

October 6, 1971

OPINION LETTER NO. 30  
Answer by letter-Wood

Mr. Joseph Jaeger, Jr.  
Director of Parks  
Missouri State Park Board  
1204 Jefferson Building  
Jefferson City, Missouri 65101



Dear Mr. Jaeger:

This is in response to your request for my formal opinion on whether or not the Missouri State Park Board would be obligated to honor a fee contract entered into between the former trustees of the Jacob L. Babler Perpetual Endowment Trust Fund and Mr. W. Kendall Baker, Attorney at Law, of Houston, Texas. The subject of the contract was representation of the trust fund in settlement negotiations with the Mexican Government arising out of the expropriation in 1938 by the Mexican Government of certain interests in Mexican oil leases held by Jacob L. Babler. We understand that the trustees agreed to compensate Mr. Baker on the basis of thirty percent of any sum realized out of these negotiations with the Mexican Government.

Jacob L. Babler established the Perpetual Endowment Trust Fund through an instrument dated May 28, 1937 and recorded on June 24, 1937 at Book 1438, page 572 with the St. Louis County recorder of deeds. The assets of the fund were to be any and all income realized from the Mexican oil leases, and were to be devoted to the operation, maintenance and development of the Dr. Edmund A. Babler Memorial State Park. The trustees were given the option, in the event of insufficiency of the income of the fund for the stated purposes, of terminating the trust and relinquishing their rights and powers thereunder to the State of Missouri.

Jacob Babler's will, executed on July 17, 1942, and duly admitted for probate after his death on May 31, 1945, established a Testamentary Trust for the benefit of the Babler Memorial State Park.

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This Testamentary Trust was composed of the residue of his estate and had a duration of twenty years from the date of his death. The Testamentary Trust and the Perpetual Endowment Trust, though having a common purpose, were separately administered and separately funded. Because of the governmental expropriation of Jacob Babler's interest in the Mexican lands, the Perpetual Endowment trustees were solely dependent upon the assets of the Testamentary Trust for development and operation of the Park (see dissenting opinion in Mercantile Trust Company National Ass'n v. Jaeger, 457 S.W.2d 727, 740-741 (Mo. banc 1970)). We understand that the Perpetual Endowment trustees, upon termination of the Testamentary Trust and distribution of its assets to the State of Missouri in 1965 as provided in the will, have since that time entirely surrendered their management of the Park to the Missouri State Park Board. We accordingly believe that the Perpetual Endowment Trust has been effectually terminated and that the Missouri State Park Board has succeeded to all rights and obligation formerly held by said Trust.

A contingent fee contract for legal services may be canceled before the contingency occurs subject to payment of a reasonable attorney's fee for services already performed.

"There can be no doubt of the right of a client to discharge his lawyer, whether he be employed on a quantum meruit basis or for a contingent fee. In such event, if the lawyer has a contingent contract and is without fault, he has the election to claim a reasonable fee for the work done, as upon a mutual rescission, or to wait until the claim is liquidated by judgment or settlement and then sue (if necessary) for his contract fee. . . ." (In re Downs, 363 S.W.2d 679, 686 (Mo. banc 1963))

The Attorney General has the statutory responsibility of providing legal advice and representation to the State Park Board (Sections 27.040 and 27.060, RSMo 1969). This responsibility is general and unlimited; and therefore, we are of the opinion that this office should decide whether the instant contract for legal services "inherited" by the Park Board should be ratified or canceled. We believe it would be in the State's best interest not to disturb the present arrangement with Mr. Baker.

Yours very truly,

JOHN C. DANFORTH  
Attorney General