

Digest of A Performance Audit of the School Children’s Trust Section

In 1999, the Legislature created the School LAND Trust Program which is administered by the School Children’s Trust Section (the Section) at the Utah State Office of Education (USOE). The interest and dividends earned on the nearly \$900 million dollar permanent school fund—equating to \$25.3 million in fiscal year 2008—are distributed to the local school districts for distribution to each school. Each public school (charter and traditional) has a School Community Council (SCC) which decides how to spend the funds. This report reviews the role the Section plays in this process and its other roles.

The oversight provided by the State Board of Education to the School Children’s Trust Section needs to improve. The Board has recently recognized this need and has delegated to the State Superintendent, through board resolution, the responsibility to represent the board on school trust issues. The Superintendent needs to review the duties of the Section since some duties and practices are currently not found in *Utah Code* or Administrative Rule.

Oversight to SCCs Should Come from Local School Boards. It is our interpretation that the *Utah Code* intended the School LAND Trust Program as a local program requiring local administration. It is the local school boards who have the responsibility to ensure compliance. Therefore, having oversight provided by the School Children’s Trust Section appears inconsistent with *Utah Code* and should be reviewed.

Relinquishing IAC Staffing Duties Would Free Up Resources. It is unclear why the School Children’s Trust Section has recently staffed the Investment Advisory Committee (IAC) to the Treasurer. There is no statutory authority for the Section to be staffing the IAC. Attendance at the IAC meetings would fall under the Section’s beneficiary responsibilities, but staffing the meetings is beyond their responsibility. Freeing up the resources utilized in staffing the IAC would enable them to be used in other more valuable duties of the School Children’s Trust Section.

**Chapter I:
Introduction**

**Chapter II:
School Children’s
Trust Section
Duties Need to be
Reevaluated**

**Chapter III:
Stronger Trust
Land Management
Needed**

Advocacy Role Should Be More Closely Monitored. We observed that the School Children's Trust Section's efforts in lobbying and advocacy appear, at times, to originate from their own office and not from the office of the Superintendent. We believe that lobbying efforts and advocacy should be approved by the State Board to ensure that the message is cohesive and supported by all involved parties.

Resources Seem Well Spent in Monitoring SITLA. The monitoring of SITLA is, in our estimation, a valuable duty of the School Children's Trust Section, and stakeholders concur. Through monitoring and work with SITLA, more money has come to the school children of Utah through prudent asset management. We believe the Section could spend more time monitoring SITLA, if the State Board and Superintendent so direct.

School Children's Trust Section Did Not Justify Request for Budget Increase. The Section failed to justify its 2009 budget request to the February 2008 Public Education Appropriations Subcommittee. Consequently, the subcommittee did not approve the proposed funding increase for the Section. Furthermore, we found that much of the Section's workload is not based in *Utah Code* or State Board rule. Since much of the Section's practices cannot be found in statute and board rule at this time, we believe that an increase in its budget is unnecessary to fund these practices.

School Children's Trust Section Needs Increased USOE Involvement. Decisions made within the Section have demonstrated the need for increased USOE oversight and better internal management. First, throughout the 2008 fiscal year, the Section failed to account for expenses in four areas of their budget and, consequently, accrued a budget deficit. Second, the Section management submitted multiple budgets for the 2009 fiscal year, each depicting different workloads. Finally, due to a lack of office policies and procedures and accurate job descriptions, the Section and its employees have failed to receive clear direction.

Future Funding Should Depend on Reevaluation from the Superintendent. Future funding proposals to the Legislature should reflect the Section duties outlined in *Utah Code* and the duties reevaluated and determined by the Superintendent. Additionally, funding for the School LAND Trust website, which is maintained by the School Children's Trust Section, needs to be reviewed.

REPORT TO THE
UTAH LEGISLATURE

Number 2009-02

**A Performance Audit
of the
School Children's Trust Section**

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Chapter I

Introduction

The School Children's Trust Section (the Section) of the Utah State Office of Education (USOE) needs retooling by the State Board of Education because its current practices surpass obligations outlined in *Utah Code* and State Board rule. We believe some of the Section's current responsibilities are misplaced, some are not the most efficient use of resources, and one of their responsibilities could be enhanced. Consequently, we believe future funding of the School Children's Trust Section needs to be reevaluated. In fact, the Section's budget and overall management can improve.

Prior to Utah becoming a state in 1896, the state was granted in trust on behalf of the common schools, four sections of every township to support public education. In 1999, the Legislature passed House Bill 350 creating the School LAND Trust Program for the state's public schools to improve student academic achievement. In addition to administering the School LAND Trust Program, the School Children's Trust Section of the USOE performs other functions dealing with trust land issues in Utah.

Land Trust Created to Benefit School Children

In Section 6 of Utah's Enabling Act, the United States granted

. . . sections numbered two, sixteen, thirty-two and thirty-six in every township . . . are hereby granted to said State [Utah] for the support of common schools.

Currently, the School and Institutional Trust Lands Administration (SITLA) manages and generates revenue from the 3.4 million acres of surface land and 4.3 million acres of sub-surface land given to 12 beneficiaries at statehood, one of which is the public schools of Utah. The net revenue generated from SITLA, on only the school lands, is invested by the State Treasurer, and the interest and dividends earned on the nearly \$900 million dollar permanent fund, equating to \$25.3 million in fiscal year 2008, is distributed to the local

**\$25.3 million dollars
was distributed to
School Community
Councils in fiscal year
2008.**

Prior to a State Board rule, the authority to act on behalf of the beneficiary was unclear.

school districts for distribution to each school. Each traditional public school in Utah is to have a School Community Council (SCC) and each charter school is to have a Trust Land Committee which is made up of elected parents, and elected employees, and the principals from the corresponding school for the purpose of deciding on how this money is to be spent.

The SITLA organization and the State Treasurer have a unique fiduciary duty over Utah's trust land and the trust land fund. Since the Treasurer and SITLA invest and manage the children's trust land assets as trustees, they are required to do so solely with the children's best interests in mind.

The Utah State School Board is understood to be the official beneficiary representative on behalf of the school children of Utah (or common schools). The responsibility of the beneficiary representative is to ensure that the trustees are performing their fiduciary duties to the greatest extent possible. This responsibility is now clearly the State Superintendent's as the new State Board Resolution states. Prior to the State Board rule the authority to act on behalf of the beneficiaries was unclear.

School Children's Trust Section Administers School LAND Trust Program

The School LAND Trust Program for the state's public schools is to:

1. provide financial resources to enhance or improve student academic achievement, and
2. be used to implement the school improvement plan. (See *Utah Code* 53A-16-101.5)

The School LAND Trust Program is administered by the School Children's Trust Section of the USOE. This program is meant to improve student academic achievement by providing trust resources to enact programs focused on academic needs of schools. The Section currently distributes funds after assuring compliance with the *Utah Code* and State Board Resolution. The local school districts distribute

the funds on a per pupil basis to each school according to the schools' approved SCC plan. As mentioned, every SCC is made up of elected volunteer parents, elected teachers and school principals with oversight of the SCCs provided by the local school boards and the School Children's Trust Section.

However, the School Children's Trust Section executed other beneficiary oversight duties without clear authority of the current USOE administration. Only recently a State Board resolution gave the State Superintendent the responsibility to act on its behalf. The School Children's Trust Section is hired to monitor the Trust and advise the Superintendent on trust land issues, acting as a spokesperson for the State Board at the request of the Superintendent.

School Children's Trust Section Involved in Multiple Areas

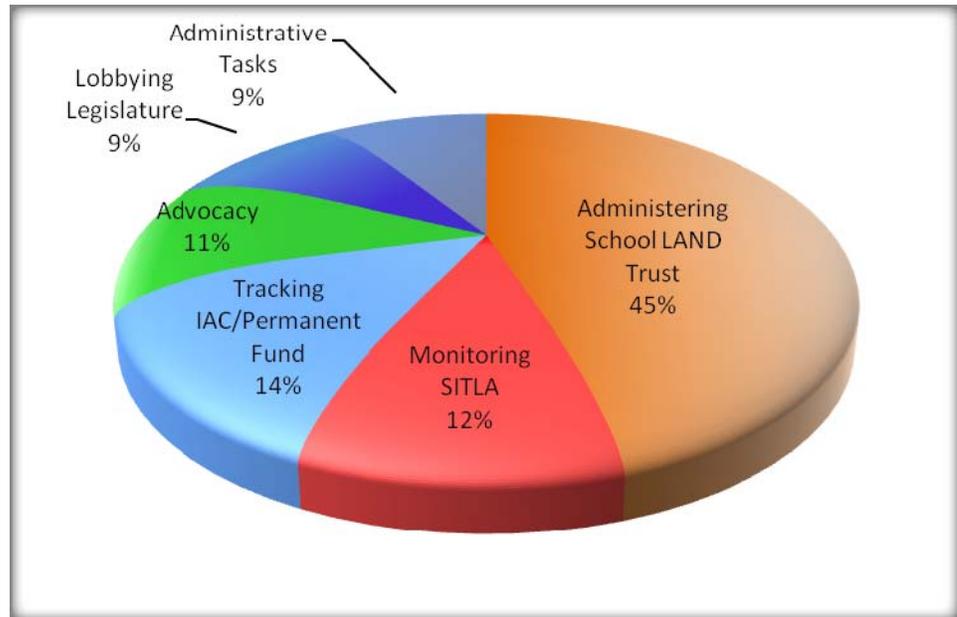
The School Children's Trust Section performs what we believe are additional tasks other than their duties of speaking on behalf of the beneficiaries under the Superintendent's direction. These practices are based upon the School Children's Trust Section's interpretation of case law and their perceived role as beneficiary representatives.

The School Children's Trust Section had no documentation showing where or how they spent their time. We had to develop an analysis based on the director's allocation of employee time and the actual full time equivalent (FTE) data received from the Utah State Data Warehouse for fiscal year 2008.

In order to account for part-time employees, we combined the director's estimate of her personnel's time spent in the various areas with the FTE count. The result is a weighted average that better estimates how the School Children's Trust Section allocates their personnel resources. Figure 1.1 depicts our percentage allotment analysis for the School Children's Trust Section.

We believe the School Children's Trust performs additional tasks other than their assigned duties of speaking for the beneficiaries.

Figure 1.1 Areas of School Children’s Trust Section Involvement. In the 2008 fiscal year, the School Children’s Trust Section’s time was spent in six different areas. Almost half of the Section’s workload was spent administering the School LAND Trust program. (Note: percentages are approximate.)



The School Children’s Trust spends 45 percent of their resources administering the School LAND Trust Program.

Figure 1.1 breaks out the percentage of office time spent in the six different areas by the School Children’s Trust Section during the 2008 fiscal year. The following are some of the activities included within each area:

- **Administering the School LAND Trust Program** (45 percent)—Evaluating SCC and charter school plans, training, administering LAND website, and responding to questions.
- **Monitoring SITLA** (12 percent)—Attending SITLA board meeting, researching trust land issues, and executing special projects.
- **Tracking Investment Advisory Committee (IAC)/ Permanent Fund** (14 percent)—Staffing IAC meetings and lobbying for statutory and constitutional changes. The IAC is a group put together by the different beneficiaries that advises the State Treasurer on investment of the permanent fund.

- **Advocating** (11 percent)—Participating and staffing the Trust Land Advisory Committee (TAC) meetings, media work, and presentations with user groups, policy makers and SCCs. TAC is a group of interested parties including Parent Teacher Association (PTA), Utah Education Association (UEA), the State Superintendent, the State Board of Education, the School Children’s Trust Section and others who meet together to discuss trust land issues.
- **Lobbying Legislature** (9 percent)—Presenting proposed legislative changes to TAC and the State Board, training new legislators, and providing requested trust land information to legislators, media and the public.
- **Performing Administrative Tasks** (9 percent)—Completing necessary paperwork, attending continuing education and distribution of other revenue received from the creation of The Grand Staircase Escalante Monument.

Audit Scope and Objectives

The audit request stems from a February 2008 Public Education Appropriations Subcommittee meeting when the School Children’s Trust Section asked for additional funding but upon request had not presented what some of the committee believed to be an adequate justification for such an increase. Shortly after, an official audit request was submitted by the co-chairs of the Public Education Appropriation Subcommittee. They requested that our office determine the statutory authority for the School Children’s Trust Section, the value Section adds to public education, and the comparable programs in peer states.

Consequently, this audit includes these objectives:

1. Document the statutory authority for the program’s representation of the public school beneficiary.
2. Determine how well the program’s performance benefits public education by evaluating the School Children’s Trust Section’s contribution to:

The Public Education Appropriations Subcommittee had questions about the School Children’s Trust Section at the USOE.

- The State of Utah School and Institutional Trust Lands Administration (SITLA)
 - Investment Advisory Committee (IAC)
 - School Community Councils (SCCs)
3. Gather comparable data from similar programs in other states.
 4. Review the program's current budget and justification for personnel and resources.

Chapter II outlines the current duties and practices of the School Children's Trust Section and the need for reevaluation. Chapter III outlines the current and future funding needs of the School Children's Trust Section and the need for budgetary and managerial improvements.

Chapter II

School Children's Trust Section Duties Need to Be Reevaluated

The oversight provided by the State Board of Education over the School Children's Trust Section (the Section) of the Utah State Office of Education (USOE) needs to improve. The Board has recently recognized this need and has delegated to the State Superintendent the responsibility to represent them on school trust issues. We also found that some of the Section's duties and practices are currently not found in *Utah Code* or Administrative Rule, which creates some confusion. Overall, the Section's duties and practices need to be more clearly defined, particularly in establishing the Section's role in monitoring and oversight. This chapter discusses the Section's authority and explores other practices currently performed by the Section. This chapter also addresses the following possible changes to the School Children's Trust Section:

- The Section oversees the School LAND Trust Program for the School Community Councils (SCCs) and trains schools in spending of trust land funds. However, our interpretation of *Utah Code* states that these are local school board functions and should be reassigned to the school districts.
- The Section's involvement as staff to the Investment Advisory Council (IAC) is not specified in *Utah Code* and should discontinue.
- The Section's role as advocates for changes in law to benefit the trust needs to be more closely monitored by the State Superintendent.
- The Section's involvement as beneficiary representatives with the School and Institutional Trust Land Administration (SITLA) appears valuable and could increase.

The State Board has recently given the responsibility to speak on their behalf to the State Superintendent through State Board resolution.

Authority to Act as Beneficiary Only Recently Made Clear

There had been no clear authority granted the School Children's Trust Section to act on behalf of the State Board until recently. During the time of our audit, the State Board rectified this issue in May 2008 with a resolution defining the authority of the State Superintendent to represent the State Board on trust land issues. The Section is to act as a consultant to the Superintendent when necessary. This recent resolution sets up a clear line of authority and determines who has the power to speak on behalf of the State Board.

Land Given to School Children at Statehood

In the Utah State Enabling Act, the federal government granted sections of land throughout the state "for the support of common schools." The land is held in trust for the schools with any revenue earned deposited in a trust established as the permanent State School Fund as defined in Article X, Section 5 of the *Utah State Constitution*. The beneficiaries of the permanent State School Fund are the schools of Utah, with the Utah State Board of Education acting on their behalf. The law establishes the State Board, or its designee, as the beneficiary representative for the schools. Both SITLA and the State Treasurer are the trustees of the beneficiaries' assets.

Recent Board Resolution Gives State Superintendent Authority

A recently adopted Utah State Board of Education resolution outlined the authority with which the School Children's Trust Section of the USOE should operate. When the audit began, we could not find any language in *Utah Code* or State Board rule that gave authority to the Section to act as the beneficiary representative for the School LAND Trust. However, the board resolution, dated May 2008, established that the Superintendent is designated by the State Board to represent the interests of the children. The Superintendent hires the School Children's Trust Section to monitor the program. The resolution states,

The recently adopted board rule states that the Superintendent may rely on the School Children's Trust's expertise in trust land matters.

Be it Further Resolved that the Utah State Board of Education delegates to the State Superintendent of public Instruction the responsibility to represent the Utah State Board of Education on school trust issues. . . . In fulfilling this responsibility, the State School Superintendent of Public Instruction may rely upon the staff expertise of the School Children’s Trust at the Utah State Office of Education. . . .

When required by the Superintendent, the School Children’s Trust Section can represent the State Board on behalf of the schools and children of Utah. Recently, the Section has conducted some of their practices outside of direct supervision of the State Superintendent. However, in June 2008, the section was put under the direct supervision of the State Superintendent. Since authority has been clearly outlined by the State Board rule, we believe the State Superintendent needs to clarify and prioritize what functions of this section are providing value to the USOE and children of Utah.

Interaction with Local School Community Councils Is Unique

Utah appears to be the only state to have local organizations such as SCC’s receive any education funds to spend on approved academic expenditures. The fact that Utah is the only state with SCCs and an organization to monitor SCC spending makes Utah and the School Children’s Trust Section unique and without direct comparison. Other states use their trust land money in different ways; Washington and Wyoming use the money to subsidize new school building construction while New Mexico uses the money to subsidize the general school fund. Consequently, there are no comparable peer programs that administer a SCC trust land program similar to the School Children’s Trust Section. Since there is no comparison or criteria with which to compare programs, we constructed our own analysis of the Section based upon their current practices.

Oversight to School Community Councils Should Come from Local School Boards

The *Utah Code* seems to indicate that the School LAND Trust Program is a local program requiring local administration. It is the

The Superintendent needs to clarify and prioritize the functions of the School Children’s Trust Section.

Having the School LAND Trust Program administered by the School Children’s Trust Section seems inconsistent with the *Utah Code*.

We believe that the local school boards have the statutory responsibility to provide oversight of the School LAND Trust Program.

local school boards who seem to have the responsibility to ensure compliance. Therefore, having the oversight provided by the School Children’s Trust Section directly to each school does not appear consistent with *Utah Code* and should be reviewed. Although the Section has provided a good service in reviewing the plans for compliance and providing training, currently some of the school districts either already provide oversight of the program or are capable of providing all the oversight themselves. As an extension of the State Superintendent’s responsibility to guard the rights of the beneficiaries, the state has a continued interest in ensuring compliance which would require the monitoring of the local board allocations and decisions. There are options, however, for the Section to continue to provide limited support and training for the school districts and SCCs through coordinated activities, while still giving local entities the oversight responsibility. We recognize these changes will require a transition period.

The School LAND Trust program is set up in *Utah Code* 53A-16-101.5 with the SCCs developing the plan for spending their allocation and the local school board giving final approval to the plans. However, even though the *Utah Code* outlines this program as having local oversight, the School Children’s Trust Section has had the duty of ensuring compliance in the trust land plans by reading the various iterations of trust land plans. As a representative of USOE and in accordance with Administrative Rule 277-477-4(D), the Section also visits 10 percent of the SCCs and provides training and visual inspection of items purchased with the trust land funds. We believe the USOE should review this role of visiting schools. The role of the School Children’s Trust Section could be revised to provide for more post audit work in the review of trust land expenditures rather than a simple visual inspection of the items purchased.

School Community Councils and Local School Boards Have Program Responsibility

Utah Code 53A-16-101.5(5)(6)(7) outlines that “each school shall implement the program [trust land plan] as approved by the school SCC and approved by the local school board.” *Utah Code* directs the local SCCs to develop the plan, the local school boards to approve the plan, and the schools to implement the approved school plan. In approving and implementing the plans, we believe that the local

school boards rather than USOE have the statutory responsibility to provide oversight.

In addition, the *Utah Code* does not require the USOE staff to review or approve SCC plans as they currently do. The only mention in rule regarding compliance is found in R277-477-3(O): If the plans are found to be out of compliance, then USOE can withhold funds until the misappropriated funds are restored. This implies that USOE has some level of oversight, but perhaps secondary to the local school boards. In keeping the control local, the State Board could consider changing the rule and have the local school boards withhold funding for plans that are found to be out of compliance.

A new proposed change to R277-477 states that the “USOE staff shall read the school plans for compliance with the law.” This new change seems to suggest authority greater than what we believe is stipulated in *Utah Code* 53A-16-101.5 as stated previously, with approval and implementation to be at the local level.

There is another responsibility mentioned in rule regarding the School LAND Trust website (www.schoollandtrust.org). It states that the plans are to be inputted into the LAND website, which is to be maintained by the USOE to ensure accurate and uniform reporting (R277-477-4(E)). Still, there is no mention of any sort of approval or review by the School Children’s Trust Section. In summary, we believe the School LAND Trust Program was created as a local program and therefore, as our interpretation of the code states, that it should be dependent upon local board control and oversight.

Oversight Should Be Provided by Districts

In addition to the review currently done by the School Children’s Trust Section, oversight of trust land plans is also reviewed and developed by SCCs and approved by local school boards. Many districts also charge the business administrator or a district trust land specialist with reviewing all of the plans and facilitating the approval of the plans by the local school board. With the combination of local school board approval and district employees, the trust land plans receive at least two levels of review. There is currently a duplication of effort between the USOE and school districts, and if the districts are given the responsibility for compliance and are held accountable for

The *Utah Code* does not require the USOE staff to review or approve the Trust Land plans.

There is currently a duplication of efforts in providing oversight between the USOE and the School Districts and local school boards.

their review through random audits by USOE, this oversight would be sufficient to ensure that the plans receive an adequate review.

In speaking with several of the districts, each stated that they have the knowledge and resources to provide an adequate level of oversight of the plans. Those districts we contacted believe that they could provide a review of the trust land plans for compliance. Going forward, we recommend that the districts are given the charge to provide the oversight of the trust land plans. However, some districts in our sample did request that there be a representative at the USOE that they could call with questions and as the expert in trust land plans. We acknowledge that this expertise resides with the current School Children's Trust Section staff.

Currently, about \$190,000 of School Children's Trust Section funds are devoted to providing oversight and training for this program. The Section spends their resources reading multiple iterations of trust land plans, communicating with the districts on suggested changes, and visiting nearly 90 schools for training purposes. We believe that those responsibilities are misplaced, and although they have provided positive results in the past, the responsibility lies with the school districts and local school boards. The training should occur locally with expert assistance housed at the USOE.

Instead of the School Children's Trust Section reading the plan, a progress report and final report with each school, we suggest that a random and/or selective sample of plans be reviewed each year for compliance with the law. This service could be provided by the Section or by other staff within the USOE. This practice would provide an efficient review and still allow a level of USOE involvement which is more appropriate for the risk involved with the trust land plans. Secondly, as will be discussed later, the School Children's Trust Section could provide a limited post audit function as currently none exists.

Most Trust Land Plans Are In Compliance

As part of the audit, we examined the School Children's Trust Section's reviews of plans. What we determined after testing is that district compliance is generally high. Administrative Rule R277-

Approximately \$190,000 of trust land funds are spent providing oversight and training for the School LAND Trust Program.

477-4 indicates that the trust land money must be spent by the schools according to a trust land plan including specific academic goals and steps to meet those goals. According to *Utah Code* 53A-16-101.5(5), the plans have to answer the greatest academic need.

We conducted an audit test of the School Children’s Trust Section report on plans since 2004 and found that 92 percent of the plans were categorized as having Met Expectation or Exceeded Expectations. This percentage demonstrates a high level of compliance by the schools in writing the plans to the requirements listed in *Utah Code*. Figure 2.1 demonstrates this analysis.

92 percent of the plans reviewed by the School Children’s Trust Section since its inception met or exceeded expectations.

Figure 2.1 A Summary of School Children’s Trust Section’s Review of Plans Shows High Compliance With Over 92 Percent Having Met or Exceeded Expectations. This information was created from the Section’s review documents, which were not complete. However, they provided the best information available.

| 2004-2009 Plans | Count | Percentage |
|-----------------------|-------------|-------------|
| Exceeded Expectations | 572 | 12.8% |
| Met Expectations | 3512 | 78.7 |
| Concerning | 380 | 8.5 |
| Total | 4464 | 100% |

As seen in Figure 2.1, the majority of plans are classified by the School Children’s Trust Section as having met or exceeded expectations, while 8 percent are classified as concerning. Plans classified as “exceeding expectations” are those in which everything is clear and relates to the school improvement plan. The classification of “met expectations” means that the plans are compliant with code. The other categories denote that there is some concern, meaning that there are some perceived violations in the plans. Those that were classified as having concern were typically marked as such because portions of the plan were considered questionable, not because the entire plan was concerning.

For instance, we looked at nine plans that the School Children’s Trust Section marked concerning, and found that approximately 26 percent of the funding from those plans was questioned. So even though 8 percent of the plans had concerns, only 26 percent of the funding of these plans was considered concerning.

A new Board Rule is currently in process that will aid in defining appropriate trust land expenditures. The new rule outlines, in greater detail, appropriate expenditures and gives some examples of what are not appropriate expenditures for trust land money. *Utah Code* states that the money is to be spent on academic reasons linked to the school improvement plans so behavior modifications or security cameras are outside of these requirements and trust land money should not be spent on these expenditures. We believe a better definition of allowable expenses in the new Board Rule will enable the districts and local boards themselves to catch even more plans with questionable spending.

Figure 2.2 illustrates some of the questionable expenditures that prompted a clarification in State Board Rule and their respective dollar amounts.

Figure 2.2 Some Expenditures Were Questioned by the School Children’s Trust Section’s Review. These are examples of some of the most questionable uses of trust land money by school community councils.

- Anti-bullying programs/(\$6,000)
- Sound system for gymnasium/(\$13,000)
- Digital video cameras/(\$11,000)
- Unexplained amounts in general supplies/(\$5,600)
- Teaching and student achievement incentives/(\$6,000)
- Desks and school furniture/(\$1,000)

The Section has provided a good service in helping the districts to realize the importance of appropriate expenditures.

The School Children’s Trust Section has provided a good service in helping the districts to realize the importance of appropriate expenditures. However, as mentioned, we believe the *Utah Code* charges the districts, charter schools and local boards with this responsibility. The improved definition of allowable expenses in the new board rule will further enable the districts themselves to catch even more plans with questionable spending. Further, the way that the plans are documented by the Section did not allow us to determine whether or not the districts had made changes on the recommendation of the Section. We believe, USOE should now allow the responsibility of control and monitoring of these expenditures to the districts as indicated in *Utah Code*. Finally, we believe USOE will still have reasonable oversight of trust land spending by allowing the

School Children's Trust Section to conduct periodic audits of spending and report back to the Board.

School Children's Trust Section Has Trained School Districts on Compliance Issues

The School Children's Trust Section has worked to clarify appropriate expenditures in the new State Board rule previously mentioned. This State Board rule is still in process. The Section has also spent the last few years training the schools and districts on appropriate expenditures.

In 2009, from the trust land fund, Utah School Districts will get between \$72,000 and \$3.7 million to split among that district's schools. Typically, the plans that were deemed concerning had a small portion of money planned for questionable purchases, with the remaining portion of the money being used for appropriate expenditures. The School Children's Trust Section worked with the schools and districts to amend these practices and get their school plans compliant with the law.

Periodic Audits Would Help Ensure Compliance. The School Children's Trust Section's routine visits would be more valuable if, during these visits, Section staff compared purchases made with trust land funds against receipts kept at the district offices to ensure that trust land money was only spent on approved purchases as defined in the new Board Rule. This practice would allow the USOE to help ensure a level of compliance between the districts and the requirements laid out in the Board Rule. Currently, the review is only a visual inspection of the items purchased with trust land funds and provides little in the way of an audit. The School Children's Trust Section could be more valuable to the USOE if they provided a more comprehensive audit of the purchased items.

Districts Capable of Assuming Training Role

R277-477-4D states that USOE staff should visit 10 percent of the schools and USOE staff is to provide training on trust land issues. This practice should be reconsidered. We believe that school districts are capable of assuming the role of training their SCCs. Our interpretation of *Utah Code* suggests that training is a district role under the direction of the local board. Twenty-five of the 30 districts

Periodic audits would allow the USOE to maintain some level of compliance and oversight.

in our sample provide training to their SCCs some through the training given to their principals. Twenty of the 30 districts surveyed stated that they provide some SCC training; while an additional five more districts already have developed a training manual.

As mentioned, the School Children's Trust Section currently visits nearly 90 schools each year and provides training to the individual school councils. While an increased level of training would have been necessary early in the program, we feel the districts, and local boards now have the knowledge to provide their own training on appropriate expenditures for the trust land money.

Consistent with this being a local program, it seems appropriate for the various school districts to provide the training to their school SCCs. We believe that the school districts are capable of taking on the additional training role with the USOE providing regional trainings to the districts. Holding the training at the district or regional level would significantly cut down on the cost of sending the USOE staff out to visit 90 schools and train 90 individual SCCs. The School Children's Trust Section or some section of the USOE could provide customer service and answer questions for the districts on training.

In speaking with the State Superintendent, we learned that the USOE is already moving in the direction of providing regional trainings for both school administrators and SCC members. We agree that handling training at the district or regional level is more efficient than providing training at each school, which is the current practice of the School Children's Trust Section.

USOE Should Reconsider Training Function

SCCs have several responsibilities and the USOE should be responsible to monitor their training. We have researched some options, in addition to the audit function mentioned previously, that should be considered by the State Board of Education in changing the School Children's Trust Section's role in SCC training.

Serve as School Community Council Specialists. One way in which the School Children's Trust Section could provide a service to the SCC training effort is to continue to serve as a SCC training resource that schools could call with questions. In addition, they could act as the training coordinator in the regional trainings and

Holding the School Community Council trainings at the regional or district level would cut down on the costs of sending USOE staff out to visit individual schools.

With a reorganization, the School Children's Trust Section could be of service to SCCs by providing customer service to the districts or expanding the scope of the Trust Land website.

produce a manual that could be distributed by the USOE in regional trainings.

Provide Expanded Information on LAND Website. Currently, the School Children’s Trust Section maintains the LAND Trust website, which exists so that schools in each district can input their trust land plans. The website could be expanded to include other information pertaining to other SCC responsibilities, which include teacher improvement, safe routing plans, elementary reading, and development of school improvement plans.

It would be advantageous if the LAND website could include other SCC training information. A more comprehensive website would provide a greater resource to the schools and SCC members who have questions regarding any of the aspects of their SCC responsibilities. However, if the website were to contain more SCC information, additional funding and redirection from other areas of USOE would be necessary.

Relinquishing IAC Staffing Duties Would Free Up Additional Resources

We reviewed another area where the School Children’s Trust Section spent their time and found it is unclear why the Section has recently staffed the Investment Advisory Committee (IAC) to the Treasurer. The staffing and monitoring of the IAC utilized approximately 14 percent of the Section’s resources. The IAC was established by the Legislature in 1992 by Senate Bill 20 in order to advise the State Treasurer on investing the funds generated from the trust lands. There is no statutory authority for the Section to be staffing the IAC. Attendance at the IAC meetings would fall under the Section’s beneficiary responsibilities, but staffing the meetings is beyond their responsibility. Freeing up the resources utilized in staffing the IAC would enable them to be used in other more valuable duties of the School Children’s Trust Section.

There is no justification in *Utah Code* or State Board rule establishing the School Children’s Trust Section as the staff for the IAC.

Staffing of IAC by School Children's Trust Section Not in *Utah Code*

Utah Code 51-7a-301 documents the duties of the IAC but makes no mention of the committee's staffing responsibilities. Nothing is found in state statute or rule that establishes the School Children's Trust Section as IAC staff, but the Section has assumed this responsibility since 2004. It is likely that the Section took this assignment because the Section's director was instrumental in getting the committee established. However, now that the committee is established, the School Children's Trust Sections' continued involvement should be up to the discretion of the State Superintendent. We believe that their resources could be better used in other areas.

The School Children's Trust Section has performed the duties of staffing the IAC by taking minutes, calling meetings, and constructing agendas for the quarterly meetings. In addition to staffing these meetings, the Section works with the IAC to promote legislation allowing more investment opportunities for the fund. The Section also researches how the fund is performing and measures it against other trusts. The director of the School Children's Trust Section hopes current staff will research what other trusts around the nation are doing to invest their funds.

State Treasurer Has Begun Staffing Investment Advisory Committee

We understand that the State Treasurer's office has begun to provide staff for the IAC. Before the State Treasurer took on the staffing responsibilities the School Children's Trust Section spent roughly 14 percent of their total personnel time attending, lobbying on behalf of, and staffing the IAC. We believe that, with this recent staffing change, the Section can channel some of their resources toward other areas while still providing a level of oversight to the investments on behalf of the beneficiaries. The School Children's Trust Section also performs roles of lobbying and acts as advocates for trust land issues in the state and national legislatures.

August 2008 was the first time that the Treasurer's Office has taken on staffing responsibilities. We agree with the State Treasurer's Office should staff the IAC, and we recommend that this change be

We recommend that the State Treasurer's Office continue to staff the IAC indefinitely.

permanent. However, we do believe that, in their beneficiary capacity, someone from the School Children's Trust Section should attend IAC meetings since, at times, the IAC has asked the Section to provide historical information. The School Children's Trust Section also believes that vigilant review and oversight are necessary as the interest and dividends will continue to grow and provide more money for the schools of Utah. We believe that their role should not be as staffers or decision-makers in the financial aspect, but as active observers for the benefit of the beneficiaries.

Advocacy Role Should Be More Closely Monitored

The School Children's Trust Section spends an estimated 20 percent of their time advocating for trust land issues in both the Utah Legislature and the U. S. Congress, the media, the State Board and TAC. To avoid any misunderstandings or lobbying counter to the wishes of the USOE, lobbying efforts and advocacy should be directed by the State Superintendent's office. We observed that the Section's efforts often appear to originate from their own office and not from the office of the Superintendent. We believe that lobbying efforts and advocacy should be approved by the Superintendent and State Board to ensure that the message is cohesive and supported by all involved parties.

USOE Resources Are Spent Advocating for Trust Land Issues

The School Children's Trust Section acts as advocates for trust land issues in the state and national legislatures. The Section estimates that they spend 11 percent of their time in their advocacy efforts. Our concern with their advocacy efforts is that they be in line with the policies and direction of the School Board of USOE and the Superintendent.

The School Children's Trust Section staff participates in many different advocacy groups within the state. In addition to in-state advocacy, the director of the Section has also created an organization called Children's Land Alliance Supporting Schools (CLASS) which raises awareness nationally about trust land issues. The advocacy

All lobbying and advocacy efforts should be approved by the Superintendent.

efforts of the trust land have united several other interested parties such as the Utah Education Association (UEA) and the Parent Teacher Association (PTA) in understanding trust lands and the money available to the SCCs.

Lobbying Should Be Controlled By the State Superintendent

The State Superintendent agrees that a lobbying role for the office is acceptable as long as it is in line with the policies and direction of the State Board. The School Children's Trust Section estimates that they spend 9 percent of their time lobbying and providing information to the Legislature on behalf of the beneficiaries. Once again it is up to the State Superintendent to determine how much or how little the Section is involved in outside lobbying of the Legislature.

The office of the Superintendent should give more direction to the lobbying efforts of the School Children's Trust Section. At times it has appeared that the Section was lobbying without consulting the Superintendent's Office. We believe that lobbying efforts should originate from the State Board and Superintendent in matters dealing with education.

The School Children's Trust Section claims that their lobbying efforts have aided in getting bills passed in favor of trust lands and the beneficiaries. The Section Director claims that since 1984, she and her staff have worked on more than 70 bills that have dealt with trust lands and that their lobbying has been instrumental in the passage of several of those bills.

We believe that the lobbying and advocacy have brought about positive changes for the school children of Utah. However, we recommend that the Superintendent direct lobbying and advocacy efforts of the School Children's Trust Section on behalf of the State Board.

Resources Seem Well Spent in Monitoring SITLA

The monitoring of SITLA is, in our estimation, a valuable duty of the School Children's Trust Section. Through monitoring and work

The School Children's Trust Section claims to have worked on more than 70 bills that have benefitted trust lands.

with SITLA, more money has come to the school children of Utah through prudent asset management. The Section's authority to monitor SITLA on behalf of the beneficiaries has been recently made clear, and the stakeholders agree that the oversight they provide is valuable. The Section currently spends approximately 12 percent of their resources monitoring SITLA, but we believe that this area could benefit from additional resources if the USOE Board and Superintendent desires.

The SITLA stakeholders believe that the monitoring performed by the School Children's Trust Section is valuable.

Beneficiary Case Law Establishes Duty to Monitor the Trustee

In addition to the newly passed board rule, beneficiary case law provided to us by the School Children's Trust Section indicates that the beneficiary representatives have the right to ask questions and monitor the operations of the trustee. We agree that it is in the best interest of the beneficiaries to have someone monitoring the activity at SITLA. We believe that more resources, if available, should be used to monitor and oversee SITLA transactions. However, this allocation of time spent is a determination to be made by the Superintendent on behalf of the Board.

Stakeholders Say School Children's Trust Section Provides Valuable Resource

The Director of SITLA and the former SITLA Board Chair agree that the School Children's Trust Section is a valuable resource because it provides institutional knowledge and speaks as the voice of the beneficiaries. Both the Director and former SITLA Board Chair feel that having beneficiary interaction helps keep decisions in perspective for SITLA and provides them with additional research on the proposed transactions.

School Children's Trust Section Positively Impacts SITLA Board Decisions. In 2007, SITLA considered selling land for the purpose of conservation for a price that the School Children's Trust Section believed was less than the market value. The Section raised concerns with the land being sold at less than market value suggesting that SITLA may be breaking their fiduciary responsibility to act only on the behalf of the school children. In order to make sure that the SITLA board did not forget their responsibility, the Section rallied the PTA and UEA to advocate against the sale of the trust land.

These organizations talked with the SITLA board members so that they knew that a particular conservation deal would be in violation of their fiduciary responsibilities. When the vote came to explore the option further, all the SITLA board members agreed to postpone the sale. The Section believes, and the UEA and PTA agree, that it was because of their involvement and their rallying of the education community that the decision was made not to go forward with that particular conservation sale of land.

School Children's Trust Section Scrutinizes SITLA

Transactions. Employees of the School Children's Trust Section related to us an instance when they called into question some pricing and appraisals of some pending transactions in southern Utah. They asked SITLA to get a second appraisal to ensure that the prices paid for the land were the best they could obtain, ensuring the largest benefit for the school fund and other beneficiaries. SITLA got the second appraisal, which was slightly higher and the transaction went through accordingly.

School Children's Trust Section Attorney Submits Comments.

Several times a year, the attorney within the School Children's Trust Section reads Environmental Impact Statements (EIS) and other documents generated by the Bureau of Land Management (BLM) and other federal agencies outlining their future land management plans. These plans always affect trust lands. The Section will submit comments to the BLM multiple times a year in an effort to protect the trust's interest by trying to ensure that trust land is not negatively affected by the BLM plans. The BLM has reacted positively to this practice and made changes and allowances for trust land in their next iteration of land management statements.

Few School Children's Trust Section Resources Spent Monitoring SITLA

As mentioned, the School Children's Trust Section currently spends around 12 percent of their office resources monitoring SITLA. As SITLA is the trustee that earns money for the trust, it is logical that the beneficiary representative monitor how SITLA earns money, ensuring that SITLA's fiduciary responsibility to the school children of Utah is their priority.

The School Children's Trust Section submits comments to the BLM in an effort to protect the trust's interests

In our search for comparable criteria, we reviewed other trusts. All trusts have some monitoring mechanism from the beneficiaries. We found no other school trust that had the level of beneficiary oversight provided by the School Children's Trust Section. This is because no other trusts have a structure similar to Utah's School Children's Trust Section. Other states do not have organizations comparable to the Section that actively monitor the Trustees. The Section's structure of oversight is unique when compared to both private trusts and other states' public school trusts.

Other duties that are currently performed by the School Children's Trust Section include reviewing joint ventures and leasing agreements handled through the development group, reviewing of oil, gas, and mineral leases, monitoring land sales, and watching and commenting on federal environmental impact statements that affect Utah trust lands. The Section currently sends representatives to each of the SITLA board meetings to ensure that the beneficiaries know what is happening with the Trust and that the SITLA board understands that the beneficiaries are concerned with their actions. The current Section Director believes that they are only reviewing a fraction of the transactions taking place at SITLA and would like to have the resources to look at more of what SITLA is doing.

Additional Monitoring Resources May Be Beneficial

The benefit to the trust is greatest when SITLA is operating in the best interest of the school children, because it is SITLA—along with the Treasurer—who are making the money for the School LAND Trust program. Given the increasing amount of money being distributed by the School Children's Trust Section, through the efforts of SITLA, the school children of Utah may benefit from increased monitoring efforts. If further resources are directed toward SITLA, an ongoing cost benefit analysis should follow in order to insure the greatest amount of benefit is being derived from the continued monitoring.

The greatest potential risks for the school children, as beneficiaries, are the mismanagement of the permanent fund and abuse of the land that generates the money for the permanent fund. According to the Section Director, both mismanagement and abuse of the fund have occurred in the past. We have discussed examples previously that

The School Children's Trust believes that they are only reviewing a fraction of the SITLA transactions and would like resources to do more.

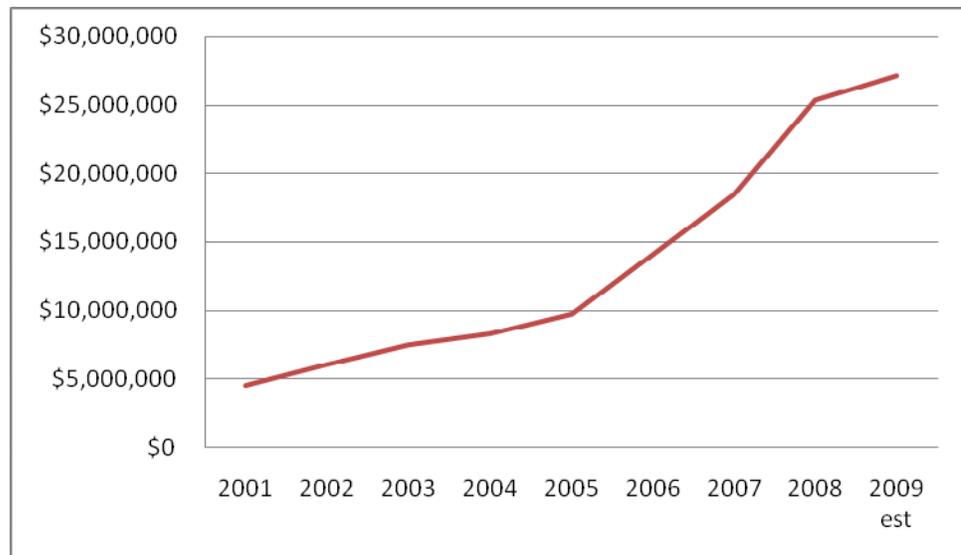
It is estimated that in 2009, \$27 million will be distributed to more than 886 schools through the School LAND Trust Program.

show the value in having someone acting in the best interest of the beneficiaries, by overseeing the SITLA activities. Leaders of the Utah PTA told us that they believe that the greatest benefit currently performed by the Section is the monitoring of SITLA.

Oversight of land management is likely where the School Children's Trust Section could focus more efforts, especially as disbursements continue to rise. In 2001, the School LAND Trust Program distributed less than \$5 million to all of the schools. In 2009, \$27 million was distributed to more than 886 schools, as shown in Figure 2.3.

Figure 2.3 Growth in Trust Land Funding Distribution to Schools.

The amount of money distributed to school SCCs through the growth of the permanent fund by SITLA and the State Treasurer has increased significantly.



*2009 is an estimated distribution amount.

Figure 2.3 shows how distribution amounts have grown over the years since the inception of the distribution to schools. The increase in the distribution of funds shows the impact of SITLA and good investment policies by the State Treasurer for the school land trust. Continued vigilance in monitoring the money will help ensure that more money is given to SCCs to fulfill specific needs within those schools.

To summarize this chapter, we believe that the State Superintendent needs to further direct the duties that should be performed by the School Children's Trust Section. The Section's monitoring of SITLA is a value to the schools in Utah. Additionally, we believe that the SCC oversight and training provided by the Section has been valuable; but ultimately, oversight and training for the program should, chiefly, be a local school district responsibility. Staffing of the IAC should be eliminated, and the advocacy and lobbying efforts should be closely tracked by the State Superintendent. In light of the new board resolution, this would be an appropriate time to make changes in the School Children's Trust Section's mission.

The Superintendent needs to further direct the duties that should be performed by the School Children's Trust Section.

Recommendations

1. We recommend the State Superintendent coordinate with the local school boards in providing oversight and training for the SCCs and establish the oversight as a local function as is suggested by *Utah Code*.
2. We recommend the State School Board consider amending R277-477-4(D), which states that the USOE shall visit 10 percent of the schools for training. In its place, the new rule should allow for more efficient and effective regional trainings and random and selective audits of expenditures.
3. We recommend the State Superintendent direct that the School Children's Trust Section no longer staff the Investment Advisory Council.
4. We recommend the State Superintendent determine appropriate advocacy and lobbying activities for the School Children's Trust Section.
5. We recommend the State Superintendent provide more specific beneficiary representative duties to the School Children's Trust Section and consider allocating more of the section resources to beneficiary oversight duties.

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Chapter III

Stronger Trust Land Management Needed

We reviewed the School Children's Trust Section's (the Section's) duties as assigned them by *Utah Code* and Administrative Rule and identified three areas of concern.

- First, we believe that the Section's 2008 budget request failed to provide adequate justification for their requested budget increase based on their outlined duties as discussed in Chapter II of this report.
- Second, we believe Section management needs to improve. Symptoms that the Section needs to improve budgeting and general management include: a \$23,000 budget shortfall in fiscal year 2008, a lack of office policies and procedures outlining responsibilities in the multiple areas in which they operate, and a lack of accurate job descriptions.
- Finally, since we conclude in Chapter II that some current practices performed by Section exceed statute and board rule, we believe that the future funding for the Section should be more closely scrutinized by USOE management. The funding of the Section should correlate with the direction outlined by the State Board and Superintendent on what duties should be assigned to the Section, keeping in mind the duties already assigned in statute and Board Rule.

School Children's Trust Section Did Not Justify Request for Budget Increase

The School Children's Trust Section failed to justify its 2009 budget request to the February 2008 Public Education Appropriations Subcommittee. Consequently, the subcommittee failed to approve the proposed funding increase for the Section. Furthermore, we found that much of the Section's workload is not based in *Utah Code* or State Board rule.

Much of the workload in the School Children's Trust Section is not based in *Utah Code* or State Board rule.

Budget Increase Proposal Did Not Pass

During the February 7, 2008 Public Education Appropriations Subcommittee meeting, the School Children's Trust Section requested a change to the *Utah Code* that would potentially allow their budget to total up to \$650,000. This amount would have been substantially larger than the Section's 2008 total appropriation of \$434,125. The proposal would have added the following *italicized* language to *Utah Code* 53A-16-101(3):

Upon appropriation by the Legislature, monies from the Interest and Dividends Account shall be used for the School LAND Trust Program as provided in Section 53A-16-101.5, *of which 2.5% of the total annual distribution, not to exceed \$650,000, shall be used for the administration of the program and beneficiary oversight of the common school trust.*

The subcommittee members were not prepared to adopt the supplementary language without more justification for the increase and opted to address the issue at a later date. In the ensuing subcommittee meeting, the 2.5 percent requested appropriation was placed on the interim study list. But, members of the subcommittee did approve a continuation of funding from the Interest and Dividends Account to sustain the trust land program for fiscal year 2009. The subcommittee wanted more information on how the additional money was to be used and what are the current duties of the section before approving the budget request. As discussed in Chapter II, the School Children's Trust Section's duties are unclear and are in need of further direction from the USOE.

School Children's Trust Section Workload Needs to Be Reevaluated

According to the *Utah Code* and State Board rule, there are very few duties assigned to the School Children's Trust Section. The majority of the Section's authority comes from the State Board, which allows, under the direction of the Superintendent, the Section to speak on the Board's behalf regarding trust land issues.

The other School Children's Trust Section functions are based upon the Section's interpretation of beneficiary case law. Examples of

The Public Education Appropriations Subcommittee desired more information on how the money was to be spent before approving the budget request.

interpreted duties include staffing the Investment Advisory Committee (IAC), staffing Trust Land Advisory Council (TAC) meetings, and even performing various SITLA and State Treasurer oversight tasks. The Section's director has argued that these additional practices require more funding. We question the necessity of the Section's involvement in these additional areas and, as stated in Chapter II, recommend that the Superintendent and State Board outline the official duties of the School Children's Trust Section.

Since the majority of the School Children's Trust Section's practices cannot be found in statute and State Board rule at this time, we believe that an increase in the Section's budget is unnecessary to fund these practices. In addition, we question some of the budget and management practices identified during the audit, which are discussed in the next section.

School Children's Trust Section Needs Increased USOE Involvement

Management decisions made by the School Children's Trust Section have demonstrated the need for increased USOE oversight and better internal management.

- First, throughout the 2008 fiscal year, the Section failed to account for expenses in four areas of their budget and, consequently, accrued a budget deficit. The budget shortfall caused the Section to consume a portion of their 2009 appropriations.
- Second, the Section's management has also submitted multiple budgets for the 2009 fiscal year; each budget has depicted various workloads. Furthermore, in a move contrary to their budget increase request, the Section has recently reduced their staff by one employee. The reduction in staff was due to both budget constraints and performance and job changes.
- Finally, due to a lack of office policies and procedures, the Section and its employees fail to receive clear direction. The Superintendent reports that new and appropriate job descriptions have recently been developed and implemented

Some management decisions made by the School Children's Trust Section demonstrate the need for increased USOE involvement.

during the audit. Still, we recommend that the Superintendent provide continual review, in order to improve the accountability and effectiveness of the Section.

The School Children's Trust Section Failed To Allocate Costs in Fiscal Year 2008

The School Children's Trust Section was over budget in fiscal year 2008 by approximately \$23,000.

The School Children's Trust Section was over budget in the 2008 fiscal year by approximately \$23,000. Several factors led to this overspending, including compensating for extra hours accrued, improper budgeting for employee overhead, office rent, and a website upgrade. The failure to properly budget for both personnel and non personnel expenses caused the Section to expend a portion of their 2009 budget.

In fact, due to the depletion of their budget before June 30, 2008, the Section was temporarily shut down for one week. The Section was reopened when the Superintendent authorized funding from the unused fiscal year 2008 Mineral Lease Account to cover the remaining costs for the fiscal year. Consequently, a portion of the Section's 2009 budget was used to complete the 2008 fiscal year, and elements of future budgets are still problematic, as will be discussed.

Funding for the School Children's Trust Section is allocated from the Legislature and the Superintendent. During the 2008 fiscal year, the Section received appropriations from three accounts:

- **FY 2008 Appropriation**—One-time funding appropriated by the Legislature from the Uniform School Fund Restricted Interest and Dividends Account
- **Mineral Lease Account**—Funding that is approved and dispersed at the discretion of the State Superintendent
- **School LAND Trust**—Ongoing funding from the Uniform School Fund Restricted Interest and Dividends Account

Figure 3.1 breaks out the School Children's Trust Section's 2008 budget. Total appropriations equaled \$434,125 and personnel costs for the 2008 fiscal year were over \$338,000, or roughly 74 percent of the budget.

Figure 3.1 Fiscal Year 2008 School Children’s Trust Section Expenditures Exceeded Appropriations. The Section receives their funding from three different sources. Due to two unexpected personnel charges, additional expenditures on the website and rent, the Section was over budget by \$23,259.

| Category | Amount |
|------------------------------------|--------------------|
| Appropriations | |
| FY 2008 Appropriations | \$ 200,000 |
| Mineral Lease Money | 150,825 |
| School LAND Trust | <u>83,300</u> |
| Total | \$ 434,125 |
| Expenditures | |
| Personnel | \$ 38,652 |
| USOE Overhead | 45,718 |
| Website | 24,015 |
| Professional/ Technical Services | 20,510 |
| Rent | 17,464 |
| Office Supplies/Other Expenditures | 7,878 |
| Travel, Meals, and Lodging | <u>3,147</u> |
| Total | \$ 457,384 |
| Difference | \$ (23,259) |

The ending balance in Figure 3.1 computes to a deficit of over \$23,000. The School Children’s Trust Section’s inability to properly budget for expenditures identifies an area in need of increased supervision by the Superintendent. In speaking with the Section about exceeding their budget, they identified four areas that contributed to the Section’s shortfall:

1. **The Section Director failed to properly budget for extra hours worked by the Director and Deputy.** Near the end of the 2008 fiscal year, USOE staff became aware of the Section’s practice of accumulating unreported hours. Both the director and her deputy were immediately compensated for the unreported hours and the practice was stopped. However, the necessary payout for the additional comp and overtime caused the Section to exceed planned personnel expenditures for the year. The expense for the unreported hours was included within the “Personnel Expenditure” category.

According to the School Children’s Trust Director, it was a combination of four areas which led to the budget shortfall in fiscal year 2008.

2. **The Section director failed to properly budget for the USOE overhead charge on the two newly hired employees.** In order to receive federal grants, the federal government requires that the USOE collect a surcharge for all personnel-related expenditures. The director did not include this expense in the 2008 budget, and only after the two employees were hired did the director realize this surcharge and allocate the appropriate funds.
3. **The Section failed to account for increasing rent responsibilities.** For a few years, the Section has rented office space outside of the USOE Building at the request of an earlier USOE administration. This rent is 20 percent higher than the price charged by the USOE. Until fiscal year 2008, the difference has been reimbursed with USOE supplementary funding. However, part way into fiscal year 2008 the USOE informed the Section that they would be required to pay all of the additional rent. In 2008, the original Section's budget did not account for the rent premium.
4. **Additional website features requested by the Section required more funding.** During the 2007-2008 fiscal years, the Section expanded their web design contract to include features that would allow district business administrators to enter final audited expenditures for each school online at year-end. In addition to the annual website maintenance cost, the Section had to pay for the upgrade. (The expenditure was charged under the Professional/Technical Services category.) The website upgrade charge was split over fiscal years 2007 and 2008. However, the unexpected additional cost added by the upgrade was not accounted for in the budget.

None of these four would have caused a shortfall individually as there was a surplus in the budget. However, taken together, these four items put the School Children's Trust Section over their budget by year's end.

To summarize, the personnel charges for unreported hours and USOE indirect costs were not included in the initial 2008 budget. The School Children's Trust Section was aware of the rent premium and website upgrade before the 2008 fiscal year, but these expenses,

combined with the unreported hours, USOE overhead, and regular office expenditures, caused the budget shortfall.

Multiple Changes in Budgets Are Problematic

Fluctuations and inconsistencies exist in budgeted Full Time Equivalent (FTEs), hours worked, and the status of employees accruing overtime or compensation (comp) time. These matters are problematic and need to be addressed by the State Superintendent.

Recent budget submissions to the USOE by the School Children's Trust Section show 2 of the 4 employees having FTE changes. In a matter of months, some employees' budgeted workloads have fluctuated from .75 FTE to 1 FTE. The director's FTE workload draws attention to these inconsistencies. In four different budgets, the director's workload has increased from between .8 - .85 FTE to 1 FTE during a four-month period in fiscal year 2008.

During fiscal year 2008, the hours worked each pay period varied for almost every School Children's Trust Section employee, including the Director and Deputy. We found multiple instances where the hours worked did not correspond with the previous pay period or the appropriated workload found in the Section's budget. For example, during three consecutive pay periods in April-May 2008, the Section Deputy Director was compensated for 80, 52, and 58 hours of work when she was originally budgeted a workload of 56 hours per pay period at the beginning of the fiscal year.

The amount of changes in FTE's and hours worked is concerning in that it is very difficult to put together workload budgets and to perform forecasting if the hours worked and FTE amounts are always changing. The budgeted FTE's and hours worked should also act as a control used by management to ensure that the employees are performing their assigned duties. The State Superintendent reported that she and the Business Administrator have corrected the FTE variability in the Section as of November 2008.

In our analysis, we discovered that the employees of the School Children's Trust Section are categorized in different ways regarding overtime (time-and-a-half) and comp time. Two of the four employees earn comp at straight time, one earns comp time at time-and-a-half and another earns overtime at time-and-a-half. We believe

Fluctuations and inconsistencies in employee status, hours worked, and FTE's are concerning.

that the employee status should be standardized by USOE to aid in accurate budgeting.

The variances in the budget and workload are concerning as it is difficult to determine spending; the budget is continually adjusted to include the varying FTE amounts. The School Children's Trust Section's budget issues during the 2008 fiscal year identify a greater need for better management and coordination with the USOE. The numerous changes in budget, FTE, and workload need to be addressed by the USOE.

Outside Activities Affecting the Section Require

Superintendent Approval. In a related issue, the School Children's Trust Director and Deputy Director are now each working a full 1 FTE workload. But, as stated in Chapter II, both the Director and Deputy Director administer a private nonprofit organization called CLASS which promotes trust land issues in the western states. It is unclear how the School Children's Trust Section's employees will account for their time to administer the private organization CLASS as they are now full time employees for USOE. It is important that the Superintendent know and have appropriate controls to prevent any accusations of administrating this private organization on state time.

Staffing Was Recently Reduced

Since 2000, the number of School Children's Trust Section employees has grown from two part-time employees to five employees (recently reduced to four) whose workload, in our estimation, equated to 3.7 FTE's. During the course of the audit the Section released the trust land trainer, thus reducing their employee count by one but at the same time increasing their FTE count to 3.75 as other employees changed FTE counts.

The recent reduction of office personnel seems inconsistent with the Section's budget increase request made to the appropriations subcommittee. We believe that the elimination of the Trainer position is inconsistent with the budget increase request since the Section requested more money because of their claim that they were busy fulfilling all of their perceived duties.

We compared the 2008 School Children's Trust Section budget with a revised budget without the trainer position (while assuming

It is important that the Superintendent have controls in place to prevent any accusations of Section employees working on private endeavors on state time.

The recent reduction in staffing seems inconsistent with the Section's budget request.

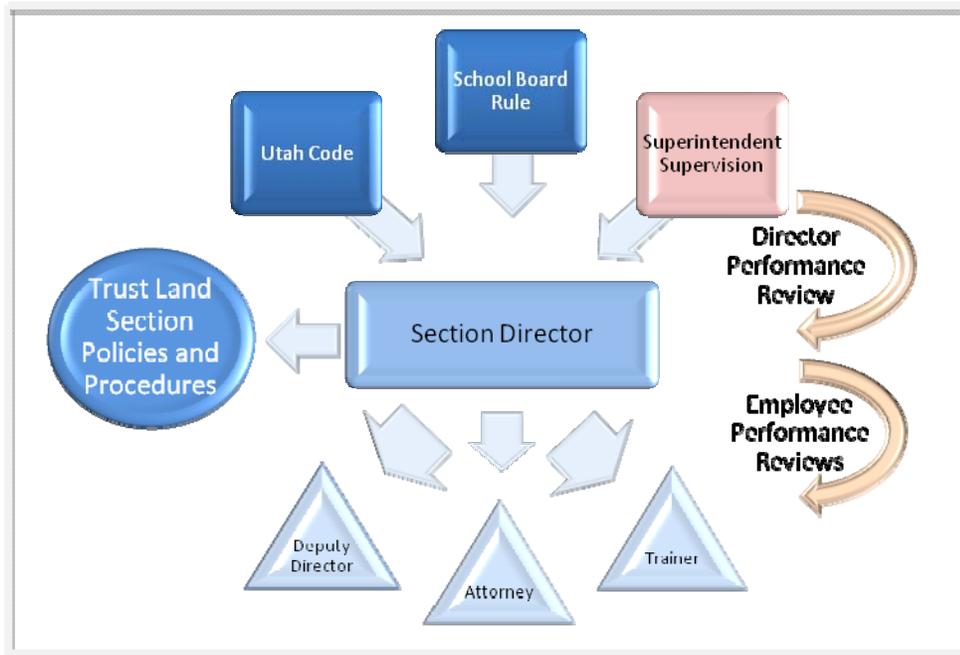
minimal changes in other office expenditures) and found that the cost savings of not employing a trainer was over \$57,000. The creation of office policies and accurate job descriptions is one task that should help to clarify the duties and the needed FTE's for the Section, as will be discussed next.

Policies and Procedures Do Not Exist

As of the end of this audit, the School Children's Trust Section did not have any documented office policies or procedures, which are needed to guide office duties and functions. The USOE should assist the School Children's Trust Section with the creation of sound policies and procedures. Figure 3.2 shows the hierarchy of the office, the duty of the Section Director to create appropriate policies and procedures, and the employee performance review processes. We note that the Superintendent reports that all of the Section's functions were moved directly under her supervision in June 2008.

The School Children's Trust Section does not have any documented policies or procedures for the organization.

Figure 3.2 Proposed Model for School Children's Trust Section Oversight. The Section Director should create office policies and procedures from three sources: **Utah Code**, the State Board rule, and direction from the State Superintendent.



The School Children's Trust Section needs to develop appropriate office policies and procedures.

As depicted in Figure 3.2, the Section Director should include all statutory duties assigned in the *Utah Code* and State Board rule along with any additional duties passed on by the State Superintendent in the Section's policies and procedures. Currently, there are USOE policies concerning annual performance reviews based on generic criteria embedded within the USOE job descriptions. The director conducts the performance reviews of the Section employees. The State Superintendent is charged with the annual performance review of the Section's director.

We believe that the School Children's Trust Section director needs to develop appropriate office policies and procedures. Good policies and procedures will clarify the beneficiary duties assigned to the Section. We recommend the following best practices:

- Develop policies specific to the program's goals and objectives.
- Be certain that policies are consistent with statutory provisions.
- Receive direction from the Superintendent and USOE legal staff while developing policies.
- Keep procedures updated.
- Ensure program policies are
 - in writing,
 - distributed and readily available to all affected parties, and
 - kept current and followed through regular review and updating.

As for performance reviews, they should be an evaluation of how well the employee accomplishes the overall goals and objectives of the office and the tasks assigned to them in their job descriptions. We have seen the performance appraisals, and they could be more valuable if they were linked to specific job duties and expectations. Once proper office policies and procedures are created, the School Children's Trust Section's employee job evaluations should correlate with the specific duties found in the policies and procedures.

Job Descriptions Are Insufficient

During the audit, work was being done by the School Children's Trust Section and USOE to establish more accurate job descriptions because they were not previously developed. Without the proper job descriptions, employees are unable to judge their performance or meet

expectations because no concrete expectations exist. Additionally, we were unable to quantify the effectiveness of employees since the criteria for performance is usually contained within the employee's job description. USOE has recognized this deficiency and has instigated a desk audit on the School Children's Trust Section positions.

Current Job Descriptions Fail to Outline Duties. When the Section hired two new employees at the beginning of the 2008 fiscal year, they lacked adequate job titles and descriptions for the new positions. For example, the original Financial Manager I job description supplied by the USOE emphasized budgetary and management duties but failed to focus on the beneficiary duties needed for working with trust lands, SITLA, and SCCs.

Another example of how the generic descriptions do not address the needed skills is that all positions required potential employees to obtain a teaching certificate even though the position's actual duties do not require such expertise. According to the State Superintendent, the teaching certificate constraint has since been rescinded from the job description's requirements. However, this demonstrates that the job titles and descriptions are poor matches when compared to necessary duties of the School Children's Trust Section. In the past, the Section director has recognized the need for more accurate job descriptions and has been working with USOE to get these descriptions corrected. The Superintendent reported to us that policies and procedures for the Section are currently being developed and the new job descriptions have been instituted since the audit began.

Desk Audit Results Are Forthcoming. During the course of the audit, the USOE has conducted a desk audit of the School Children's Trust Section's job titles and descriptions. We expect the results of the desk audit to clarify employee duties as beneficiary representatives and, in turn, improve the efficiency and effectiveness of the office.

In conclusion, we feel that the implementation of these recommendations will clarify the mission, duties, and responsibilities of the School Children's Trust Section; give better direction to its employees; and provide a more efficient and well-managed section. Once actual duties are outlined, the Superintendent should reevaluate funding for the Section to accomplish all delegated beneficiary duties.

We expect that the USOE desk audit will clarify employee duties and improve the efficiency and effectiveness of the School Children's Trust Section.

Future Funding Should Depend on Reevaluation from the Superintendent

Future funding proposals to the Legislature should reflect the School Children's Trust Section duties outlined in *Utah Code* and the duties reevaluated and determined by the State Superintendent. Additionally, funding for the LAND website, which is maintained by the Section, needs to be reviewed.

Future Funding Contingent Upon School Children's Trust Section's Duties

As directed in Chapter II, the State Superintendent should determine the duties and direction of the state School Children's Trust Section. First the Superintendent needs to clarify the Section's objectives. Then, with coordination of the Section director, outline the duties necessary to accomplish those objectives. Next, the number of FTEs needed to fulfill the duties should be determined. Lastly, the funding for the FTE's should be requested. There is no evidence that any such analysis has been done by Section.

Specifically, we believe the Section duties of overseeing the SCCs and staffing the IAC should be eliminated or reduced. Also, both the advocacy program and the monitoring of SITLA should be evaluated. After those areas that the State Superintendent deems valuable have been assigned to the Section, the Superintendent should determine funding for the section.

In the current School Children's Trust Section budgets, the director has proposed that the Section hire part-time employees to complete the outlying SCC visits. Instead of a Section employee traveling to distant SCCs in the state, they would hire local contacts to visit SCCs on their behalf. Additional part-time employees would assume the task of reading a large portion of SCC plans. We disagree with any increase in funding for additional part-time employees. The program oversight and training should be the responsibility of the local school boards, not the USOE.

Utah Code states that a portion of the School Trust Land monies should be used to administer the School LAND Trust Program. However, the State Superintendent has the discretion to utilize the

The funding for the Section should be determined after the Superintendent reevaluates the duties of the School Children's Trust Section.

money allocated to the School Children’s Trust Section as deemed necessary, as long as expenditures are consistent with the law.

The appropriated amount of funding from the Legislature, combined with the unused mineral lease money for the 2009 fiscal year equates to \$559,700. This amount is \$125,000 more than what the Section received in 2008. Once all duties and assignments for the Section are clarified by the Superintendent and the State Board, the Legislature should reexamine future appropriations for the Section.

Future Increases in Website Cost May Require Additional Funding

The School LAND Trust Program is to have a website in accordance with School Board Rule R277-477-4. The website is currently maintained by the School Children’s Trust Section. The purpose for the Program’s website is to accumulate all the SCC trust land plans in one place and have those plans accessible to the public. Current costs for the website include all necessary features to fulfill the requirements in the board rule. Whether oversight and training are placed under the local school boards—as discussed in Chapter II—we believe that having a central location for the submission of trust land plans is appropriate and should continue at the USOE.

The contract for the website services will expire at the end of fiscal year 2009. As shown in Figure 3.1, the annual maintenance cost is \$24,015 (\$45 per hour). In the past, the School Children’s Trust Section has received a discounted price because of their loyalty to the current web host. However, the current web host will increase prices significantly to what they feel is a fair market rate at the conclusion of fiscal year 2009. The Section is preparing to send out a request for proposal (RFP) for website services. Early estimates by the Section state that their cost for web maintenance will likely double to at least \$50,000 annually.

The USOE should reevaluate the website to determine how costs could be saved and what should be the objectives of the website. As a possible cost saving measure, the State Superintendent could consider housing the website at the USOE. The USOE Information Technology Department estimated that the workload to maintain the current website equates to over .25 FTE and they would have to commit more workforce if additional features were added. Housing

The Superintendent should reevaluate the School LAND Trust Program website and determine how to best utilize this resource.

the website at the USOE would provide for more control but may not be a financial savings.

More analysis in this area would be necessary before making such a determination. As discussed in Chapter II, the USOE needs to determine what purpose the website should provide and efficiently utilize this valuable tool. In the future, if the Section decides to add additional features to the website, implementing these new features could require even more funding.

Recommendations

1. We recommend that the State Superintendent direct the School Children's Trust Section to create and align appropriate job descriptions, duties, and policies and procedures based on best practices listed in the chapter.
2. We recommend that the State Superintendent develop a proposed funding structure to the Legislature for the School Children's Trust Section consistent with:
 - duties outlined in *Utah Code* and,
 - duties which have been reevaluated and determined by the State Superintendent.

Agency Response

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January 13, 2009

Mr. John Schaff
Auditor General
W315 State Capitol Complex
Salt Lake City, UT 84114

Dear Mr. Schaff:

Thank you for the opportunity to review *A Performance Audit of the School Children's Trust Section*, number 2009-02. We have appreciated the many detailed conversations about this audit and the recommendations for improvement. We accept those recommendations and are anxious to ensure organizational improvement, focused resources of time, people and funding, and consistency with statute in the use of School LAND Trust program funds.

As you may know, in spring 2008 the Utah State Board of Education reviewed two key matters related to the Trust Section: 1) Defining the "beneficiary" as the public schools of Utah represented by the State Board and delegated to the State Superintendent; and 2) supporting the policy established in the Utah Enabling Act of placing all proceeds from the granted lands into the permanent State School Fund and distributing only interest and dividends. While these two matters were pressing, others remained.

The School Children's Trust Section at the Utah State Office of Education was reorganized in June 2008. The section is now under my direct supervision. Since June, we have created job descriptions and have worked on correcting budget concerns. Additionally, the Utah State Board of Education prioritized an internal audit on School Community Councils (SCCs), which was reported to the Board's Audit Committee in December 2008. This audit was one that focused primarily on the responsibilities of School Community Councils and their use of School LAND Trust funds in relation to state law and board rule. Together, these audits and actions now give some clear insight and direction to me as I work to better organize and frame the duties of the School Children's Trust Section at the USOE. The Board is poised to take action on two board rules related to School Community Councils and the School LAND Trust program, and those rules will now incorporate the recommendations of this audit.

Specifically, action will be taken to:

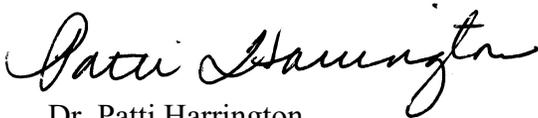
- Ensure that careful and deliberate oversight and training is expected from local boards of education.
- Review the training process and provide explicit state models while expecting local delivery.
- End the staffing relationship with the Investment Advisory Committee (has now been implemented).

Mr. John Schaff
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- Route any advocacy or funding requests through the State Board's annual budgeting and legislative review process so that the Trust Section does not act or lobby without Board oversight and State Superintendent approval.
- Continue to expend resources to monitor SITLA and enhance the value of Trust Lands.
- Regularly monitor and account for Trust Section budgets and personnel assignments.
- Create clear and precise policies and procedures for the Trust Section.
- Conduct a review of the use of the Trust Section website.

Thank you for your time and consideration in this audit.

Sincerely,

A handwritten signature in black ink, appearing to read "Patti Harrington". The signature is written in a cursive, flowing style.

Dr. Patti Harrington
State Superintendent of Public Instruction