

Date Issued: February 20, 1981 (AGO 81-15)

Requested by: James E. Sperry,
Superintendent, of the North Dakota
State Historical Society

- QUESTION PRESENTED -

Whether it is permissible for the State Historical Society, as trustee of the Antoine (Tony) de Vallombrosa Trust, to deposit accrued interest from said Trust in a passbook savings account until appropriate expenditures, as outlined in the terms of the Trust, are made.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the State Historical Society, as trustee of the Antoine (Tony) de Vallombrosa Trust, may deposit accrued interest from the Trust in a passbook savings account until appropriate expenditures or investments are made under section 55-01-04 of the North Dakota Century Code.

- ANALYSIS -

The Antoine (Tony) de Vallombrosa Trust (hereinafter referred to as the Trust) contains two pertinent paragraphs relating to expenditures and to investments. They read as follows:

3. EXPENDITURES. Expenditures shall not exceed income as derived from the original fund and any principal additions thereto, and, if income is accrued for more than three calendar years; such accrued income shall then accrue and be added to the original principal of the fund.

4. INVESTMENTS. The trustee, hereinafter named, shall invest principal, and accrued and accruing income of the fund in United States Government securities; and may make no other investments or types of investments with this fund.

Section 55-01-04, N.D.C.C., states as follows:

Whenever any grant, devise, bequest, donation, gift, or assignment of money, bonds, or choses in action, or of any property, real or personal, is made to the state historical board or either division under it, such board shall receive and accept the same, and the right and title thereto, in the name of the state. All moneys coming into the hands of the board as donations, gifts, grants, and bequests, unless by the terms of the donation, gift, grant, or bequest such moneys are required to be maintained in another manner, shall be maintained within the state treasury. All rent, interest, or income from land, money, or property received by the board by donation, gift, grant,

or bequest, shall also be maintained within the state treasury unless by the terms of their acquisition such moneys are required to be maintained in a different manner. Such moneys shall be paid out for the purposes prescribed by the donor upon the approval of the state historical board by warrant-check prepared by the department of accounts and purchases.

It is clear from reading the pertinent paragraphs of the Trust that the donated money is required to be maintained in another manner other than being maintained within the State Treasury. Under the terms of the Trust, the trustee is directed to invest the principal and accrued and accruing income of the fund in U.S. Government securities. No other kinds of investments can be made. The donor obviously intended that the principal and income are not to be maintained in the State Treasury.

The accruing of income, however, is secondary to the trustee's principal duty to expend income to maintain the exterior and interior of the Marquis de Mores home and stables located near Medora. The purpose of the Trust is not to make investments, but to use the income earned to carry out the donor's intent. Necessarily then, in order to carry out the Trust's provisions, the trustee may maintain a passbook savings account containing earned income in order to have money on demand for repairs, etc., of the home and stables. Any income accrued beyond that necessary to carry out the donor's intent can be accrued in a passbook savings account until enough money is available for investment in additional U.S. Government securities. Additional U.S. Government securities purchased, however, from accrued income must be kept segregated from the principal so they can be used when necessary to carry out the donor's intent.

Thus, in complying with the Trust's provisions and with the intent of the donor, the Historical Society may set up a passbook savings account.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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