

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

June 9, 2015

Thomas D. Lee, Esq.
Lee & Lee, P.A.
Post Office Box 370
Forest, MS 39074

Re: Authority of Secretary of State Regarding Sixteenth Section Contracts

Dear Mr. Lee:

Attorney General Jim Hood has received your request for an official opinion of this office and assigned it to me for research and reply.

Facts and Issues Presented

Your letter states the position of the Forest Municipal School District's Board of Trustees ("School Board") with regard to the School Board's authority in leasing of sixteenth section school lands and asks, "Does the Secretary of State's Office have legal authority to reject school land contracts that meet all of the statutory requirements below?"¹ We interpret your inquiry relative to your client to be whether the school board is required to obtain the prior approval of the Secretary of State on sixteenth section leases. In order to address the authority of the school board regarding sixteenth section leases, it is also necessary that we address the authority of the Secretary of State.

Brief Response

The school board is not required to obtain prior approval from the Secretary of State on sixteenth section leases. However, prior review by the Secretary of State may help the board avoid inadvertent mistakes, clouds on titles, potential litigation and the like.

¹ Your letter includes only paragraph (a) of Miss. Code Ann. Section 29-3-1. There are various other code provisions that relate to the validity of a lease. We assume your reference to Section 29-3-1 is intended to include the entire code chapter dealing with sixteenth section land and conveyances. Additionally, the "re" line and another paragraph in your letter states the subject/issue as regarding the authority of the Secretary of State to sign sixteenth section leases. This opinion will discuss both issues.

Response and Legal Analysis

Your letter states that the School Board would like a "clear ruling" as to the "legal authority" of the Secretary of State's Office as opposed to the authority of the school board. Our official opinions are for the purpose of providing guidance and limited protection to public officials who propose to take prospective action. Miss. Code Ann. Section 7-5-25, (as amended). It is beyond the scope of an official opinion to attempt to explore every possible requirement contained in applicable statutes to all types of sixteenth section transactions.

As a matter of historical fact, it seems beyond dispute that primary authority over leasing and management of sixteenth section lands in this State has been vested in local boards and officials. The United States Supreme Court, after discussing the general history of sixteenth section lands in Mississippi, has stated:

From these historical circumstances, the current practice in Mississippi with regard to Sixteenth Section lands has evolved directly. Under state law, these lands, which are still apparently held in large part by the State, "constitute property held in trust for the benefit of the public schools and must be treated as such." Miss. Code Ann. § 29-3-1(1) (Supp. 1985). ***In providing for the operation of these trusts, the legislature has retained the historical tie of these lands to particular townships in terms of both trust administration and beneficiary status. Thus, the State has delegated the management of this property to local school boards throughout the State:*** Where Sixteenth Section lands lie within a school district or where Lieu Lands were originally appropriated for a township that lies within a school district, the board of education of that district has "control and jurisdiction of said school trust lands and of all funds arising from any disposition thereof heretofore or hereafter made." Ibid. In this respect, the board of education is "under the general supervision of the state land commissioner." Ibid. . . . Further, ***the State has, by statute, set forth certain prescriptions for the management of these lands.*** See generally Miss. Code Ann. §§ 29-3-1 to 29-3-135 (Supp. 1985).

Papasan v. Allain, 106 S.Ct. 2932, 2937 (U.S. 1986)(emphasis added). In this same vein, the Mississippi Court has stated:

The State of Mississippi has historically managed its sixteenth section lands through local authorities, originally through the respective boards of supervisors, and more recently through the school boards. This Court has described the duties of such managing agents in *Humble Oil & Refining Co. v. State*, 206 Miss. 847, 41 So.2d 26 (1949). "As such Trustees they were required, like all other fiduciaries, to exercise a higher degree of care with reference to the administration of their trust than in the management of their own individual personal

business, and furthermore, even than in attending to the general run of the county's business." 206 Miss. at 854, 41 So.2d at 27. As record titleholder, the State of Mississippi, through its managing or supervising agent, the Board of Education, has standing to bring or defend actions in federal or state courts respecting these trust lands, the same as any common-law trustee.

Hill v. Thompson, 564 So.2d 1, 5-6 (Miss. 1989)(emphasis added).

The conflict between some local school boards and the Secretary of State as to the leasing and control of sixteenth section lands apparently arises from differing interpretations as to which entity serves as trustee for the school lands and what powers flow to the "trustee" over sixteenth section lands. The Secretary of State takes the position that by virtue of his general "supervisory power" granted under Section 29-1-3 over sixteenth section lands and the "general supervision" under Section 29-3-1 given to the land commissioner² over local boards, he has overriding authority to approve leases as to specific terms, specific amounts and specific durations.³ Additionally, the Secretary of State asserts that his designation as "trustee" of all public lands requires that he have such authority in order to fulfill his obligations as a trustee.

With regard to the issue of which public officials or bodies serves as trustee, this question, to some degree, misses the mark of how any public lands are managed and especially in the case of sixteenth section lands. Sixteenth section lands are held in the name of the State. Thus, the "State" is the trustee, and the State can determine which entity or entities are vested with authority to ensure that the trust is maintained. Section 211 of the Mississippi Constitution of 1890 gives the Legislature the authority, within the constraints set forth therein, the authority to determine which duties are vested and which entities have such vested power. With regard to public lands in general, this State has historically had two statutory schemes or chapters dealing with the different types of public lands. Section 29-1-1, *et. seq.*, is entitled "Public Lands" and generally does not govern sixteenth section lands. This chapter gives extensive authority to the land commissioner and his statutorily designated replacement, the Secretary of State. Under Section 29-1-1, *et. seq.*, although the Secretary/Land Commissioner is given most authority, the Governor⁴ has some authority, and the Legislature specifically reserved unto itself the right to approve certain sales of public

² Miss. Code Ann. Section 7-11-4 states that references to land commissioner shall mean the Secretary of State.

³ See MS AG Op., Finch (June 28, 1979)(noting that lands controlled by the land commissioner such as swamp lands, forfeited lands, etc. are to be distinguished from other public lands not controlled by the land commissioner.)

⁴ For example, the Secretary of State is authorized to lease lands "with the approval of the Governor. . ." Section 29-1-1(2)(a). Notably, there is no similar provision in Section 29-3-1, *et. seq.*, giving the Secretary of State similar authority over sixteenth section land.

lands.⁵

Section 29-3-1, *et. seq.*, is entitled "Sixteenth Section and Lieu Lands" and gives considerable authority to local boards of education. This chapter, likewise, places various responsibilities and duties on the land commissioner, the Secretary of State, local boards of supervisors, local superintendents of educations and even the Forestry Commission. With regard to this chapter, the Mississippi Supreme Court has stated that "the **responsibility** for the general supervision, management and control of 16th section lands **is not specifically fixed by statute solely in any particular public body or officer.**" *Tally v. Carter*, 318 So.2d 835, 836-37 (Miss. 1975). Cases have routinely characterized local boards as "trustees." Discussing a "school boards' management powers," the Mississippi Court has stated "the empowering statute does not detail the Board's specific authority, but creates a general charge that the lands be managed 'as trust property.'" *Turney v. Marion County Bd. of Educ.*, 481 So.2d 770, 777-78 (Miss. 1985). Continuing, the Court held that:

This direction necessarily assumes that the Board has authority to perform all actions necessary, lawful, and proper to perform its statutory duty. **The use of the phrase "as trust property" recognizes that the Board may exercise the general powers of a trustee with the same general restrictions and general liabilities of a trustee.**

Id. (emphasis added). See also, *Tally v. Board of Sup'rs of Smith County*, 323 So.2d 547, 549 -50 (Miss. 1975)(noting "Boards of Supervisors" positions "as trustees.") Section 29-3-1 is the general grant of authority and states, in relevant part:

Sixteenth section school lands, or lands granted in lieu thereof, constitute property held in trust for the benefit of the public schools and must be treated as such. The **board of education under the general supervision of the state land commissioner, shall have control and jurisdiction of said school trust lands** and of all funds arising from any disposition thereof heretofore or hereafter made. **It shall be the duty of the board of education to manage the school trust lands and all funds arising therefrom as trust property.** Accordingly, the board shall assure that adequate compensation is received for all uses of the trust lands, except for uses by the public schools.

The Supreme Court has held that "[t]he use of the phrase 'as trust property' recognizes that the Board may exercise the general powers of a trustee with the same general restrictions and general liabilities of a trustee." *Turney*, 481 at 777 -778 (Miss. 1985).

The Secretary of State has noted one case which states that he is the trustee for all public lands. In a case dealing with tidelands, the Supreme Court, in dicta agreed with this assertion. *Columbia Land Development, LLC v. Secretary of State*, 868 So.2d 1006,

⁵

See Miss. Code Section 29-1-1 (as amended).

550 HIGH STREET - POST OFFICE BOX 220 - JACKSON, MISSISSIPPI 39205-0220
TELEPHONE (601) 359-3680 - FACSIMILE (601) 359-5025

1011 (Miss. 2004). The language, however, specifically referred to authority granted under Section 29-1-1, which as noted, is generally inapplicable to sixteenth section lands. While the Supreme Court made this statement in a general sense, that statement cannot be read to overturn the Legislature's express statements made in other statutes. The Legislature granted "trustee" status to school boards by statute and also granted various specific duties including the leasing of school trust lands. Moreover, it is the Legislature that is constitutionally authorized to provide for the management of school trust lands and the division of those duties.

More generally discussing the management of sixteenth section lands, the *Turney* Court stated:

The **State, as trustee, may not divest itself of its duties.** However, the State, by statute, may vest in others the authority to do acts which the trustee cannot practicably be expected to perform. Restatement (Second) of Trusts § 171 (1959). The State, **as a matter of practical necessity, manages its sixteenth section trust property through local county boards of education.** As Miss. Code Ann. § 29-3-1 relates, "The board of education... shall have control and jurisdiction of said school trust lands and of all funds arising from any disposition thereof heretofore or hereafter made." The charge of the statute is that Boards of Education manage the school trust lands "as trust property" and "assure that adequate compensation is received." Even though the State has vested in the local boards of education certain management powers and duties, **the State at all times holds the fee as trustee and maintains the authority and responsibility to oversee the management of the trust and to assure that the trust is properly executed.**

Turney, 481 So.2d at 776 (Miss.1985)(emphasis added). Clearly, the sixteenth section statutes and cases interpreting them recognize local boards as trustees and give specific authority to such boards. Likewise, the Secretary of State (land commissioner), and local superintendents are given specific authority. Both local boards and the Secretary of State are given "trustee" type duties and responsibilities. However, we do not believe that, absent express statutory or case law to such effect, the Secretary of State is given veto authority over the acts of boards or other entities where authority to act is expressly granted to those other entities.

As previously stated, Section 29-3-1 places the "duty . . . to manage" sixteenth section land with the "school board." Approval of the rental value is by this same statute vested in the "board of supervisors" with express provisions to be followed in the event the board of supervisors "declines to approve the rental value." With regard to sales of sixteenth section land for "industrial parks" under Section 29-3-29, the statute requires the board of education to make certain findings and to forward the same to the board of supervisors for a "final" determination. Section 29-3-45 requires the board of education to enter into an agreement with the State Forestry Commission for the management of forest lands. Section 29-3-65 gives the boards of education authority to hire appraisers

and determine whether such amounts are reasonable. Section 29-3-69 states that the "board of education may lease school trust land" and places various requirements and restrictions on what the boards may or may not do and what they are required to do.

With regard to sixteenth section lands classified as other than agricultural land, the statute sets out a specific process which does not include the Secretary of State. The statute states:

The following procedure shall be followed for the leasing of sixteenth section school lands or lands granted in lieu thereof which are not classified as agricultural land:

(a) Any present leaseholder who desires to renew his lease, or any person who desires to lease sixteenth section or lieu lands, shall make application to the superintendent of education.

(b) ***Upon receipt of an application for the lease of such lands, the superintendent of education shall promptly give consideration to the application and he shall record his recommendation in writing and present it to the board of education at the next regular meeting of the board.***

(c) The board of education, at its meeting, shall consider the application and recommendation of the superintendent of education and may receive any other information which it considers bearing upon the approval of the application and lease of such land. ***Within thirty (30) days of the receipt of an application, the board shall act on the application and if such action is favorable, the board of education shall submit to the superintendent of education a suggested lease agreement.***

(d) ***The superintendent of education shall then present the lease to the board of supervisors of the county where such land is located. Within thirty (30) days of the receipt of the lease, the board of supervisors shall accept or reject the proposed rental amount.***

(e) ***If the board of supervisors accepts the lease as proposed by the board of education, the superintendent of education shall execute the lease to the applicant under the terms and conditions set forth in the lease.***

(f) If the board of supervisors refuses to accept the rental value set by the board of education in the proposed lease, the rental value of the lease shall be determined under the provisions set forth in Section 29-3-1(2).

(g) ***All sixteenth section or lieu land leases shall be reduced to writing and signed in triplicate by the president of the board of supervisors,***

the president of the board of education and the superintendent of education. The chancery clerk shall certify one (1) copy of the lease to the superintendent of education and one (1) copy to the state land commissioner, and shall record the original on the deed records of the county, abstract the lease as a mesne conveyance, and record it on the minutes of the board of supervisors. The chancery clerk shall charge and collect from the lessee the full recording fees.

Miss. Code Ann. § 29-3-82 (as amended)(emphasis added). The above "procedure" clearly envisions a process where the decision making authority is vested in the board of education with approval of the rental amount by the board of supervisors. The statute clearly lays out who should sign the document and the order in which it should occur. Nowhere does this statute vest specific authority in the Secretary of State nor does it require any prior approval from the Secretary of State. In fact, the statute contemplates that the chancery clerk will provide to the Secretary of State a certified copy of the executed and filed agreement after the fact. Section 29-3-52 provides that any lease "executed and recorded in substantial conformity" with the applicable provisions shall be deemed prima facie valid. This statute further confirms the "prima facie" validity of leases which the Secretary of State has neither approved nor signed.

Notably, the Secretary of State or land commissioner is not given any authority with regard to execution of leases or the specific terms or rental values contained therein. Where the Legislature intended the Secretary of State to have approval authority over such acts, it included the same in the statute. For example, Section 29-3-81 deals with letting and re-letting of agricultural sixteenth section land. The statute specifically allows for a holder of an agricultural lease to re-lease the land within the discretion of the "board of education" subject to "the prior approval of the Secretary of State." This statute demonstrates that the Legislature knew how to make the decisions of a board of education subject to the approval or veto right of the Secretary of State. The fact that this approval authority is granted to the Secretary of State in this limited instance clearly indicates that it was not meant to apply across the board to all decisions of a board of education. Moreover, if the Secretary of State's authority extended to such pre-approval or veto right over all decisions of boards of education, the inclusion of this provision in Section 29-3-81 with regard to re-letting of agricultural property would have been superfluous.

A general reading of the statutes on sixteenth section land and the involvement of the Secretary of State or land commissioner does not lead to a logical conclusion that the Secretary has veto rights over decisions by local boards. Section 29-3-2 provides that the Secretary of State shall "assist the local school districts, when so requested, in establishing and maintaining local school trust management systems." The notion of such assistance "when so requested" is not consistent with a direct management authority in the Secretary of State's office. Likewise, Section 29-3-45 provides that if a board is dissatisfied with a decision of the Forestry Commission, it may "appeal" such decision to the Secretary of State. This appellate authority tends to contradict any notion that the Secretary has the ultimate decision making authority in the beginning

that he could simply impose on the local school board. Section 29-3-31 gives the boards of education authority to classify sixteenth section lands. Section 29-3-39 gives boards authority to reclassify sixteenth section lands. By virtue of his position as land commissioner, the Secretary is also given reclassification authority in addition to the boards. However, these statutes cannot be read to allow the Secretary to direct the boards in their decisions. Again, if the Secretary retained plenary authority over all sixteenth section lands, these statutes would be unnecessary since the Secretary could simply direct school boards to reclassify lands as he deemed appropriate.

As discussed above, the regulatory scheme has been around in similar forms since the late nineteenth century. At times, the Legislature has specifically made the decisions of one board or entity subject to the approval of another, which is what we understand to be the essence of your question. The last major overhaul of the sixteenth section statutes occurred in 1978. The prior version of Section 29-3-1 demonstrates that the Legislature knew how to make, and had specifically made, the actions of one entity subject to the approval of another. In that prior version⁶, the boards of supervisors were primarily tasked with jurisdiction and control of sixteenth section lands. However, the statute provided that "no action of any board of supervisors with regard to the leasing of sixteenth section lands . . . shall be valid unless approved by the . . . board of trustees of the school district . . . Miss. Code Ann. Section 29-3-1 (as amended in 1974).

The current version of Section 29-3-1⁷ derives from the 1978 amendments. The

⁶ The relevant text of the statutes is set forth below.

The county boards of supervisors of the several counties wherein there are situated any sixteenth section school lands, or lands in lieu thereof, ***under the general supervision*** of the State Land Commissioner shall have control and jurisdiction of said school lands and of all funds arising from any disposition thereof heretofore or hereafter made; provided, that ***no action of any board of supervisors with regard to the leasing of sixteenth section lands, or lands in lieu thereof, shall be valid unless approved by a majority of the membership of the board of trustees of the school district*** or districts in which the section or portion thereof proposed to be leased is located.

(Emphasis added).

⁷ The current version states:

Sixteenth section school lands, or lands granted in lieu thereof, constitute property held in trust for the benefit of the public schools and must be treated as such. ***The board of education under the general supervision of the state land commissioner, shall have control and jurisdiction of said school trust lands*** and of all funds arising from any disposition thereof heretofore or hereafter made. ***It shall be the duty of the board of education to manage the school trust lands and all funds arising therefrom as trust property. Accordingly, the board shall assure that adequate compensation is received for all uses of***

principal changes were that boards of education became primarily responsible and the boards of supervisors were relegated solely to approving the rental amount. However, the Legislature removed the language from the prior version which made decisions by the supervisors subject to approval of the school trustees. No similar veto power was given to supervisors except on the issue of rental value. Notably, in neither statute was the land commissioner given veto or approval authority over either supervisors or school trustees' decisions. Had the Legislature intended the land commissioner (now the Secretary of State) to have such authority over a local board's decision, it could have easily included language similar to that contained in the pre 1978 version of the statute. Both statutes contain language about the "general supervision" of the land commissioner, but the context and case law make it clear that this general supervision does not equate to pre-approval or veto authority over issues otherwise delegated by statute to local boards.

The Secretary of State's office has cited the "general supervision" language of Section 29-3-1 as well as Section 29-1-3. Section 29-1-3, which is found in the general statutory scheme on non-sixteenth section public lands references the authority of the Secretary of State as follows:

OFFICIAL OPINION
(1) The **land commissioner has a supervisory power** over sixteenth section lands or lands granted in lieu thereof; and he shall supply to the members of the legislature, the boards of supervisors, the boards of education and other interested persons information concerning those lands and make such recommendations and suggestions as he may deem proper.

(Emphasis added): No statute attempts to clarify or define what is meant by "general supervision" or "supervisory power." Moreover, the cases that have discussed sixteenth section land matters have never used these references to support any broad authority vested in the Secretary of State to, in essence, control all aspects of sixteenth section land management and leasing. Moreover, the sixteenth section land statutes use similar "supervisory" language in regard to local superintendents of education. Section 29-3-57 states "[i]t shall be the duty of the superintendent of education to **supervise generally** the administration of all sixteenth section lands within his jurisdiction." The Secretary of State's office has suggested that general supervision be construed broadly so as to give the Secretary of State wide ranging powers. If, however, the Legislature had intended "general supervision" to be read so broadly, it is unlikely that it would have used similar language with regard to local superintendents whose managerial functions with regard to sixteenth section lands are for the most part administrative and advisory in nature.

On at least two occasions the Mississippi Supreme Court has dealt directly with the

the trust lands, except for uses by the public schools.

Miss. Code Ann. § 29-3-1 (as amended)(emphasis added).

550 HIGH STREET - POST OFFICE BOX 220 - JACKSON, MISSISSIPPI 39205-0220
TELEPHONE (601) 359-3680 - FACSIMILE (601) 359-5025

phrases "general supervision" or "supervisory power" and endeavored to explain what these phrases mean. One case is from 1924 and the other from 1942. While both cases are older cases, it is important to note that statutory predecessors to Section 29-1-3 and Section 29-3-1 have been contained in the Mississippi Code since at least 1892. In Chapter 73 entitled Land Office, Section 2577 of the 1892 Code states:

The land-commissioner has only a supervisory power over the Choctaw⁸ school or sixteenth section lands; and he shall supply to the boards of supervisors and other interested persons information concerning those lands, and make such recommendations and suggestions as he may deem proper.

Section 4150 of Chapter 123 relates to sixteenth section lands and states that "the several counties . . . have, through their respective boards of supervisors, **under the general supervision of the land commissioner**, jurisdiction and control" of sixteenth section land and the proceeds thereof. Thus, judicial interpretation of these statutes is highly relevant since these statutes have remained on the books in similar forms.⁹ Addressing which official had jurisdiction under these statutes, the Mississippi Court stated:

"The land commissioner has only a supervisory power over the Choctaw school or sixteenth section lands; and he shall supply to the boards of supervisors and other interested persons information concerning those lands, and make such recommendations and suggestions as he may deem proper."

It will be observed that in **its first clause that section provides that the land commissioner has only supervisory power** over the Choctaw school and sixteenth section lands. And in the last clause **what was meant by supervisory power is defined as the duty on the part of the land commissioner to supply the boards of supervisors and other**

⁸ The reference to Choctaw lands was to distinguish them from Chickasaw Cession lands. Under the Chickasaw cession, sixteenth section lands were allowed to pass into the hands of private owners. The reference to Choctaw is used to mean all other lands in the state except the Chickasaw. Thus, Choctaw school lands means all sixteenth section trust or lieu lands in the state. For a general discussion of this, see *Smith v. McCullen*, 13 So.2d 319, 328 (Miss. 1943). There the court stated "it is unnecessary that we decide whether . . . the Choctaw Indians ever claimed or possessed any land in said extreme southern part of the State, or in Lowndes, Clay, and Monroe Counties, or in the old Natchez district, since the only question before us is that of determining in what sense the words 'in the Choctaw purchase' were used in Section 211 of the Constitution and in the Act of 1942 . . . ; and we have reached the conclusion that the use of such words was intended only to distinguish the lands referred to from those in the Chickasaw Cession." *Id.*

⁹ These statutes or similar ones can be found in the 1892 Code, 1930 Code, 1942 Code and the 1972 Code.

persons interested information concerning said lands, "and make such recommendations and suggestions as he may deem proper." **Section 4701**, Code of 1906 (section 7511, Hemingway's Code), giving the board of supervisors jurisdiction and control of the sixteenth section lands **uses the language: "Under the general supervision** of the land commissioner."

We are of the opinion that the section before the last referred to which defines what was meant by supervisory power in the land commissioner applies to the clause above quoted from the latter statute. We are not concerned in this case with suits of this character brought by the Attorney General or the state revenue agent on behalf of the state. The question here simply is whether there is any statute conferring the power to bring this character of suit on the land commissioner. We hold that there is not; that his general power to prosecute suits in the name of the state concerning the public lands has no reference to the sixteenth section lands. The latter are separately dealt with by the Legislature, and **there seems a clear unmistakable purpose from the statutes on the subject that it was the purpose of the Legislature as between the land commissioner and the boards of supervisors to give the latter jurisdiction and control of the sixteenth section lands**, with the right to bring all necessary suits with reference thereto, and to exclude the land commissioner from any jurisdiction or control over said lands, except for the purpose of supplying the boards of supervisors and others interested with information concerning the same, and making such recommendations and suggestions with reference thereto as he may deem proper.

Edward Hines Yellow Pine Trustees v. State, 98 So. 445, 446-447 (Miss.1924) (Emphasis added): The case is construing statutes from the 1906 Mississippi Code, but the codes sections are similarly worded to Section 29-1-3 and Section 29-3-1. When all of the archaic references are sorted out, the effect of the holding on our present statutes would be that the first sentence of Section 29-1-3 to the effect of "[t]he land commissioner has a supervisory power over sixteenth section lands or lands granted in lieu thereof" bestows a supervisory power; and the second clause "and he shall supply to the members of the legislature, the boards of supervisors, the boards of education and other interested persons information concerning those lands and make such recommendations and suggestions as he may deem proper" defines that power. Under the holding in *Edward Hines*, when applied to today's statute the phrase "general supervision" in Section 29-3-1 would have the meaning as is defined for supervisory power in the second clause of Section 29-1-3. When applied to the current statutes, the holding in *Edward Hines* significantly limits the Secretary of State's general supervisory authority with regard to sixteenth section land.

Edward Hines has been cited one time by the Mississippi Court in *McCullen v. Mercer*, 6 So.2d 465, 467 (Miss. 1942). In *Mercer* the Court again held that local boards, and not the land commissioner, have primary authority over sixteenth section lands.

Discussing the *Edward Hines* case, the *Mercer* Court stated:

It is thus seen that the land commissioner has only supervisory power over these lands and that it is now "the duty of the superintendent of education * * * with the approval of the board of supervisors, to lease [them] * * *" if not within a municipality, and if within a municipality the supervisors shall lease them upon report of appraisers appointed by the board for such purpose.

In *Hines Yellow Pine Trustees v. State ex rel. Moore, Land Commissioner*, 134 Miss. 194, 98 So. 445, 446, this court construed said sections 6019 and 6033 and 6760 *467 (then appearing as sections 2903, 2915 and 4701, Code of 1906), holding that the supervisors did have, and the land commissioner did not have, authority to maintain an action for statutory and actual damages resulting from the wrongful cutting of trees on sixteenth section lands, saying: "The latter [sixteenth section lands] are separately dealt with by the Legislature, and there seems a clear unmistakable purpose from the statutes on the subject that it was the purpose of the Legislature as between the land commissioner and the boards of supervisors to give the latter jurisdiction and control of the sixteenth section lands, with the right to bring all necessary suits with reference thereto, and to exclude the land commissioner from any jurisdiction or control over said lands, except for the purpose of supplying the boards of supervisors and others interested with information concerning the same, and making such recommendations and suggestions with reference thereto as he may deem proper"; "In short they [the supervisors] are given full jurisdiction and control of the sixteenth section lands * * *".

Mercer, 6 So.2d at 466-467.

Although the school board is not required to obtain prior approval from the Secretary of State on leases, the Secretary of State does have significant legal authority with regard to compliance with sixteenth section laws by any responsible official. This authority is found in Section 29-3-9 which states:

In all cases where this chapter has not been complied with, the official involved shall forthwith comply with same. ***It shall be the duty of the state land commissioner to ascertain whether or not said statutes have been complied with. If said state land commissioner shall find that said statutes have not been complied with in any case, he shall call the same to the attention of the board of education involved. If any board of education shall fail or refuse to comply with the mandate of this section, then the action of mandamus shall lie to compel such compliance,*** and such action may be brought either by the attorney general or any resident citizen of the State of Mississippi on the

relation of the attorney general. If the state land commissioner shall find

Thomas D. Lee, Esq.
June 9, 2015
Page 13

that any board of education is failing to take the necessary steps to effectively comply with said statutes in any case, he shall so certify to the attorney general. It shall thereupon be the duty of the attorney general to institute an action for issuance of a writ of mandamus as hereinabove provided, and to such end he is hereby authorized and empowered to employ competent local counsel to assist him in the prosecution of the same. It shall also be the duty of the state land commissioner in conjunction with the attorney general, to submit a special report in writing to the next regular session of the legislature, which said report shall set forth any instances of noncompliance with said chapter and the steps which have been taken to secure compliance with same.

Miss. Code Ann. Section 29-3-9 (as amended). This statute clearly gives the Secretary of State supervisory authority over compliance with the sixteenth section laws. However, the statute presumes that any dispute over whether there has been compliance will be presented to a court. If local officials were required to secure prior approval by the Secretary of State of sixteenth section leases, then the need for Section 29-3-9 would be dubious.

Conclusion

It is the opinion of this office that the Secretary's duties with regard to sixteenth section lands are those set forth in statute and that these duties cannot be expanded to include the rejection of leases entered into by school districts pursuant to their statutory authority. Likewise, given that the procedure for execution of sixteenth section leases is specifically set out by statute, school boards are not required to obtain the Secretary of State's signature or prior-approval on such leases.

Nevertheless, although we find no legal requirement to do so¹⁰, we are of the opinion

¹⁰ Section 7-11-11 provides that "[t]he Secretary of State shall have charge of the swamp and the overflowed lands and indemnity lands in lieu thereof, the internal improvement lands, the lands forfeited to the state for nonpayment of taxes after the time allowed by law for redemption shall have expired, and of all other public lands belonging to or under the control of the state." and requires that the [t]he secretary . . . shall sign all conveyances and leases of any and all state-owned lands . . ." The lands set forth in Section 7-11-11 are lands that are governed by and made subject to Section 29-1-1." These include "29-1-21 and following dealing with lands forfeited to the State for the failure to pay taxes; Section 29-1-59 dealing with swamp and overflow land; Section 29-1-61 dealing with internal improvement land; Section 29-1-63 dealing with Chickasaw school lands; and Section 29-1-65 dealing with the other public lands over which the Land Commissioner must exercise authority and control; namely, escheated lands, seat of government lands (both Pearl River swamp subject to overflow and those surveying lots and blocks), accretions near the mouth of the Pascagoula River, and all lands within the borders of the State not belonging to the United States nor owned by another." See MS AG Op., Finch (June 28, 1979). Also Section 29-1-1 specifically incorporates Sections 7-11-11. Sections 29-3-1, *et. seq.*,

Thomas D. Lee, Esq.
June 9, 2015
Page 14

that school boards may seek the Secretary of State's prior approval of and signature on sixteenth section leases. In fact, we encourage same. As discussed above, boards of education have a fiduciary duty, as trustees, to manage sixteenth section lands in the best interest of the beneficiaries of the trust, i.e., the public schools. As trustees, they also face potential personal liability if they fail to act in a reasonably prudent manner to achieve a reasonable return on the leases. See *Scott's Abridgement of the Law of Trusts*, Section 205. See also, Bogert, *The Law of Trusts and Trustees*, Section 543 ("Perhaps the most fundamental duty of a trustee is that he must display throughout the administration of the trust complete loyalty to the interests of the beneficiary and must exclude all selfish interest and all consideration of the interests of third persons."); and, *Turney v. Marion County Bd. of Educ.*, 481 So.2d 770, 777 -778 (Miss. 1985)(trustees are bound in the management of all the matters of the trust to act in good faith and employ such vigilance, sagacity, diligence and prudence as in general prudent [persons] of discretion and intelligence in like matters employ in their own affairs).

The Office of the Secretary of State has a wealth of knowledge and expertise which can be and has been leveraged by school boards throughout the state to the advantage of the schools and in aid of the school board members' exercise of their fiduciary duties. Review by the Secretary of State may help avoid inadvertent violations of the law, clouds on titles, void contracts, and possible litigation. However, such review is at the option of the board, and the board is always free to proceed without same and at its own risk.

If this office may be of further assistance, do not hesitate to contact us.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:



Ricky G. Luke
Assistant Attorney General

on the other hand do not incorporate Section 7-11-11 and, to the contrary, sets out a procedure for execution of leases which does not include execution by the Secretary of State. In such a case, the requirements of specific statutes should be applied over a statute of general application.