

**RAE ANN RUMERY, JOHN SKARHUS, AND
CARTWRIGHT ELEMENTARY SCHOOL
DISTRICT V. MARIA BAIER, NO. CV-11-0358-
PR, 2013 WL 85338 (ARIZ. 2013)**

Alexander McCourt

On January 9, 2013, the Arizona Supreme Court held that a state statute diverting money from state trust lands to a trust management fund instead of the designated permanent fund violated Article 10, Section 7 of the Arizona Constitution.¹ In 1910, Congress granted 10 million acres of land to Arizona to hold in trust for public purposes.² According to Arizona's Constitution, any proceeds from state trust land must be used in furtherance of a stipulated public purpose.³ In 2009, Arizona enacted Ariz. Rev. Stat. ("A.R.S") Section 37-527, which proportioned some of the money derived from state trust lands to pay the costs of managing the land.⁴ Rae Ann Rumery, John Skarhus, and the Cartwright Elementary School District filed a lawsuit alleging that Section 37-527 violated Section 28 of the New Mexico-Arizona Enabling Act and Article 10, Section 7 the Arizona Constitution because it allocated state trust funds away from the land's intended purpose.⁵ Baier, the Arizona State Land Commissioner, appealed the trial court's ruling that Section 37-527 violated the Arizona Constitution.⁶ The Arizona Supreme Court affirmed the trial court's decision, stating that Arizona may only use monies derived from state trust lands in accordance with the Arizona Constitution, even if the Constitution is silent as to how the state should fund the management of those lands.⁷

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1. Rumery v. Baier, No. CV-11-0358-PR, 2013 WL 85338, at ¶ 1 (Ariz. 2013).
 2. *Id.* at ¶ 2.
 3. ARIZ. CONST. art. 10, § 7(A).
 4. *Rumery*, 2013 WL 85338, at ¶ 8.
 5. *Id.* at ¶ 10.
 6. *Id.* at ¶¶ 11, 12.
 7. *Id.* at ¶¶ 1, 28.

Arizona received the state trust lands as part of the New Mexico-Arizona Enabling Act (“Enabling Act”), passed by Congress in 1910.⁸ The Enabling Act instituted strict requirements for the state trust lands, guaranteeing that trust funds would be used for specific public purposes.⁹ When the Arizona Constitution was ratified, the Enabling Act was incorporated into the constitutional law of the state.¹⁰ Article 10, Section 7 of the Arizona Constitution lists specific restrictions from the Enabling Act.¹¹ Specifically, all income from state trust lands must be put into a permanent fund and used for the stated public purpose of the land in question.¹² For example, the Enabling Act designated approximately 8 million acres for the “support of common schools.”¹³ Funds derived from this land must be put in a permanent fund dedicated to education. Once the funds are deposited in the permanent fund, the Constitution requires that money may not be removed for any purpose save the explicit public purpose to which the land was devoted.¹⁴

The State Land Department is responsible for managing the trust lands.¹⁵ The Arizona Constitution does not describe how to fund land management.¹⁶ Historically, the legislature has apportioned money from the state’s general fund to the State Land Department.¹⁷ In 2009, the Arizona legislature changed the funding process with A.R.S. § 37-527.¹⁸

A.R.S. § 37-527 states that up to 10 percent of the proceeds from each parcel of trust land will be deposited into a newly formed “trust land management fund.”¹⁹ This fund would only be used to pay for management of the trust lands.²⁰ The remaining proceeds would continue to be deposited into the “common schools” fund.

The Arizona Supreme Court held that Article 10, Section 7 of the Arizona Constitution prohibited the diversion of trust proceeds to the management fund created by Section 37-527.²¹ This holding follows reasoning used by the Supreme Court of the United States, which has held that states may not interpret Enabling Acts in any way that allows the use of trust land proceeds for any purpose other than the purpose stated in the Act itself.²² Article 10, Section 7 incorporates the

8. *Id.* at ¶ 2; Karen M. Jurichko, *In re Gen. Adjudication of All Rights to Use Water in the Gila River Sys. & Source*, No. WC-11-0001-IR, 2012 WL 3966327, 54 ARIZ. L. REV. SYL. (2012).

9. *Rumery*, 2013 WL 85338, at ¶ 2.

10. *Id.* at ¶ 3.

11. *Id.* at ¶ 4.

12. *Id.*

13. *Id.* at ¶ 2.

14. *Id.* at ¶ 4.

15. *Id.* at ¶ 7.

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.* at ¶ 8.

20. *Id.*

21. *Id.* at ¶ 28.

22. *Id.* at ¶ 18 (citing *Ervien v. United States*, 251 U.S. 41, 47-48 (1919)).

language of the New Mexico-Arizona Enabling Act and thereby designates state trust lands for a specific purpose.²³ The Court acknowledged that the Constitution is silent as to how the State should fund the management of state trust lands, but silence does not allow the legislature to infer the existence of an exception to the Enabling Act, even if that exception would benefit the trust land funds.²⁴ The Court also addressed the common law of trusts.²⁵ While the common law generally holds that a trustee can use trust funds to manage the trust itself, the Court pointed out that these “common law powers” can be limited by statute or by the terms of the trust.²⁶ Here, the constitutional language places limitations on the treatment of the land trusts.²⁷ Additionally, the Court was not persuaded by out-of-state case law because Arizona’s Enabling Act is substantially different from similar acts in other states.²⁸ Diverting proceeds from state trust lands to a management fund violates Article 10, Section 7 of the Arizona Constitution.

23. *Id.*

24. *Id.* at ¶ 24.

25. *Id.* at ¶ 25.

26. *Id.* (citing the RESTATEMENT (THIRD) OF TRUSTS §§ 38 (2003), 85 (2007)).

27. *Id.*

28. *Id.* at ¶ 26.