NEVADA
STATE PERMANENT SCHOOL FUND

ENVIRONMENT OF OPERATIONS
(continued)

APPROPRIATE PARTY TO ADMINISTER THE FUND

A major problem confronting prudent administration of the Fund is the fragmented assignments of responsibility made by the Nevada Revised Statutes. A partial list of the parties having duties involved with the State Permanent School Fund includes:

1. Officials of the Justice Courts
2. Officials of the District Courts
3. County Treasurers
4. County Auditors
5. State Attorney General
6. State Controller
7. State Treasurer
8. State Board of Education
9. State Board of Examiners
10. State Board of Finance
11. Director, Department of Conservation & Natural Resources
12. Superintendent of Public Instruction

The fragmented assignments of responsibility has resulted in general neglect of the Statutes pertaining to the Fund which in turn has lead to:

1. Violations of Statutes
2. Conflicting Statutes
3. Dated Statutes

It is imperative that a single entity be given the responsibility and authority to administer the Fund.

STATE OF NEVADA
STATE PERMANENT SCHOOL FUND

LEGISLATIVE STUDY

Due to the number of parties involved in the administration of the Permanent School Fund and the varied interest of those parties, solutions to the problems set forth in this report are not immediately available.

Accordingly, a detailed review of the purpose of the Fund is necessary in order to properly determine:

1. The revenues of the Fund
2. The beneficiaries of the Fund's income
3. The proper administrator of the Fund

This requires making decisions regarding the Fund's purpose and goals. Decisions of this nature are properly the prerogative of the Legislature.

RECOMMENDATION

We recommend that the Legislature conduct an indepth study of the State Permanent School Fund to determine:

1. The purpose of the Fund
2. The necessary statutory amendments to be made to achieve the purpose

APPENDIX B

NRS 355.010 et seq.

NRS 387.010 et seq.

STATE BOARD OF FINANCE

355.010 State board of finance: Creation; members.

1. The state board of finance is hereby created.
2. The state board of finance shall consist of the governor, the state controller, the state treasurer and two other members to be appointed by the governor for terms of 4 years each.
3. At least one of the members appointed by the governor shall be actively engaged in commercial banking in this state.
[Part 1:212:1917; A 1919, 284; 1919 RL p. 3146; NCL § 6962] + [Part 1:93:1919; 1919 RL p. 3109; NCL § 6956] + [Part 2:93:1919; 1919 RL p. 3109; NCL § 6957]—(NRS A 1969, 1200)

355.020 Appointive members: Compensation and expenses. The two members appointed by the governor shall each receive \$40 per day for their services while actually engaged in the performance of their duties as members of the board, and shall also be entitled to traveling and necessary expenses incurred in the performance of such duties.

[Part 2:93:1919; 1919 RL p. 3109; NCL § 6957]—(NRS A 1969, 1200; 1975, 298)

355.030 Legal advisor; financial secretary; clerical help.

1. The attorney general shall be the legal advisor of the state board of finance.
2. The state board of finance may employ a financial secretary and such clerical help as may be necessary or proper.
[3:93:1919; 1919 RL p. 3110; NCL § 6958] + [4:93:1919; 1919 RL p. 3111; NCL § 6959]—(NRS A 1969, 1201)

355.040 Records. The state board of finance shall keep a permanent record of all its meetings, in which record shall be:

1. Recorded the aye and nay vote of the members of the board upon all questions presented to the board.
2. Kept all opinions of the attorney general as required by the provisions of this chapter.

[3:212:1917; 1919 RL p. 3147; NCL § 6964]

INVESTMENTS AND LOANS FROM STATE PERMANENT SCHOOL FUND

355.050 State board of finance charged with investments of moneys in state permanent school fund. The state board of finance shall have charge of all the investments of moneys and the sale of all securities of the state permanent school fund.

[Part 1:212:1917; A 1919, 284; 1919 RL p. 3146; NCL § 6962]

355.060 Bonds, loans in which state permanent school fund may be invested; reports of state controller.

1. Quarterly, until July 1, 1970, the state controller shall notify the state board of finance of the amount of uninvested money in the state permanent school fund. On and after July 1, 1970, the state controller shall notify the state board of finance monthly of the amount of uninvested money in the state permanent school fund.

2. Whenever there is a sufficient amount of money for investment in the state permanent school fund, the board shall proceed to negotiate for the investment of the same in:

(a) United States bonds; or

(b) Bonds issued under the authority of the United States; or

(c) Bonds of this state or of other states; or

(d) Bonds of any county of the State of Nevada; or

(e) Farm mortgage loans fully insured and guaranteed by the Farmers Home Administration of the United States Department of Agriculture; or

(f) Loans at a rate of interest of not less than 6 percent per annum, secured by mortgage on agricultural lands in this state of not less than three times the value of the amount loaned, exclusive of perishable improvements, of unexceptional title and free from all encumbrances.

[Part 2:212:1917; A 1925, 221; 1919 RL p. 3146; NCL § 6963] + [2a:212:1917; added 1953, 304]—(NRS A 1969, 822)

355.070 Determinations to be made before investment; opinion of attorney general.

1. The state board of finance shall:

(a) Make due and diligent inquiry as to the financial standing and responsibility of the state or states, county or counties, or person or persons in whose bonds or securities on agricultural lands it proposes to invest.

(b) Require the attorney general to:

(1) Give his written legal opinion as to the validity of any act or acts of any state or county under which such bonds or securities are issued and authorized and in which the state board of finance contemplates investment.

(2) Examine and pass upon and give his written opinion upon the title and the abstract of title of all agricultural land on which the state contemplates taking mortgages.

2. If the state board of finance is satisfied as to the financial standing and responsibility of the state or states or county or counties whose bonds or securities it proposes to purchase, or is satisfied of the financial standing and responsibility of the person or persons or corporation or corporations whose mortgages on agricultural land are offered to the state, and the attorney general gives his written opinion that the act or acts under which the bonds or securities are issued are valid and that the issues were duly and regularly made, or approves the abstract of title of the agricultural land proposed to be mortgaged, the board may approve such investment. By a majority vote, the board shall order the

state controller to draw his warrant in favor of the state treasurer for the amount to be invested. The state controller shall thereupon draw his warrant as directed, and the state treasurer shall complete the purchase of the securities authorized by the board.

[Part 2:212:1917; A 1925, 221; 1919 RL p. 3146; NCL § 6963]

355.080 Restrictions on investments in county bonds. No part of the state permanent school fund shall be invested in the bonds of any county whose entire bonded indebtedness for all purposes shall exceed 10 percent of its assessed valuation; and the amount of bonds of any county purchased or invested in by the state board of finance shall not, in the aggregate, exceed 4 percent of the assessed valuation of any county.

[5:212:1917; A 1928, 30; 1947, 267; 1943 NCL § 6966]

355.090 Conversion of bonds, securities into cash; reinvestment. The state board of finance is authorized to convert into cash any of the bonds or securities in which any part of the state permanent school fund is now or at any time hereafter may be invested by selling the same in the open market to the highest bidder or bidders, the proceeds thereof to be placed by the state treasurer in the state permanent school fund to be reinvested as provided in NRS 355.060 and 355.070.

[4:212:1917; 1919 RL p. 3147; NCL § 6965]

355.100 Loans on agricultural lands: Abstract; appraisal.

1. Any person desiring to obtain a loan from the state permanent school fund on agricultural land shall:

(a) Make written application to the state board of finance; and

(b) At the same time, furnish to the state board of finance a full and complete abstract of title to the property offered as security for the loan.

2. If the abstract is approved by the attorney general and it appears that the person offering such mortgage has an exceptional title free from all encumbrances, the state board of finance forthwith shall appoint an appraiser or appraisers to view the land and improvements thereon and make a report to the state board of finance of the value thereof. The person desiring to obtain the loan shall pay the cost of the appraiser or appraisers which may be incurred, not to exceed \$5 per day and expenses.

[6:212:1917; 1919 RL p. 3147; NCL § 6967] + [8:212:1917; 1919 RL p. 3147; NCL § 6969]

355.110 Note and mortgage: Execution and recording; provisions.

1. If the abstract is approved by the attorney general and the title is in accordance with the requirements of NRS 355.100, and the written report of the appraiser or appraisers is satisfactory to the state board of finance, the loan shall be made. The person obtaining the loan shall execute a note payable to the State of Nevada for the state permanent school fund for the amount thereof, and shall execute as security for the payment of the note a mortgage upon the lands to be given as security in a form and manner to be approved by the attorney general.

The mortgage shall be recorded as other mortgages of real property are recorded.

2. Every loan made upon a mortgage on agricultural land shall be payable in not to exceed 10 years; and provision shall be made for partial payments annually or semiannually to the state treasurer, but no payments shall be made in an amount less than \$100 and interest accruing. All payments of interest and payments upon principal shall be made semiannually on June 1 and December 1 of each year.

[7:212:1917; 1919 RL p. 3147; NCL § 6968]

OTHER AUTHORIZED STATE INVESTMENTS AND LOANS

355.120 Investments in farm mortgage loans, farm loan bonds, other obligations issued by federal land banks and banks for cooperatives; limitations. The state board of finance may invest any available moneys in the state treasury, other than those in the state permanent school fund and those in the state insurance fund, in farm mortgage loans fully insured and guaranteed by the Farmers Home Administration of the United States Department of Agriculture, farm loan bonds, consolidated farm loan bonds, debentures, consolidated debentures and other obligations issued by federal land banks and federal intermediate credit banks under the authority of the Federal Farm Loan Act, 12 U.S.C. §§ 636 to 1012, inclusive, and §§ 1021 to 1129, inclusive, as now or hereafter amended, and the Farm Credit Act of 1971, 12 U.S.C. §§ 2001 to 2259, inclusive, as now or hereafter amended, and bonds, debentures, consolidated debentures and other obligations issued by banks for cooperatives under the authority of the Farm Credit Act of 1933, 12 U.S.C. §§ 1131 to 1138e, inclusive, as now or hereafter amended, and the Farm Credit Act of 1971, 12 U.S.C. §§ 2001 to 2259, inclusive, as now or hereafter amended.

[5a:93:1919; added 1953, 303]—(NRS A 1959, 34; 1973, 1089)

355.130 Loans to local governments.

1. By unanimous vote of its members and with the approval of the state board of examiners, the state board of finance is empowered to lend any available moneys in the state treasury, other than those in the state permanent school fund and those in the state insurance fund, to local governments situated within the boundaries of the State of Nevada. Such loans shall be made only to local governments that have observed the regulations and followed the procedure for obtaining short-term financing set forth in chapter 354 of NRS. Such loans shall be made for a period of not longer than 5 years and shall bear interest at the rate of not to exceed 9 percent per annum.

2. In making loans to local governments, the state board of finance shall follow the procedure for making other loans set forth in this chapter.

[5:93:1919; 1919 RL p. 3111; NCL § 6960]—(NRS A 1959, 422; 1965, 745; 1969, 802; 1973, 16; 1975, 870)

STATE SCHOOL FUNDS

387.010 State permanent school fund: Composition; investment.

1. The state permanent school fund, consisting of:
 - (a) All moneys accruing to the State of Nevada from the sale of lands heretofore given or bequeathed, or that may hereafter be given or bequeathed, for public school purposes; and
 - (b) All fines collected under the penal laws of the state; and
 - (c) All estates which may escheat to the state,shall be and the same hereby is solemnly pledged for educational purposes, and shall not be transferred to any other fund for other uses.
2. The state permanent school fund shall constitute an irreducible and indivisible fund which shall be invested by the state board of finance as provided by law.

[87:32:1956]

387.013 State permanent school fund: Quarterly financial reports by state controller. On and after July 1, 1970, the state controller shall, each quarter, prepare a complete financial report of the state permanent school fund. A copy of this report shall be submitted to the state board of finance and to the research director of the legislative counsel bureau.

(Added to NRS by 1969, 823; A 1973, 1668)

387.015 State treasurer to be custodian of securities; liability on bond. The state treasurer shall be the legal custodian of all securities in which the moneys of the state permanent school fund are or may hereafter be invested. He shall be liable on his official bond for their safekeeping.

[88:32:1956]

387.020 Interest on securities; payment into state distributive school fund. When the interest on any securities belonging to the state permanent school fund is due, the state treasurer shall:

1. Upon the warrant of the state controller and in the presence of a majority of the members of the state board of examiners, cut off and pay the coupons on such securities.
2. Place the money so paid into the state distributive school fund.
3. Keep a correct account thereof in his books.

[89:32:1956]

387.030 State distributive school fund: Composition; distribution. All moneys derived from interest on the state permanent school fund, together with all moneys derived from other sources provided by law, shall:

1. Be placed in and constitute a fund to be known as the state distributive school fund; and

APPENDIX C

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU

LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710



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April 21, 1976

Assemblyman Donald R. Mello
2590 Oppio Street
Sparks, Nevada 89431

Dear Mr. Mello:

In conjunction with your subcommittee studying the problems relating to the state permanent school fund (S.C.R. 37), you have requested the opinion of the Legislative Counsel concerning:

1. Whether Nevada counties may retain moneys collected for violations of county ordinances and not be in violation of section 3 of article 11 of the Nevada constitution; and
2. Whether a county may retain fines collected under an ordinance which essentially makes all offenses which violate the penal laws of the State of Nevada offenses against the county?

Section 3 of article 11 of the Nevada constitution provides in relevant part:

* * * all fines collected under the penal laws of the state * * * shall be and the same are hereby solemnly pledged for educational purposes, and shall not be transferred to any other funds for other uses.
(Emphasis added.)

In the case of State ex rel. Rosenstock v. Swift, 11 Nev. 128 (1876), the Nevada Supreme Court held that the foregoing provision of the constitution referred only to "such fines only as are collected under the penal laws prescribed by the law-making power of the state, and cannot, by any legal or constitutional rule of construction, extend to penalties incurred for violation of the ordinances of municipal corporations."

Assemblyman Donald R. Mello
April 21, 1976
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Although the high court did not specifically apply the holding to fines collected under county ordinances, probably due to the fact boards of county commissioners were not vested with the power to enact ordinances at the date of the decision, the clear implication of the decision is that a fine collected under an ordinance properly enacted by and within the statutory authority of a board of county commissioners would not fall within the purview of "fines collected under the penal laws of the state," and thus could be retained by the county. Obviously, all fines collected by a county for violations of NRS provisions should be paid into the state permanent school fund.

The only limitations on the authority of a board of county commissioners to enact ordinances is that it can only exercise such powers as are expressly granted it by the legislature, or such powers as are necessarily incidental for the purpose of carrying out the express powers so granted. See Waitz v. Ormsby County, 1 Nev. 370 (1865); State of Nevada v. Commissioners of Washoe County, 22 Nev. 14 (1894); State ex rel. King v. Lathrop, 55 Nev. 405 (1934) as representative of the Nevada Supreme Court on this point.

The powers granted the board of county commissioners in chapter 244 of NRS (County Government) include, but are not limited to, the power to enact police, sanitary, vagrancy and traffic ordinances to apply throughout the county or to limited areas within the county (NRS 244.357). Although NRS 244.357 reflects a very broad grant of power to the counties by the legislature, it certainly is not so broad that it would permit a board of county commissioners to enact an ordinance which declares all offenses which violate the penal laws of Nevada are offenses against the county. Thus, a "blanket" ordinance would seem to exceed the power granted to the counties by the legislature.

In our opinion, fines collected for violations of ordinances which are adopted in accordance with the provisions of NRS 244.095 to 244.110, inclusive, which define the subject matter

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regulated or conduct proscribed and do not exceed the statutory authority delegated by the legislature, may be legally paid into the funds of the county issuing the citation. This result is consistent with the decision of the Nevada Supreme Court in State ex rel. Rosenstock v. Swift, 11 Nev. 128 (1876), discussed previously.

Very truly yours,

FRANK W. DAYKIN
Legislative Counsel

By A. Stanyan Peck
A. Stanyan Peck
Deputy Legislative Counsel

ASP:mjf

APPENDIX D

SUGGESTED LEGISLATION

SUMMARY--Deletes requirement of presence of members of state board of examiners when coupons are clipped for state permanent school fund. Fiscal Note: No. (BDR 34-24)

AN ACT relating to the payment of interest on securities belonging to the state permanent school fund; deleting the requirement for the presence of members of the state board of examiners.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND
ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 387.020 is hereby amended to read as follows:

387.020 When the interest on any securities belonging to the state permanent school fund is due, the state treasurer shall:

1. Upon the warrant of the state controller , [and in the presence of a majority of the members of the state board of examiners,] cut off and pay the coupons on such securities.
2. Place the money so paid into the state distributive school fund.
3. Keep a correct account thereof in his books.

SUMMARY--Proposes constitutional amendment to repeal certain pledges to state permanent school fund and to limit permissible investments of that fund. (BDR C-23)

JOINT RESOLUTION--Proposing to amend section 3 of article 11 of the constitution of the State of Nevada relating to sources of revenue pledged for educational purposes by deleting estates which escheat to the state and fines collected under the penal laws of the state and by eliminating loans on agricultural lands as a permissible form of investment of such revenues.

RESOLVED BY THE AND OF THE STATE OF NEVADA,
JOINTLY, That section 3 of article 11 of the constitution of the State of Nevada be amended to read as follows:

[Section] Sec. 3. All lands, including the sixteenth and thirty-sixth sections in any township donated for the benefit of public schools in the act of the Thirty-eighth Congress, to enable the people of Nevada Territory to form a state government, the thirty thousand acres of public lands granted by an act of Congress, approved July second, A.D. eighteen hundred and sixty-two, for each senator and representative in Congress, and all proceeds of lands that have been or may hereafter be granted or appropriated by the United States to this state, and also the five hundred thousand acres of land granted to the new states under the act of Congress distributing the proceeds of the public lands among the several states of the union, approved

A.D. eighteen hundred and forty-one; provided, that Congress make provision for or authorize such diversion to be made for the purpose herein contained; [all estates that may escheat to the state;] all of such per centum as may be granted by Congress on the sale of lands; [all fines collected under the penal laws of the state;] all property given or bequeathed to the state for educational purposes, and all proceeds derived from any or all of said sources shall be and the same are hereby solemnly pledged for educational purposes, and shall not be transferred to any other funds for other uses; and the interest thereon shall, from time to time, be apportioned among the several counties as the legislature may provide by law; and the legislature shall provide for the sale of floating land warrants to cover the aforesaid lands, and for the investment of all proceeds derived from any of the above-mentioned sources, in United States bonds, or the bonds of this state, or the bonds of other states of the union, or the bonds of any county in the State of Nevada; [or in loans at a rate of interest of not less than six per cent per annum, secured by mortgage on agricultural lands in this state of not less than three times the value of the amount loaned, exclusive of perishable improvements, of unexceptional title and free from all encumbrances, said loans to be under such

further restrictions and regulations as may be provided by law;] provided, that the interest only of the aforesaid proceeds shall be used for educational purposes, and any surplus interest shall be added to the principal sum; and provided further, that such portion of said interest as may be necessary may be appropriated for the support of the state university.

Footnotes

- 1 Several of the deficiencies cited in the audit report were administratively corrected by the responsible officials as a result of their disclosure in the audit. Other problems however, can only be corrected by constitutional or statutory change.
- 2 NRS 387.010 et seq. and NRS 355.050 et seq. are contained in Appendix B to this report.
- 3 Audit, p. 15.15.
- 4 Ibid.
- 5 Audit, p. 15.14.
- 6 See Appendix C for the text of an opinion by the legislative counsel on penal fines.