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# Trust but Verify: Open Government and Oklahoma Public Trusts - Summary\*

## Introduction

Oklahoma state law permits the creation of public trusts, empowered to further some public function for the benefit of state, county, and municipal governments. Regrettably, public trusts have created opportunities for governments to disobey constitutionally established directives, allowing them to neglect their duties of loyalty and care with decreased transparency and accountability. As codified in state law, public trusts increase the risk of self-dealing, circumvent constitutional limitations, and distance the public from activities of a government created for their benefit. Consequently, Oklahoma public trust laws should be repealed or, at the very least, reformed.

## What is a Public Trust?

In Oklahoma, public trusts exist for the benefit of a state, county, or municipal government.

These trusts have the power “to issue obligations, enter into financing arrangements ... and to provide funds for the furtherance and accomplishment of any authorized and proper public function or purpose ... in real or personal property ... in any estate or interest.”

Generally, trustees of a trust owe the duties of loyalty; care; abiding by the directives of entrustment; acting in good faith in performing fiduciary services; generally, not delegating the fiduciary duties to others; accounting for and disclosing relevant information; and impartiality.

Once formed, as long as the public trust satisfies a few enumerated conditions, it enjoys broad presumptions of legitimacy.

## Problems With Oklahoma Public Trusts

Numerous flaws within the current statutory framework increase the risk of self-dealing, misalign fiduciary duties, violate the state constitution, and decrease transparency and accountability. Specifically, Oklahoma public trust laws:

- Create a system of loyalty and accountability to a bureaucracy rather than the people;

- Undermine protections against corruption with no meaningful check on governmental activity;
- Permit conflicts of interest;
- Circumvent constitutional debt limitations;
- Promote inefficient unchecked government growth;
- Foster discriminatory treatment of businesses and residents; and
- Diminish transparency, reduce accountability, and limit liability.

## Policy Recommendations

### Eliminate Public Trusts

Because of the numerous problems that plague Oklahoma public trusts, the best solution is to repeal public trusts laws.

### Reform Public Trusts

While repeal is the best solution for problems with public trusts, if the legislature lacks the will to eliminate them, it should enact six reforms.

- 1 Prohibit Dual-Office Holding and Require that Trustees Possess Relevant Knowledge or Expertise
  - Requiring trustees to be distinct from a governing body (like a city council) will limit the opportunity for self-dealing and safeguard the public. Establishing relevant trustee qualifications will ensure that public trusts are managed by those with the knowledge and skills necessary to carry out trust directives.
- 2 Ensure Trusts are Legally Distinct Entities
  - Genuinely independent trusts would reduce conflation of governmental functions and help minimize collusion to circumvent constitutional debt limits. Public trusts should be required to generate sufficient revenue to cover their costs and be permitted to retain surplus revenue for accomplishing their missions.

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### 3 Make the Public the Direct Beneficiary of a Public Trust

- By ensuring the general public is the direct, rightful beneficiary, public trusts will be required to act for and on behalf of the people, with all due loyalty and care. As beneficiaries, the people would retain the ability to challenge breached duties.

### 4 Eliminate all Presumptions of Propriety

- Public trust law erroneously presumes that trustees are working for the benefit of the public when they may not be. Public trusts must be required to affirmatively demonstrate they are acting according to trust directives for the benefit of the people.

### 5 Require Greater Transparency

- Public trusts should be required to maintain a website, one that is separate from any other government's website. This website should, at a minimum, include the trust instrument, a list of trustees, a description of the trust structure and its beneficiary, accurate contact information for trustees and staff, conflict of interest disclosures, a calendar for upcoming meetings, a description of the properties held in trust, and the trust's checkbook.

### 6 Ensure the Public Has Standing to Challenge Trustees for Breach of Fiduciary Duty

- The legislature should ensure that the people retain standing to challenge trustees' administration of the trust by statutorily defining standing for beneficiaries of a public trust and specifying the remedies available.

## Conclusion

Public trusts have created opportunities for state, county, and municipal governments to disobey constitutionally established directives and shirk their duties of loyalty and care with decreased transparency and accountability. The people have established governments, entrusting them with political power to govern for their benefit. However, the opportunity for self-dealing, impartiality, and disobedience that can arise from creating a public trust undermines people's trust in government.