

impossible, that we can't do it within our fiduciary duties, then we've got another question to contend with, I guess.

SENATOR CHAMBERS: They can say that whether this language is there or not, can't they?

SENATOR BROMM: Well, they sure could. But I don't want...

SENATOR CHAMBERS: So...

SENATOR BROMM: I don't want them to challenge it in court on that grounds.

SENATOR CHAMBERS: Well, yes they can anyway. Let's say the Legislature puts this language in. So the board says, okay, we're going to give them what they want. In our opinion it does not violate our fiduciary duty to sell the lands in this way. And they give that as their opinion. And the plan is supposed to be going into action and somebody seeks to have it enjoined because it does violate fiduciary duty. The fact that the board members said they thought they were complying with this duty doesn't mean that they've complied with it. There is an objective test. It's not just that I think this, I have to actually do it. So are you telling me that if the board members, in an objective way, violate this duty, they can get away with violating it by just inserting a statement somewhere that we believe this complies with our fiduciary duty? Is the compliance based on their saying they think they've complied?

SENATOR BROMM: No.

SENATOR CHAMBERS: Or on an objective test that the court would apply?

SENATOR BROMM: Their compliance would be based on the substance of their acts.

SENATOR CHAMBERS: So what difference does it make whether we've put this in the bill or not, or what the board says?

SENATOR BROMM: Because this acknowledges that the Legislature, the Legislature's acknowledging the fiduciary responsibility. We aren't trying to run roughshod over that, we're acknowledging that by the passage of this law with the words in it. And I'll