

Answer by letter-Wood

February 1, 1971

OPINION LETTER NO. 75

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



Dear Mr. Jaeger:

You have requested my formal opinion as to what constitutes the corpus of the Dr. Edmund A. Babler Memorial State Park Fund.

Sections 253.350 and 253.360, RSMo (L. 1965, p. 387, approved June 18, 1965) created the above named fund to be composed of the following:

"1. All personal and real property bequeathed or devised to the state of Missouri for the benefit of the Doctor Edmund A. Babler memorial state park under the will of Jacob L. Babler and all other personal and real property acquired through any grant, gift, donation, devise, or bequest to or for the use of the state of Missouri for such purpose . . ."

Subsection 3 of Section 253.360, RSMo, provides:

"3. The Missouri state park board is authorized to use the income of the fund created by this section for the purposes for which the fund is dedicated and, in addition, may expend annually an amount equal to seven and one-half percent of the corpus of the fund for the same purposes. Such amounts shall be subject to appropriation by the general assembly."

Mr. Joseph Jaeger, Jr.

According to the opinion in Mercantile Trust Company National Association v. Jaeger, 457 S.W.2d 727, 729 (Mo. banc 1970), the testamentary trust established by the will of Jacob Babler terminated in May 31, 1965, at which time "the value of the trust estate, corpus, and unexpended income was \$2,724,714.27.", which estate by the terms of the will, was to be delivered to the State Treasurer for use and expenditure by the State Park Board on Babler Memorial State Park.

The will of Jacob Babler authorized the testamentary trustees to expend all or any part of the net income of the trust estate and not to exceed seven percent of the annual book value of the corpus of the trust estate upon the improvement of Babler Memorial State Park (Mercantile Trust Company National Association v. Jaeger, supra, l.c. 728). We assume that this provision of the will motivated the enactment of Subsection 3 of Section 253.360, RSMo, which permits the General Assembly to appropriate all income, and seven and one-half percent annually of the corpus of the Babler Fund to the State Park Board for the maintenance and development of Babler Memorial State Park.

The distinction between corpus or principal and income or interest is normally meaningful only in a trust situation, and particularly in a trust where the beneficial interest in the estate is divided between two or more persons, typically a life tenant and a remainderman. The Dr. Edmund A. Babler Memorial State Park Fund is not a "trust," for all interests in the assets of the fund, nominal and beneficial, present and future, are vested in the same person, to-wit: the State of Missouri (Peugnet v. Berthold, 81 S.W. 874 (Mo. 1904)).

". . . Since every valid trust must have a trustee who is not the sole beneficiary, it is undoubtedly true that the same person cannot be at the same time sole trustee and sole beneficiary of the same interest, or, in other words, that a trust cannot exist where the legal and beneficial interests are in the same person; . . ." (90 C.J.S., Trusts, §210, page 138)

"Likewise, 'if the legal title to the trust property and the entire beneficial interest become united in one person who is not under an incapacity, the trust terminates.' . . ." (Thomson v. Union National Bank in Kansas City, 291 S.W.2d 178, 182 (Mo. 1956))

Mr. Joseph Jaeger, Jr.

However, because the legislature was probably influenced by the Jacob Babler testamentary trust in enacting Section 253.360(3), RSMo, we believe it appropriate to apply trust principles in interpreting this section.

"Corpus" is generally defined as the principal sum or capital, as distinguished from interest or income (Black's Law Dictionary, Fourth Edition, page 413). Trust income is ordinarily the net income which the corpus of the trust actually earns (Gardner v. Bernard, 401 S.W.2d 415, 422 (Mo. 1966)).

"In general, the capital, corpus, or principal of the trust estate includes not only the property which originally comes into the trustee's hands, but its increase or enhancement in value, unless the instrument or the statute creating the trust evinces an intention to the contrary; and the capital or corpus also includes whatever subsequently takes the place of the original property and represents it.

. . .

"As distinguished from capital, income represents the earnings of the trust property; it embraces only the net profits after deducting all necessary expenses and charges. . . .

* * *

"Where stock, bonds, or other property belonging to the trust estate are sold, the money received, including profits, if any, ordinarily constitutes a part of the corpus, or principal, of the estate, and not income, unless the trustor has, by unmistakable language, directed otherwise; . . ." (90 C.J.S., Trusts, §355, pages 642-644, 646-647)

In ruling that stock dividends, as opposed to cash dividends, ordinarily belong to the corpus of a trust, the Supreme Court of Missouri gave this definition of corpus and income:

"What is the principal or corpus of the estate in cases of this kind? Is it the corporate stock, itself, or its value at a given time? Undoubtedly the former. If the trust asset were land, the fact would be clear. With reference to stock, the same view is taken in other phases of trust administration, even in

Mr. Joseph Jaeger, Jr.

those states following the Pennsylvania or Kentucky rule. For instance, it is uniformly conceded that, if corporate stock, so held in trust, increase in value through the accumulation of corporate earnings after the beginning of the trust, and if no dividends are declared, the whole increase belongs to corpus, even upon a sale of the stock. . . .

* * *

"The basis of our ruling in this case is that the stock dividends were not income of the trust estate but an accretion to the corpus because of their nature and because they represent no money or property severed from capital assets. The converse of that ruling would be that money or property which is severed from corporate assets by appropriate action of the governing body of the corporation and paid as dividends, would be income; . . ." (Hayes v. St. Louis Union Trust, 298 S.W. 91, 97, 99 (Mo. 1927))

The proceeds from the sale of real estate constituting trust assets are principal and not income of the trust (Lang v. Mississippi Valley Trust Co., 223 S.W.2d 404, 405-406 (Mo. 1949)). As ruled by Hayes v. St. Louis Union Trust, supra, stock dividends are generally allocable to the trust principal, but if the trustee, as the shareholder, has the option of receiving the dividend in the form of stock or cash, the dividend is allocable to income regardless of its form (Coates v. Coates, 304 S.W.2d 874 (Mo. 1957)). Rents and royalties are generally considered income (51 Am.Jur.2d, Life Estate and Remainderman, §§130, 153-156). Hayes v. St. Louis Union Trust, supra, also ruled that the increase in value of corporate stock held in trust by reason of accumulation of corporate earnings is allocable to corpus, even upon a sale of the stock. The gains in value of investment bonds also belong to trust corpus (Mercantile-Commerce Bank & Trust Co. v. Morse, 201 S.W.2d 915, 922 (Mo. 1947)). Excess income may become assets of the trust to be added to the corpus and invested as part of the corpus (St. Louis Union Trust Co. v. Bethesda General Hospital, 446 S.W.2d 823, 829 (Mo. 1969)). We believe that income of the Babler Fund not appropriated by the legislature should be considered excess income and thereafter treated as corpus.

In summary, it is our opinion that the corpus of the Dr. Edmund A. Babler Memorial State Park Fund, within the meaning of Section

Mr. Joseph Jaeger, Jr.

253.360(3), RSMo, includes all assets of whatever character delivered by any person to the State of Missouri for the benefit of the Babler Memorial State Park, and includes the increase in value of such assets, and the conversion of all assets through sale, purchase, or exchange, into other assets. It is our opinion that income of the fund, within the meaning of Section 253.360(3), RSMo, includes all interest, rents and royalties, cash dividends, and stock dividends where received in lieu of cash dividends at the option of the stockholder (i.e., the State Treasurer and the Missouri State Park Board; Section 253.360(4), RSMo).

Since the legislature appropriates annually or biennially for fiscal years commencing on July 1 (Article IV, Section 23, Constitution of Missouri, 1945), we believe it most logical to determine annual income and corpus value of the Babler Fund on the same fiscal year basis. This would necessarily have to be fiscal years that have elapsed prior to the appropriation, and following an appropriation based on the value of income and corpus for a particular fiscal year, that fiscal year would not again be considered for purposes of Section 253.360(3), RSMo. If the legislature does not appropriate the full income derived from the fund assets during a particular fiscal year, this remaining income should thereafter be considered and treated as corpus of the fund.

Because the Babler Fund is not a trust, and hence there are no separate and competing interests of different persons in the fund, we have difficulty perceiving the justification for Section 253.360(3), RSMo, particularly in view of the mechanical difficulties inherent in its application (i.e., segregation of income and corpus; annual valuations of corpus and income). We would recommend that the Missouri State Park Board seek amendment of Section 253.360(3), RSMo, so that it would read:

"The Missouri State Park Board is authorized to use the assets of the fund in such amounts as may be appropriated according to law for the purposes of maintaining and developing the Dr. Edmund A. Babler Memorial State Park."

Yours very truly,

JOHN C. DANFORTH
Attorney General