



Douglas La Follette, *Secretary of State*
Kurt Schuller, *State Treasurer*
J.B. Van Hollen, *Attorney General*
Tia Nelson, *Executive Secretary*

101 E. Wilson Street
2nd Floor
PO Box 8943
Madison, WI 53708-8943

608 266-1370 INFORMATION
608 266-0034 LOANS
608 267-2787 FAX
bcpl.wisconsin.gov

Managing Wisconsin's trust assets for public education

AGENDA

June 11, 2013

2:00 P.M.

Board of Commissioners of Public Lands
101 E. Wilson Street, 2nd Floor
Madison, Wisconsin

- 1) Call to Order
- 2) Approve Minutes – May 21, 2013
- 3) Approve Loans
- 4) Proposed Land Bank Sale – Grub Hoe Lake (S1108)
- 5) Pending Legislation on Unclaimed Property and the Common School Fund
- 6) Executive Secretary's Report
- 7) Adjourn

**BOARD MEETING
JUNE 11, 2013**

**AGENDA ITEM 2
APPROVE MINUTES**

Attached for approval are the minutes from the May 21, 2013, board meeting.

Board Meeting Minutes
May 21, 2013

ITEM 1. CALL TO ORDER

Board Chair La Follette called the meeting of the Board of Commissioners of Public Lands to order at 3:00 p.m.

Present were:

- | | |
|---------------------------------|--|
| Doug La Follette, Board Chair | Secretary of State |
| Kurt Schuller, Commissioner | State Treasurer |
| J.B. Van Hollen, Commissioner | Attorney General |
| Tia Nelson, Executive Secretary | Board of Commissioners of Public Lands |
| Tom German, Deputy Secretary | Board of Commissioners of Public Lands |
| Richard Sneider, Loan Analyst | Board of Commissioners of Public Lands |

ITEM 2. APPROVE MINUTES – MAY 7, 2013

MOTION: Commissioner Schuller moved to approve the minutes; Commissioner Van Hollen seconded the motion. The motion passed 3-0.

ITEM 3. APPROVE LOANS

Executive Secretary Nelson said the loans had received legal review.

Municipality	Municipal Type	Loan Amount
1. Calumet Fond Du Lac County Application #: 02013185 Purpose: Finance road construction	Town Rate: 2.50% Term: 5 years	\$300,000.00
2. Enterprise Oneida County Application #: 02013189 Purpose: Construct fire department building	Town Rate: 2.75% Term: 10 years	\$351,830.00
3. Jackson Washington County Application #: 02013187 Purpose: Finance road projects	Town Rate: 2.50% Term: 5 years	\$300,000.00
4. Lac La Belle Waukesha County Application #: 02013190 Purpose: Refinance plow truck loan	Village Rate: 2.75% Term: 10 years	\$55,000.00

5.	Milltown Polk County Application #: 02013186 Purpose: Finance TID development incentives	Village Rate: 2.75% Term: 10 years	\$99,000.00
6.	Platteville Grant County Application #: 02013184 Purpose: Finance TID #6 projects	City Rate: 4.50% Term: 15 years	\$2,000,000.00
7.	Superior Douglas County Application #: 02013188 Purpose: Finance TID #8 projects	City Rate: 2.75% Term: 8 years	\$805,000.00
		TOTAL	\$3,910,830.00

MOTION: Commissioner Schuller moved to approve the loans; Commissioner Van Hollen seconded the motion. The motion passed 3-0.

ITEM 4A. PROPOSED LAND BANK SALES – LEHTO BOG (\$1303)

MOTION: Commissioner Schuller moved to approve the land sale; Commissioner Van Hollen seconded the motion. The motion passed 3-0.

NOW, THEREFORE BE IT RESOLVED, that the Board of Commissioners of Public Lands approves the sale of the Lehto Bog Property to the Wisconsin Department of Natural Resources at the price of Two Hundred Eighty-One Thousand Dollars (\$281,000) in accordance with Chapter 24 of the Wisconsin Statutes on such terms and conditions as the Executive Secretary determines to be reasonable and necessary. The Executive Secretary is authorized and directed to execute any documents reasonably necessary to complete such transaction.

ITEM 4B. PROPOSED LAND BANK SALES – BRULE RIVER STATE FOREST (\$1304)

MOTION: Commissioner Schuller moved to approve the land sale; Commissioner Van Hollen seconded the motion. The motion passed 3-0.

NOW, THEREFORE BE IT RESOLVED, that the Board of Commissioners of Public Lands approves the sale of the Brule River State Forest Property to the Wisconsin Department of Natural Resources at the price of Ninety-Four Thousand Dollars (\$94,000) in accordance with Chapter 24 of the Wisconsin Statutes on such terms and conditions as the Executive Secretary determines to be reasonable and necessary. The Executive Secretary is authorized and directed to execute any documents reasonably necessary to complete such transaction.

ITEM 5. EXECUTIVE SECRETARY'S REPORT

Executive Secretary Nelson reported that the Joint Finance Committee voted to reduce overall funding for the Knowles-Nelson Stewardship Fund and eliminate the set aside for DNR purchases of School Trust Lands from the BCPL. This funding reduction will delay completion of the DNR/BCPL partnership for an unknown period of time. While the set aside has been eliminated, she feels there are still opportunities to partner with the DNR and others to accomplish the BCPL's consolidation and improved timber management goals.

Executive Secretary Nelson suggested that the Board co-author an editorial piece describing the history of the Board and its duties, including the fiduciary responsibilities to the beneficiaries, the prudent lending to municipalities and school districts, and overseeing nearly \$1 billion in Trust Assets. Board members expressed interest in seeing the draft editorial piece for their review.

ITEM 6. ADJOURN

MOTION: Commissioner Schuller moved to adjourn the meeting; Commissioner Van Hollen seconded the motion. The motion passed 3-0.



Tia Nelson, Executive Secretary

These minutes have been prepared from a tape recording of the meeting. The summaries have not been transcribed verbatim. Anyone wishing to listen to the tape may do so at the Board of Commissioners of Public Lands, 101 E. Wilson Street, 2nd Floor, Madison, Wisconsin.

**BOARD MEETING
JUNE 11, 2013**

**AGENDA ITEM 3
APPROVE LOANS**

Municipality	Municipal Type	Loan Amount
1. Beloit Rock County Application #: 02013197 Purpose: Finance 2013 capital improvement budget	City Rate: 2.75% Term: 10 years	\$677,100.00
2. Grand Rapids Wood County Application #: 02013196 Purpose: Finance road project	Town Rate: 2.50% Term: 5 years	\$500,000.00
3. Juneau Dodge County Application #: 02013191 Purpose: Purchase ambulance	City Rate: 2.50% Term: 5 years	\$156,000.00
4. Marquette Marquette County Application #: 02013200 Purpose: Reconstruct dredge bank	County Rate: 2.50% Term: 5 years	\$240,000.00
5. Mayville Dodge County Application #: 02013192 Purpose: Finance fiber technology project	School Rate: 2.50% Term: 5 years	\$225,000.00
6. Mayville Dodge County Application #: 02013193 Purpose: Refinance BCPL loan #2003103	School Rate: 2.75% Term: 10 years	\$405,000.00
7. Mayville Dodge County Application #: 02013194 Purpose: Finance building and grounds renovation	School Rate: 2.75% Term: 10 years	\$370,000.00
8. Oakfield Dodge and Fond Du Lac Counties Application #: 02013198 Purpose: Finance middle school renovation	School Rate: 3.75% Term: 20 years	\$270,000.00

Municipality	Municipal Type	Loan Amount
9. Oakfield Dodge and Fond Du Lac Counties Application #: 02013199 Purpose: Refinance BCPL loan #2008100	School Rate: 3.75% Term: 15 years	\$727,563.67
10. Wayne Washington County Application #: 02013195 Purpose: Purchase plow truck	Town Rate: 2.50% Term: 4 years	\$125,000.00
	TOTAL	\$3,695,663.67

BOARD MEETING

JUNE 11, 2013

AGENDA ITEM 4

PROPOSED LAND BANK SALE – GRUB HOE LAKE (S1108)

The United States Forest Service (“Forest Service”) has determined that 253.88 acres of BCPL Trust Lands in Florence County are required for Forest Service use.

BCPL staff recommends the sale of the property to the Forest Service for the following reasons:

- The property is primarily lowland consisting of an isolated, landlocked parcel adjacent to a shallow bog lake with a muck bottom.
- The property is surrounded by the Chequamegon-Nicolet National Forest;
- The property does not provide access to other BCPL lands;
- Sale of the property would provide BCPL with funds to purchase other lands that would provide better access to existing BCPL lands, produce timber revenue, improve management efficiency, reduce forest fragmentation, or all of the above; and
- Sale of the property to the Forest Service would improve management efficiencies for the Forest Service by adding a parcel that blocks perfectly with existing Forest Service lands and eliminates an inholding within the National Forest.

Attachments:

Resolution w/Exhibits

Exhibit A - BCPL Sale Criteria

Exhibit B - Appraisal Certification

BCPL Project Map

BOARD MEETING

JUNE 11, 2013

AGENDA ITEM 4

PROPOSED LAND BANK SALE – GRUB HOE LAKE (\$1108)

RECITALS

- A. The United States Department of Agriculture, United States Forest Service (the “U.S. Forest Service”) has determined that certain property currently owned by the Board of Commissioners of Public Lands, more particularly described as the Southeast ¼ of the Northwest ¼ (SENW), Government Lot One (GL-1), Government Lot Two (GL-2), and Government Lot Four (GL-4) of Section Seven (7), Government Lot One (GL-1), and Government Lot Two (GL-2) of Section Eighteen (18), all locating in Township Thirty-nine (39) North, Range Sixteen (16) East, Florence Township, Florence County, Wisconsin totaling approximately 253.88 acres in size (the “Grub Hoe Property”) is required for federal use as National Forest.
- B. The Grub Hoe Property has been evaluated by BCPL staff against sale criteria previously adopted by the Board. The Grub Hoe Property has been determined by BCPL staff to be appropriate for sale according to such criteria. A copy of the sale analysis is attached to this resolution as Exhibit A.
- C. The Grub Hoe Property has been independently appraised by Compass Land Consultants, Inc. at a value of Twelve Hundred Dollars (\$1,200) per acre for a total of Three Hundred Five Thousand Dollars (\$305,000). A copy of the Certification of the Appraisal has been attached to this resolution as Exhibit B. (The Grub Hoe Property was appraised along with another BCPL parcel in one appraisal report. The valuation of the Grub Hoe Property is listed as “Alternative A” on the Certification).
- D. The U.S. Forest Service has offered to pay the sum of Three Hundred Five Thousand Dollars (\$305,000) to acquire the Grub Hoe Property. The offered price is equal to the appraised value.
- E. BCPL staff recommends that the Board authorize the sale of the Grub Hoe Property to the U.S. Forest Service at the appraised value of \$305,000.

NOW, THEREFORE BE IT RESOLVED, that the Board of Commissioners of Public Lands approves the sale of the Grub Hoe Property to the U.S. Forest Service at the price of Three Hundred Five Thousand Dollars (\$305,000) in accordance with Chapter 24 of the Wisconsin Statutes on such terms and conditions as the Executive Secretary determines to be reasonable and necessary. The Executive Secretary is authorized and directed to execute any documents reasonably necessary to complete such transaction.

Board of Commissioners of Public Lands
Summary Analysis of Potential Property Sale
Transaction ID#: S1108

Item 4
Exhibit A

Common Name for Land Parcel Grub Hoe Lake

County Florence Township Florence

Legal Description Government Lots 1, 2 & 4, and the SENW of Section 7, Government Lots
1 & 2 of Section 18, all in T39N, R16E, Town of Florence, Florence
County, Wisconsin

GLO Acres 253.88

Sale Criteria

1. Title

- Ownership verified with Register of Deeds
 Title appears merchantable

2. Timber Management

- Parcel is located outside of Consolidation Zone
 Parcel is an isolated or unproductive parcel within the Consolidation Zone
 Parcel is a deferred natural area

3. Access

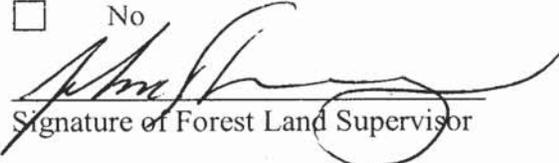
- Parcel does not provide the only reasonable access to other BCPL parcels that will be retained.
 If parcel does provide the only reasonable access to other BCPL parcels to be retained, a public access easement across the parcel has been reserved.
 Parcel has no current access

4. Parcel Required By Other Government Entity

- The parcel is located within a project boundary of another government agency or adjacent to a parcel of land owned by another unit of government.
 Parcel is otherwise required by another unit of government.

I recommend that BCPL sell the above property on terms and conditions acceptable to BCPL:

- Yes
 No


Signature of Forest Land Supervisor

7/27/2010
Date

I accept the recommendation of the Trust Lands Forestry Supervisor and direct the staff to proceed accordingly.

- Yes
 No


Executive Secretary

8/3/2010
Date

RECEIVED AUG - 2 2010

Part I – Introduction

Certification

I certify that, to the best of my knowledge and belief:

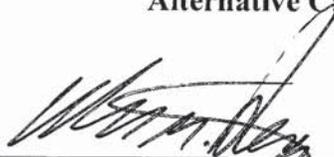
- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and legal instructions, and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no present or prospective interest in the property that is the subject of this report, and no personal interest with respect to the parties involved.
- I have had one prior engagement involving the inspection and valuation of the property in this appraisal. The appraiser performed the service in 2010 for the same parties involved in the current proposed transaction. Nate Nelson, certified general appraiser with Compass Land Consultants, Inc., had no involvement with this prior engagement.
- My engagement in this assignment is not contingent upon developing or reporting predetermined results.
- My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- My analyses, opinions, and conclusions were developed, and this report has been prepared in conformity with the “Uniform Appraisal Standards for Federal Land Acquisitions.”
- The appraisal was made and the appraisal report prepared in conformity with the Appraisal Foundation’s Uniform Standards for Professional Appraisal Practice, except to the extent that the Uniform Appraisal Standards for Federal Land Acquisitions required invocation of USPAP’s Jurisdictional Exception Rule, as described in Section D-1 of the Uniform Appraisal Standards for Federal Land Acquisitions.
- I personally inspected the subject property, which is the subject of this report, and all comparable sales used in developing the estimate of value. The date of inspection for the subject property was June 24, 2012. The dates of inspection for the comparable sales were over the course of several appraisal assignments in 2009, 2010, 2011, and 2012. Nate Nelson also inspected the subject property, which is the subject of this report, on June 12, 2012. The method of inspection for the subject property and the sales was on the ground physical observation.
- Nate Nelson provided significant assistance in this appraisal assignment. Mr. Nelson’s contributions included statistical analysis, assisting with report preparation, and comparable sales research.

- The landowner's representatives were invited to accompany me on the inspection of the subject properties, but they declined the invitation.
- Based upon the information contained in this report, and based upon the extraordinary assumption identified, it is my opinion that the market value of the subject property, as of June 24, 2012, is:

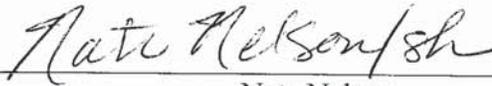
Alternative A: \$305,000

Alternative B: \$242,000

Alternative C: \$544,000

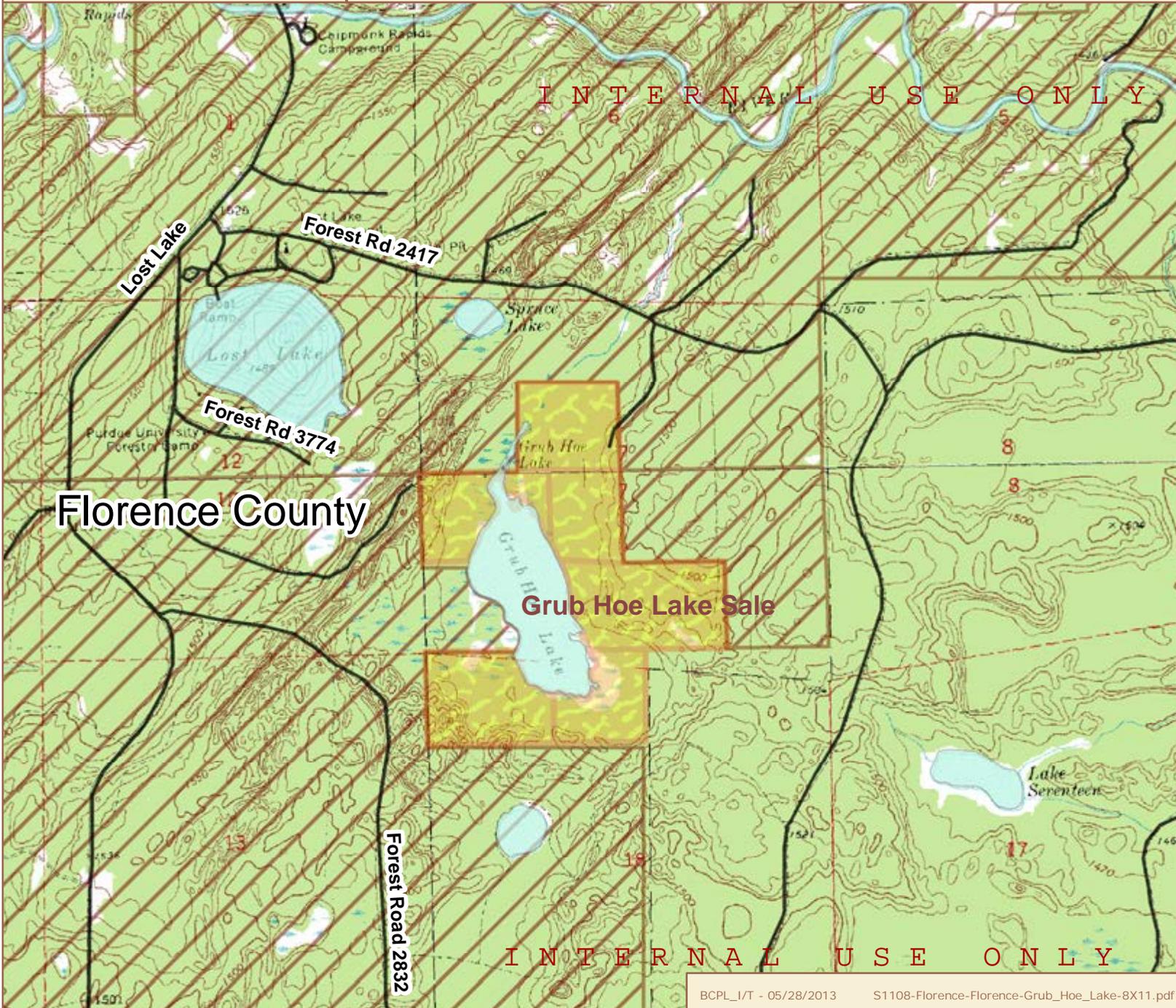
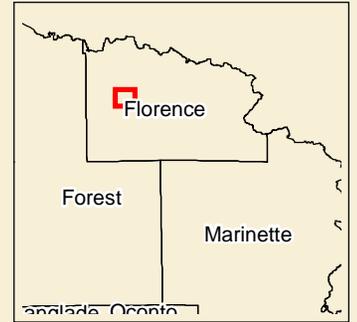


William M. Steigerwaldt
Real Estate Specialist
Wisconsin Certified General Real Estate Appraiser #394-10
(Expires 12/14/2013)



Nate Nelson
Real Estate Specialist
Wisconsin Certified General Real Estate Appraiser #1850-10
(Expires 12/14/2013)

GRUB HOE LAKE



BCPL Project #:
S1108

County: Florence

Town: Florence

Common Name

Grub Hoe Lake Sale

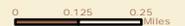
Acres - 253.88

Fund 745



 **Outgoing**

 **Nicolet USFS**



**BOARD MEETING
JUNE 11, 2013**

**AGENDA ITEM 5
PROPOSED LEGISLATION ON UNCLAIMED PROPERTY AND
THE COMMON SCHOOL FUND**

See attached memo.

MEMORANDUM

TO: TIA NELSON
FROM: TOM GERMAN
RE: UNCLAIMED PROPERTY LEGISLATION
DATE: MAY 29, 2013

Based on a board inquiry, you asked me to analyze a recent action taken by the Joint Committee on Finance with respect to the unclaimed property program and its effect on the Common School Fund.

The Joint Committee on Finance approved a motion proposing the transfer of the unclaimed property program from the Office of the State Treasurer to the Department of Revenue (Motion #230 May 15, 2013 a copy of which is attached). The motion moved 6 FTE positions and approximately \$4 million of unclaimed property program revenue to DOR. The motion also proposed that the remaining expenses of the State Treasurer's Office amounting to \$544,800 per year would be paid with an appropriation of "program revenue" from unclaimed property even though the State Treasurer's Office would no longer have any oversight or management duties attributable to the program. It is my personal opinion that this budget action, if adopted by the full legislature and signed into law by the Governor may inadvertently create a Constitutional conflict.

Article X, Section 2 of the Wisconsin Constitution provides in relevant part:

"...and all moneys and the clear proceeds of all property that may accrue to the state by forfeiture or escheat; and the clear proceeds of all fines collected in the several counties for any breach of the penal laws, and all moneys arising from any grant to the state where the purposes of such grant are not specified... **shall be set apart as a separate fund to be called "the school fund,"** the interest of which and all other revenues derived from the school lands shall be exclusively applied to the following objects, to wit: (1) To the support and maintenance of common schools, in each school district, and the purchase of suitable libraries and apparatus therefor..." (Emphasis added)

In accordance with this provision of the state constitution, it is my understanding that unclaimed property should go to the Common School Fund, not to unrelated purposes.

This question of whether unclaimed property in Wisconsin can be directed to purposes other than the Common School Fund has arisen before. In the early 1970's the legislature passed a bill that stated that unclaimed property should be deposited into the general fund. Prior to the governor signing the bill, the Attorney General issued a formal opinion that Article X, Section 2 of the Constitution "mandates the paying of these moneys to the school fund." (See 61 Op. Att'y Gen 208 1972). In accordance with that opinion, the legislature adopted Section 677 of Chapter 418 of the Laws of 1977 which provided that unclaimed property shall be deposited in the school fund.

The current statutes provide that the administrator of the unclaimed property program may set aside certain amounts of unclaimed property in the general fund to pay administrative expenses attributable to the program prior to depositing the remainder of unclaimed property in the school fund. Wis. Stats. Section 177.23(2) is based on the Uniform Unclaimed Property Act and provides,

The administrator shall deposit in the general fund an amount necessary for the payment of claims under ss. [177.24](#) to [177.26](#) and administrative expenses. Administrative expenses consist of any of the following:

- (a) Any costs in connection with the sale of abandoned property.
- (b) Costs of mailing and publication in connection with any abandoned property.
- (c) Reasonable service charges.
- (d) Costs incurred in examining records of holders of property and in collecting the property from those holders.
- (e) Salaries of the employees of the treasurer that are attributable to the administration of this chapter.

A case can be made under common law trust principles that costs of obtaining and administering a revenue stream for a trust could be properly paid from such stream of revenue. Such would be the case with the current statutes regarding unclaimed property in Wisconsin.

However, it is my view that expenses of the Wisconsin State Treasurer's Office that will have no oversight or duties for unclaimed property under the proposed bill could not be considered, under any reasonable interpretation, "expenses attributable to the program."

I am not aware of any principles of trust common law or statutory or constitutional construction which would allow revenue that is directed by the constitution to a trust to be used for purposes unrelated to such trust. While legislation is entitled to a presumption that the law in question complies with the constitution, it is my opinion that that the proposed budget amendment would result in an unconstitutional diversion of trust assets.

The Wisconsin Supreme Court has already declared that the Common School Fund is in fact a trust fund. "The school fund is a trust fund, and is placed by the constitution beyond the power of the legislature to divert it to any other use than the support of the schools of the state." State ex. rel. Sweet et al v. Cunningham 88 Wis. 81, 82-3, 57 N.W. 1119 (1894).

61 Op. Att'y Gen 208 1972 noted that, "The courts have clearly held that unclaimed property statutes similar in nature to ch. 177 are a form of escheat." "The [Legislature] may not waive the constitution of the state or the rights of the schools of the state to funds granted them by the constitution. The state does not take escheated property in a simple proprietary capacity. It takes such property as a trustee and holds it as trustee and it must keep faithful to its trust, and it is beyond the power of the legislature to divert its trust funds. The school and university trust funds are high above the competency of the legislature to destructively assault them." In re Payne's Estate, Marshall and Isley Bank v. Commissioners of Public Lands, 208, 142. Wis. 142, 147, 242 N.W. 553, 555 (1932)

In recent years, the Wisconsin Supreme Court has declared several statutes that diverted government trust fund moneys to be unconstitutional. In light of the fact that the Court has already declared the Common School Fund to be a trust fund, it is my view that it is likely that the Court would determine that the schools, as beneficiaries, are entitled to the “security and integrity of the fund.” See Wisconsin Medical Society, Inc. v. Morgan 20 WI 94, 328 Wis. 2d 469, (2010).