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HISTORY
and
ADMINISTRATION OF LAND GRANTS
TO PUBLIC SCHOOLS IN MONTANA

by

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B.A., Gustavus Adolphus College, 1929

Presented in partial fulfillment of the
requirement for the degree of Mas-
ter of Arts.

Montana State University

1940

Approved:



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of Examiners



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CHAPTER I

PREFACE

In many states the permanent funds and the proceeds which should have been added to them have been cared for so carelessly, diverted, squandered, wasted and embezzled so shamefully, that what ought to be a magnificent endowment, whose income today would be yielding an appreciable relief from taxation, has dwindled to an almost negligible sum, or exists as a permanent state debt on which interest is paid out of taxes levied upon the present generation. Twenty-eight million dollars is a conservative, approximate estimate of the sums lost or diverted in twelve states, as follows: . . .¹

"Pennsylvania and Georgia formerly had permanent common school funds, but today possess none"²

Statements such as these sum up, in very understanding language, one of the essential reasons for the writing of this thesis. If mismanagement or diversion of funds can occur in one state, it is also a possibility in our own state, Montana. What was the extent of the land granted to Montana for public schools? Under what conditions were they granted? Have these conditions been followed? Has the State realized to the fullest extent the maximum advantage from this fund? If not, what can be done so that the common schools of Montana will truly benefit from this heritage

¹ Fletcher Harper Swift, Public Permanent Common School Funds in the United States, 1795-1905 (New York, 1911), p. II.

² Ibid., 10.

from the Federal Government?

In the first report of the State Board of Land Commissioners for 1891 we read:

An estimate of the acreage of school lands shows that one million five hundred and thirty-six thousand acres are now the actual property of the State by virtue of the grant of sections 16 and 36 alone, and which acreage will be largely increased by the survey of lands still unsurveyed.⁵

According to the biennial report for the period ending June 30, 1933, this estimate was increased to 5,183,000 acres. This is a magnificent and extensive grant of land. How far has the State realized the full value of this land? The Commissioner of State Lands and Investments in 1936 reports:

There can be no doubt that this vast estate would have produced a far better income if it had been privately owned and privately managed. . . . and thousands of citizens and numerous agencies throughout the State endeavor to exert a very considerable influence on the administration of school lands. As already explained, there is a widespread misunderstanding prevalent as to the purpose of these grants and the state's obligations in their administration. The misunderstanding that this is common property is far-reaching, and the sentiment is altogether too prevalent that the state should not be niggardly in the disposition of this common property. The resulting influence is as constant as gravitation.

For the common good, I appeal to all public spirited citizens of the state, to the school boards, and to all officers and agencies of the government of the state, concerning this sacred trust, to cooperate in the fullest measure toward its proper administration so that it may contribute its reasonable share toward the

⁵ State Land Commission, Report of the State Board of Land Commissioners for 1891 (Keokuk, 1891), p. 11.

support of the common schools of the state and thereby lighten the tax burden resting upon the people.⁴

Here are some vital, challenging statements from a man who, up to that time, had been Register of State Lands and Secretary to the State Board of Land Commissioners for twelve years. It should make the citizens of Montana pause and, earnestly and sincerely, endeavor to assist the planning and administration of our land grants.

The administration of these land grants to Montana, since their inception, has been followed through the various reports of the Board of Land Commissioners, the Organic Act of Montana, the Enabling Act of Montana, the Montana Constitution, and all subsequent statutes passed by the Montana Legislative Assembly and the National Congress dealing with the subject.

The writer will endeavor to draw comparisons with private handling of lands, and to point out weaknesses in our legislation dealing with public school lands and investments. An honest effort will be made to suggest certain changes in our administration, which may help to make our permanent land grants more valuable to the schools of Montana.

Before writing this thesis an attempt was made to

⁴ Commissioner of State Lands and Investments, Report of the Commissioner of State Lands and Investments for the Fiscal Years July 1, 1934 - June 30, 1936 (Micrographed at the State Capitol, Helena, 1936), p. 6.

find out just what had been done in this field in Montana. The only work found is an unpublished thesis written by W. L. Gottenberg, in 1933, on "The 1932 Status of the Public Permanent Common School Funds of the Several States", on file in the library of the University of Montana, at Missoula, Montana. This work, however, is only general in regard to Montana, as its principal purpose is to compare permanent funds in the various states as they were at that time, and to draw conclusions relative to their importance in the general total income for school purposes. In the realm of Public Lands and Permanent Funds much material was to be found. These will be included in the bibliography.

Aside from the pages on the history of colonial and federal land grants, this thesis is principally concerned with the Montana Public School Land Grant and its administration and history.

SUMMARY

This introduction presents the field of this thesis, - a complete story of the land grants to Montana for public school purposes. Also, that by the warning of our own officials and by the examples of other states, Montana should investigate thoroughly its Land Grants and funds therefrom, in an endeavor to place it on a practical, permanent, and efficient basis.

CHAPTER II

LAND GRANTS AND FEDERAL POLICY

The Congress of the United States has made large and valuable grants of land, for various purposes, since 1789. However, the policy of granting lands for education began in colonial days. Dorchester, as early as 1635, provided,

. . . that there shall be a rent of 20 lbs. a year forever imposed upon Tomson's Island . . . toward the maintenance of a schoole in Dorchester. This rent of 20 lbs. yearly to bee payd to such a schoole-master as shall undertake to teach english, latine, and other tongues, and also writing. The said schoole-master to bee chosen from tyme to tyme pr the freeman.⁵

This was followed in 1639 by Newbury, which voted ". . . foure akers of upland and sixe akers of salt marsh" to Anthony Somerly, ". . . for his encouragement to keep schoole for one yeare", and later levied a town rate of 24 lb. for a ". . . schoole to be kepte at the meeting house . . .".⁶

A more definite trend toward securing permanent funds from land grants was seen in Virginia in 1642, where the Benjamin Simms school was founded on a bequest of 200 acres of land by Benjamin Simms,

. . . with the milk and increase of eight cows for the

⁵ Records of Colony of Massachusetts Bay in New England, p. 134, quoted in Ellwood Cubberly, Readings in American Education (New York, 1934), p. 341.

⁶ Ibid., 342.

maintenance of an earnest and honest man to keep a free school for the education of the children of the parishes of Elizabeth City and Miquotan.⁷

Earlier, in 1636, Captain John Mason had bequeathed 1000 acres of land for maintaining a free grammar school for the education of youth in New Haven.⁸

In 1687 the Colony of Connecticut granted more than one-half of what is now Litchfield County to the towns of Hartford and Windsor, to save this land from the cupidity of the royal Governor Andros. A controversy arose in 1726. The territory was divided in half, the eastern half was given to Hartford and Windsor, and the colony took the western half, which it laid out in seven townships. Five of these townships were reserved, one for the support of the town school and two for the ministry. The following quotation shows how school funds were derived from these lands.

In May, 1733, the assembly directed that these lands be sold and the proceeds divided among the towns of the colony already settled, . . . the proceeds to be set apart by each town as a permanent fund, the interest on which was to be faithfully expended for the support of the schools required by law; towns containing more than one parish, to divide the fund among their several parishes in proportion to their respective lists. . . . two classes of permanent school funds arose: (1) the fund belonging to the colony which was distributed among the towns of the colony; (2) funds belonging to new towns, rising from reservations of school lands within the towns.⁹

⁷ Swift, op. cit., p. 33.

⁸ Ibid., p. 34.

⁹ Ibid., p. 72.

The beginning of a public land legislation by the United States had its inception in a resolution passed by the Continental Congress on October 10, 1780. Part of this resolution read:

Resolved, that the unappropriated lands that may be ceded or relinquished to the United States, by any particular States, pursuant to the recommendation of Congress on the 6th. day of September last, shall be disposed of for the common benefit of the United States and be settled and formed into distinct republican states, which shall become members of the Federal Union, and shall have the same rights of sovereignty, freedom and independence, as the other states; that each state which shall be so formed shall contain. . . . That the said lands shall be granted and settled at such times and under such regulations as shall hereafter be agreed on by the United States in Congress assembled, or any nine or more of them¹⁰

Therefore, after the cession of the western lands to the United States by the various states, Congress began on a number of plans for the organization and disposal of the new public domain. The "Land Ordinance of May 20, 1785" laid the foundation for the public land system for the next hundred years. This ordinance also includes the first reservation of land by the United States, where the ordinance reads: "There shall be reserved the lot No. 16, of every township, for the maintenance of public schools within the said township".¹¹ This not only shows the intentions of the govern-

¹⁰ Henry Steele Commager, Documents of American History (New York, 1954), p. 119.

¹¹ Ibid., p. 123.

ment for making some provisions for guaranteeing schools in their new domain, but it very emphatically states public schools, showing a definite policy of education by the State as against the pre-Revolution parochial system.

The first state to receive the grant of sections 16 was Ohio. This grant was written into her Enabling Act of April 20, 1802.¹² Besides section 16, Ohio was also granted certain salt lands and a percentage of the net proceeds of lands sold by Congress after admission of the State into the Union.

Tennessee was the first state to be admitted into the Union, 1796, in which the Federal Government already owned the lands. However, Tennessee had to wait ten years before receiving lands.¹³ This grant gave her back a certain part of her own state with the provision that 640 acres of every six miles square "be appropriated for the use of schools for the instruction of children".¹⁴

Difficulties arose with various ceding of land grants to states as can be illustrated with Ohio. Congress had already, before Ohio became a State, sold much of the territory to the Ohio Company, to Symmes, given some for the Virginia

¹² Swift, op. cit., p. 46.

¹³ United States Statutes at Large (Boston, 1850), II, p. 381.

¹⁴ Swift, op. cit., p. 174-175.

Military Academy, Connecticut Western Reserve, and the United States Military Academy. These grants made it impossible for over one-third of the state to secure sections 16. As the Ohio and Symmes Companies had reserved sections 16 in their contracts with the Federal Government for education, some of the trouble was eliminated. In 1802, the Constitutional Convention of Ohio provided school sections for those sections left out, and this was passed by Congress. To make this a blanket law covering all states where sections 16 had been already given or sold, Congress passed, "An Act to Appropriate Lands for the Support of Schools in Certain Townships, and Fractions of Townships not Before Provided For".¹⁵

In February, 1848, Wisconsin was to become a state. Provision was made by Congress to give not only sections 16, but also 36. This bill, however, lost. It was later in the year when Oregon came into the Union as a Territory, in August, 1848, and Minnesota in March, 1849, that both sections 16 and 36 were given in each township for the use of schools.¹⁶

Although Oregon was the first Territory to receive both sections 16 and 36, the first State to receive both sections was California, September 9, 1850. The States in

¹⁵ United States Statutes at Large (Boston, 1850), IV, p. 179.

¹⁶ United States Statutes at Large, (Boston, 1851), IX, p. 330, section 20.

which section 16 was not reserved for educational purposes were: the thirteen original states, Indian Territory - admitted with Oklahoma in 1907 - Kentucky, Maine, Tennessee, Texas, Vermont, and West Virginia.

Kentucky, Vermont, and West Virginia contained no public lands. The Republic of Texas on admission to the Union retained title to her public lands. On July 26, 1839, she provided for a reservation of three Spanish leagues, 13,284 acres, in each county, for the support of schools. In 1840 this grant was increased to four leagues or 17,712 acres. Texas today possesses the largest permanent school fund of any state, as a result of these land grants to schools.

The lands in Indian Territory belonged to members of the Indian Tribes, lands over which Congress had no jurisdiction or authority. In place of a land grant, Congress appropriated five million dollars which became part of the permanent school fund upon the Territory's admission as a state with Oklahoma.

With the surrender of lands in the public domain to the Federal Government, no increase was made in the size of the United States. The new Public Domain was merely a transfer of ownership in lands, in the hands of the thirteen colonies to the nation. However, events were to transpire during the next century which were to increase the land area of

the United States. This addition was to be made through cession, purchase, and conquest. Including the original cession by the thirteen colonies, the total public domain has mounted to an area of 1,442,200,320 acres of land and 20,232,320 acres of water area in the United States proper, and includes all the states north and west of the Ohio and Mississippi rivers, except Texas, and includes in addition the states of Mississippi, Alabama, and Florida.

The first addition by purchase was made by Treaty with France on April 30, 1803, ratified by the Senate on October 20, 1803, and by the House on October 25, 1803.¹⁷ This purchase of Louisiana was the extensive territory lying west of the Mississippi river, and covered all or part of the present states of Montana, Wyoming, Colorado, Louisiana, Arkansas, Oklahoma, Kansas, Nebraska, South Dakota, North Dakota, Minnesota, Iowa, and Missouri.

The discovery of Oregon by Captain Gray in 1792 laid the foundation for a claim by the United States to that part of the Northwest, and after years of controversy with England, which also claimed that territory between parallels 42 degrees and 54 degrees, a compromise was agreed to. By the Oregon treaty of June 15, 1846, the boundary of the United States was extended to the Pacific and to the 49th.

¹⁷ Wm. MacDonald, Select Documents of United States History, 1776-1861 (New York, 1919), Art. III, p. 160.

parallel. This added 183,386,240 acres to the Public Domain of the United States.¹⁸

American forces under General Jackson marched into East Florida to quell outlaws there who were terrorizing the border. A treaty was signed February 22, 1819, ratified by Spain on October 29, 1820, which settled the Florida question and gave the United States 59,268 square miles of additional land for the Public Domain.¹⁹

On February 24, 1821, Mexico revolted from Spanish rule and set up as an independent nation. Texas became a state of Mexico. Emigration from the United States to Texas was heavy and finally Texas declared its independence from Mexico in 1836. For nine years this young republic tried to secure annexation to the United States and finally accomplished this by a joint resolution of Congress on March 1, 1845, ratified by Texas on July 4, 1845.²⁰

A great territory was thus added to the United States, but no Public Domain, as section 2, Article II, of the Resolution of Annexation stated,

. . . Texas shall also retain all the vacant and unap-

¹⁸ Commager, op. cit., p. 160. .

¹⁹ Sato, Shosuke, History of the Land Question in the United States, in John's Hopkins University "Studies in Historical and Political Science", edited by Herbert B. Adams (Baltimore, 1886), Vol. IV, p. 54-60.

²⁰ Ibid., p. 60-62.

propriated lands lying within its limits, to be applied to the payment of the debts and liabilities of the said Republic of Texas, and the residue of such lands, after discharging said debts and liabilities, to be disposed of as said State may direct . . .²¹

The main reason for allowing Texas to remain in possession of these public lands was that during the war with Mexico these lands and public revenue had been pledged in payment of loans to carry on the war.²²

A war followed between the United States and Mexico over the boundary of Texas. At its conclusion and treaty of peace on February 2, 1848, the Mexican government ceded to the United States, New Mexico and Upper California. This area, together with a part north of Texas, purchased from Mexico, gave the United States an additional 522,568 square miles of Public Domain.²³

The policy of Congress was to retain control over these grants during territorial control of the State. This was turned over to the states, generally, in their enabling acts. In these latter, except in Florida, Michigan, Arkansas, and Arizona, the governor and legislature were given the right to lease the lands.²⁴ Mississippi was given the

²¹ Commager, op. cit., p. 164-165.

²² Sato, op. cit., p. 65.

²³ Ibid., p. 60-64.

²⁴ United States Statutes at Large, (Boston, 1850), IV, p. 201.

right to rent lands, but this right was vested in agents appointed by various courts.²⁵ Wyoming vested the right to lease the territorial school lands in county commissioners.²⁶

No provision was made giving the territories or states the right to sell these lands until, in 1826, Congress granted Ohio this right, providing, however, that the proceeds were to be invested in a productive fund, first securing the consent of the townships to such sale.²⁷ After 1845, the Enabling Acts of States provided for the disposal of these lands.²⁸

Specific restrictions were placed on such sale beginning in 1875 when Colorado, in her Enabling Act, was required to sell her lands for not less than \$2.50 per acre.²⁹ All states since then except Utah have been restricted. This restriction was somewhat modified in 1889-1890 when Enabling Acts of Washington, Montana, North Dakota, South Dakota, Idaho, and Wyoming were required to sell their lands for not less than \$10.00 per acre.³⁰ Another restriction

²⁵ United States Statutes at Large, (Boston, 1850), IV, p. 201.

²⁶ Ibid., XXV, p. 393.

²⁷ Ibid., IV, p. 133.

²⁸ Ibid., XVIII, p. 476.

²⁹ Ibid., IX, p. 349.

³⁰ Ibid., XXV, p. 679.

was made, 1875, that concerned a requirement making it mandatory for all states, formed thereafter, on sale of their lands to start a permanent fund from the receipts, and to use the interest from this fund for the support of common schools.³¹

Specific instructions for the investment of this fund came in 1889, in the Enabling Acts of Montana, Washington, North Dakota, and South Dakota, with the specific provision that such funds realized from these granted lands be safely invested.³²

Legislation over school lands was just one phase of much legislation by Congress over the Public Domain. Other cessions to states and individuals, sales of land, gifts, and other bequests, included:

1. Contracts to the Symmes and Ohio Companies.
2. Salt and Saline grants.
3. Act of 1841, granting 500,000 acres of land each to Alabama, Arkansas, Illinois, Indiana, Louisiana, Michigan, Mississippi, and Missouri for internal improvements. This grant was made to all states admitted after the Act was in force.³³

³¹ United States Statutes at Large, (Boston, 1850), IV, p. 275-679.

³² Ibid., XXV, p. 680.

³³ Ibid., V, chapter 16.

4. Fifteen states were the recipients of swamp land grants in 1850.³⁴

5. Grants for religious purposes.

6. Special grants to Canadian Volunteers and Refugees, to Christian Indians in Ohio, to the wine-growers, soldiers, and to the earthquake sufferers at New Madrid, Missouri.³⁵

7. Land grants to settlers under the Homestead Act of May 20, 1862.

8. Land Grants under the Morrill Act of July 2, 1862. This was an act donating public lands to the several states and territories to provide colleges for the benefit of agriculture and the mechanic arts. A land grant of 30,000 acres was given to each state for each of its representatives and senators in congress.³⁶

9. Land for agricultural experiment stations, in connection with the colleges established under the Morrill Act, were granted under the Hatch Act of March 2, 1887.

10. 129,028,553.50 acres were granted to railroads.³⁷

³⁴ General Land Office, State Grants of Public Lands, (Washington, D. C., 1896), p. 9.

³⁵ P. F. Treat, The National Land System (New York, 1910), pp. 286-313.

³⁶ United States Statutes at Large, (Boston, 1863), XII, p. 503.

³⁷ General Land Office, Land Office Report for 1923 (Washington, D.C., 1923), pp. 37-38.

11. Grants of land were made to special schools, fish hatcheries, insane asylums, canal companies, and wagon road companies.

12. By the pre-emption act of March 3, 1801, provision was made for the sale of land to those persons holding contracts, which the Symmes Company, of Ohio, could not fulfill.

CHAPTER III

MONTANA'S LAND GRANTS

By action of the Congress of the United States, public education was marked out for special and individual attention. The Ordinance of 1785, already mentioned, reserved section 16 of every township for the maintenance of public schools within the said township. Having set the pattern, Congress proceeded to give specific instructions as to these land grants by incorporating a set of rules and regulations into the various Territorial and State Organic and Enabling Acts. Thus we come to the specific object of this thesis, Montana.

By the Organic Act, approved May 26, 1864, the Territory of Montana was organized. Reference to Public Lands is made in paragraph 14, where it says:

And be it further enacted, that when the lands in said territory shall be surveyed under the direction of the government of the United States, preparatory to bringing the same into the market, sections numbered sixteen and thirty-six in each township in said territory shall be and the same are hereby, reserved for the purpose of being applied to schools in said Territory, and in the states and territories hereafter to be erected out of the same.³⁸

Twenty-five years later the people of Montana, having applied for admission into the Union as a State, were

³⁸ Anderson, McFarland, Revised Codes of Montana, 1935 (Helena, 1935), I, p. 55.

admitted under certain restrictions by the Enabling Act of February 27, 1889.³⁹ This was an act to provide for the division of Dakota into two states and to enable the people of North Dakota, South Dakota, Montana, and Washington to formulate constitutions and state governments, and to be admitted into the Union on an equal footing with the original states, and to make donations of public lands to such states.

Provision for public lands is found in section 4, second part,

That the people inhabiting said proposed states do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof . . . and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States⁴⁰

It further goes on, in the fourth part, to stipulate that provision shall be made for the "establishment and maintenance of systems of public schools, which shall be open to all the children of said states, and free from sectarian control."⁴¹

Specific attention should be paid to this latter, wherein it refers to systems of public schools, free from sectarian control. This should be kept in mind, as later

³⁹ Anderson, McFarland, op. cit., p. 59.

⁴⁰ Ibid., p. 60.

⁴¹ Ibid., p. 61.

reference will be made to the use of funds from public lands in Montana.

In section 10 of the Enabling Act, provision was made for the state to secure lieu land for those sections sixteen and thirty-six which had already been legally taken. It went on to say:

Upon the admission of each of said states into the Union sections numbered sixteen and thirty-six in every township of said proposed states, and where such sections, or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the sections in lieu of which the same is taken, are hereby granted to said states for the support of common schools, such indemnity lands to be selected within said states in such manner as the legislature may provide, with the approval of the secretary of the Interior; Provided, That the sixteenth and thirty-sixth sections embraced in permanent reservations for national purposes shall not, at any time, be subject to the grants nor to the indemnity provisions of this act, nor shall any lands embraced in Indian, military, or other reservations of any character be subject to the grants or to the indemnity provisions of this act until the reservations shall have been extinguished and such lands be restored to and become a part of the public domain.⁴²

After describing the manner of disposal of such granted lands and giving other restrictions the Act further states that:

The schools, colleges, and universities provided for in this act shall forever remain under the exclusive control of the said states, respectively, and no part of the proceeds arising from the sale or disposal of any

⁴² Anderson, McFarland, op. cit., p. 63.

lands herein granted for educational purposes shall be used for the support of any sectarian or denominational school, college, or university.

.
 . . . and the lands granted by this section shall be held, appropriated, and disposed of exclusively for the purposes herein mentioned in such manner as the legislature of the respective states may severally provide.⁴³

Specifically, therefore, by established legal procedure, Congress granted to the new state of Montana, lands to be used for the maintenance of public, common, schools. Not for just a year or a hundred years, but for all time. Not for all kinds of schools, private, sectarian or such schools formed for purposes of the few, but for those schools open to all boys and girls, free to them, and democratic in every sense of the word.

This was the mandate to the people of the new state of Montana, and by their constitution they proceeded to give their pledge to its fulfillment.

Proceeding on the theory that in order to accept land grants for public schools, the state must first establish them, the Constitutional Fathers added Ordinance Number I to the Constitution of Montana. Part of that Ordinance reads that provision shall be made for the "establishment and maintenance of a uniform system of public schools, which shall be open to all the children of the said state of Montana and free from sectarian control".⁴⁴ Thus there is complete ac-

⁴³ Anderson, McFarland, op. cit., p. 64.

⁴⁴ Ibid., p. 236.

ceptance and concurrence with the demands of Congress, free public schools.

After establishing free public schools, the Constitution goes on to accept the land grants of Congress in Ordinance I, section 7. Section 4 of Ordinance No. I was made more specific by the addition of Section I, Article XI: "It shall be the duty of the legislative assembly of Montana to establish and maintain a general, uniform, and thorough system of public, free, common schools".⁴⁵ In section 7, Article XI, we read that the public schools of the state, "shall be open to all children and youth between the ages of six and twenty-one years".⁴⁶ Then, in section 8, Article XI, further safeguard is made for these public school funds, in the following words:

Neither the legislative assembly, nor any county, city, town, or school district, or either public corporation, shall ever make directly or indirectly, any appropriation, or pay from any public funds or moneys whatever, or make any grant of lands or other property in aid of any church, or for any sectarian purpose, or to aid in the support of any school, academy, seminary, college, university, or other literary, scientific institution, controlled in whole or in part by any church, sect, or denomination, whatever.⁴⁷

It is important for the citizens of Montana to bear the foregoing statements in mind as he proceeds in this the-

⁴⁵ Anderson, McFarland, op. cit., p. 163.

⁴⁶ Ibid., p. 166.

⁴⁷ Ibid., p. 166.

sis. A growing system of public education, as also a growing system of private schools, made demands upon purse and legislature to the extent that there was serious temptation, either by statute or Constitutional Amendment, to use public school money for any and all purposes. As the reader will note later on, the returns from the sale of land grants involved considerable funds, and we have now seen how the Constitution sought to protect these for the use of free, public schools.

CHAPTER IV

MONTANA LOCATES HER LAND GRANTS

Provision for the control and direction of the affairs of the new business of the state, granted lands, was made in section 4, Article XI of the Constitution, wherein it provides for a State Board of Land Commissioners.

The Governor, Superintendent of Public Instruction, Secretary of State, and the Attorney General shall constitute the State Board of Land Commissioners, which shall have the direction, control, leasing and sale of the school lands of the state, and the lands granted or which shall hereafter be granted for the support and benefit of the various state educational institutions under such regulations and restrictions as may be prescribed by law.⁴⁸

The first meeting of this Board was held on January 23, 1890. Organization was effected when Governor Jn. K. Toole was elected president, John Gannon, Superintendent of Public Instruction, secretary, with L. Rotwitt, Secretary of State, and H. J. Haskell, Attorney General, as the other members.

No statute having been passed by the state legislature defining the duties of the State Land Board, no further meetings were held until after passage by the Legislative Assembly of the act approved March 6, 1891, entitled, "An Act to Provide for the Selection, Location, Appraisal, Sale

⁴⁸ Anderson, McFarland, Revised Codes of Montana, 1935 (Helena, 1935), I, p. 165.

and Leasing of State Lands".⁴⁹ This act enacted into law the provisions for a State Board of Land Commissioners, already provided for in the Constitution, and directed that the Governor be ex-officio President of the Board. The act provided for a State Land Agent to be appointed by the Governor, by and with the consent of the State Board of Land Commissioners, whose duty it was,

. . . under the direction and control of that latter Board to carry into effect the provisions of this act, and to do all acts required of him to be performed, by the said State Board of Land Commissioners; but his official acts shall have no validity until approved by the said Board. He shall hold his office at the pleasure of the Board and shall receive an annual salary of three thousand dollars, payable quarterly from the Treasury of the State.⁵⁰

Specific instructions for the Land Agent were contained later in the act when it stipulated that under the direction of the Board, he was to examine and "report to them such lands as may be suitable for selection under the act of Congress granting the lands to the State of Montana".⁵¹ The section further requires the State Land Agent to make and keep on file maps and plats of all State Lands. To aid him in this task he was authorized to employ, "such assistants as may be required for the proper performance of his duty,

⁴⁹ Second Session Laws, Montana State Legislative Assembly, 1891 (Helena, 1891), pp. 174A-174R.

⁵⁰ Ibid., p. 174C.

⁵¹ Loc. cit.

and to carry out the provisions of this act. . .".⁵²

With this law defining the duties of the Land Board and enabling them to appoint the necessary officials to carry out the work, at the next meeting on March 14, 1891, Governor Toole announced that he had appointed Granville Stuart, Esq., as State Land Agent. This was in accordance with the law just enacted. The appointment was confirmed by the Board, and at last the State was in a position to benefit from the land grants by the Federal Government.⁵³

The State Land Board was confronted with a great amount of work. The Act granting land to the public schools of Montana had stated that sections sixteen and thirty-six in every township in the state was to be set aside from all other land for public, free education. All this land having been open to settlement for years, it was inevitable that much of the land included in this grant would already have been settled. This was further complicated by grants to railroads, Indian reservations, forests, and certain other reservations, notably mineral lands.

To the first objection, previous settlement, the Enabling Act says,

The lands hereby granted shall not be subject to

⁵² Second Session Laws, op. cit., p. 174C.

⁵³ State Land Agent, Report of State Land Board, 1891 (Helena, 1891), p. 2.

pre-emption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for the purposes for which they have been granted.⁵⁴

However, many persons had settled on land, including sections 16 and 36, in good faith, and these were protected by the Montana Constitution when it crisply stated, "preference shall always be given to actual settlers thereon. . ." ⁵⁵ This safeguard to actual settlers was enacted into law in 1891, when they were given the preference to either buy or lease the land.⁵⁶ Protection to the state against fraudulent claims was given in 1891 by the Legislative Assembly, when it gave the State Board of Land Commissioners authority to:

. . . hear and determine the claims of all persons who may claim to be entitled in whole or in part to any land owned by this state and shall have power to establish such rules as in their opinion may be proper to prevent fraudulent application under the preceding sections.⁵⁷

Other complications were faced by the State Land Board in taking possession of the land under the Land Grant. According to the Enabling Act the Federal Government reserved all mineral lands from the grant. However, section 18 rectifies this loss by saying that if any of the granted

⁵⁴ Anderson, McFarland, op. cit., p. 64, vol. I.

⁵⁵ Ibid., p. 224, vol. IV.

⁵⁶ Montana State Legislative Assembly, Second Session Laws, 1891 (Helena, 1891), p. 174R.

⁵⁷ Ibid., p. 174J.

sections or portions thereof shall be found by the Department of the Interior to be mineral lands,

. . . said states are hereby authorized and empowered to select, in legal subdivisions, an equal quantity of other unappropriated lands in said states in lieu thereof, for the use and benefit of the common schools of said state.⁵⁸

Specific regulations in selecting this lieu land were contained in Section 17 of the same Act, where it stipulates that the lieu or indemnity lands were to be selected under the direction of the Secretary of the Interior, "from the unreserved, unsurveyed, and unappropriated public lands of the United States within the limits of the respective states entitled thereto".⁵⁹

The first duty of the newly formed State Board of Land Commissioners was to locate the granted lands. In a state six hundred miles by three hundred and fifty miles, and containing approximately 146,572 square miles or 93,806,080 acres, a state of mountains, forests, and minerals, this was no easy task. In fact, at the first meeting on March 14, 1891, it was found that much of the land in the state was unsurveyed.⁶⁰

⁵⁸ Anderson, McFarland, Revised Codes of Montana, 1935 (Helena, 1935), Vol. I, p. 66.

⁵⁹ Ibid., p. 66.

⁶⁰ State Land Register, Report of the Montana State Board of Land Commissioners, 1891 (Helena, 1891), p. 24.

According to section 45 of the State Land Act of March 6, 1891, the County Superintendent of Schools in each county was supposed to inspect all school land in her county and report to the State Board of Land Commissioners on their condition, showing amount, whether occupied, by whom, and any other pertinent information.⁶¹ The State Board sent out circulars to these officials, ordering them to send in their reports. Now, to have inexperienced persons try to appraise land, land which at times was unsurveyed, land which was spread over hundreds of miles in certain counties, was a task imposed on these officials, mostly women, for which they were not equipped, either by training or experience. Naturally the reports that did come in were unsatisfactory. According to the Constitution of Montana these lands were to be classified by the State Board of Land Commissioners as follows:

. . . first, lands which are valuable only for grazing purposes. Second, those which are principally valuable for the timber that is on them. Third, agricultural lands. Fourth, lands within the limits of any town or city or within three miles of such limits. . . .⁶²

Section I of a law passed by the Legislative Assembly in 1891, gives the duties of the State Land Agent,

. . . to select, subject to such rules and regulations as may be prescribed by the Secretary of the Interior, and cause to be conveyed to the State of Montana, all school and indemnity lands, and all public lands, dona-

⁶¹ Second Session Laws, op. cit., p. 174P.

⁶² Anderson, McFarland, op. cit., p. 220.

ted to the State by the United States for various purposes, public buildings and institutions by virtue of the Act of Congress of February 22, 1889.⁶³

One stipulation as to how to select this land was written into the law in 1891, when it was provided that lands selected in lieu of these sections sixteen and thirty-six were to, "be selected as contiguous as may be to the section in lieu of which the same is taken".⁶⁴ The act went on to say that all this lieu land should be selected in legal subdivisions and the necessary steps to secure approval of the Secretary of the Interior and the President of the United States, and the issuance of patents for the same by the United States to the State of Montana.⁶⁵

Having been instructed into his duties by the Board of Land Commissioners, the State Land Agent began his duties in 1891. This was quite a task, considering what faced him. Nearly six million acres of land had been granted to the State for Public Schools, State Institutions, and Public Buildings. This land contained rugged mountains, lakes, rivers, and plains. Over five million acres were to be located and claimed for Montana. Settlers had been coming in by the thousands and settling on the land, and according to what

⁶³ Second Session Laws, op. cit., p. 174A.

⁶⁴ Ibid., pp. 174E-174F.

⁶⁵ Ibid., p. 174F.

was previously stated from the Montana Constitution, in the disposition of the public lands granted by the United States to this state, preference shall always be given to actual settlers thereon, and the Legislative Assembly shall provide by law for carrying this section into effect.⁶⁶ The Enabling Act for Montana makes the following provisions:

. . . and where such section, or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the sections in lieu of which the same is taken, are hereby granted to said states for support of common schools, such indemnity lands to be selected within said states in such manner as the legislature may provide, with the approval of the Secretary of the Interior. . . . Provided, that the sixteenth and the thirty-sixth sections embraced in permanent reservations for national purposes shall not, at any time, be subject to the grants nor to the indemnity provisions of this act, nor shall any lands embraced in Indian, military, or other reservations of any character be subject to the grants or to the indemnity provisions of this act until the reservations shall have been extinguished and such lands be restored to, and become a part of, the public domain.⁶⁷

Another complication to selecting these lands came in 1911, when the Legislative Assembly stipulated that, "all sections sixteen and thirty-six, or which will be sixteen and thirty-six when surveyed, within the boundaries of national forests within the State, are ceded to the United States".⁶⁸

⁶⁶ Anderson, McFarland, op. cit., p. 224.

⁶⁷ Ibid., p. 63.

⁶⁸ Montana State Legislative Assembly, 1911, Twelfth Session Laws (Helena, 1911), p. 145.

Montana was to get equivalent lands, situated in forest reserves, and principally valuable for the timber on them. However the State may not have suffered by this exchange, one can readily see the additional work it gave to the State Land Agent. In selecting this lieu land the State Board of Land Commissioners was to select it as much as possible in one or two compact bodies and to manage it as a State Forest.⁶⁹

Not only was the State Board to select this land in legal subdivisions, but they were restricted to 200,000 acres in any one county.⁷⁰ This selection was further limited in 1907 when the Legislative Assembly instructed the State Board of Land Commissioners not to select any more indemnity lands in counties where the State had already selected 100,000 acres or more of land in the aggregate for such purposes.⁷¹ This made the task ahead a strenuous one. First, the granted sections would have to be located to see whether they were already taken by settlement or reservation. Then, in case they had been legally taken, they would have to find out how much of the section was so taken, and find suitable

⁶⁹ Twelfth Session Laws, op. cit., p. 145.

⁷⁰ Montana State Legislative Assembly, 1897, Fifth Session Laws (Helena, 1897), pp. 193-195.

⁷¹ Montana State Legislative Assembly, Tenth Session Laws (Helena, 1907), pp. 100-101.

land, equivalent in area, in another section to take its place. Together with this task he had the additional one of picking out enough land in the state to satisfy the Federal Grants to the State for other purposes.

As has been seen one other reservation was made in the land grant to Montana, when the Federal Government reserved all lands from the grant which at that time could be classed as mineral.⁷²

A few statements from the annual reports of the State Land Agent might not be amiss here in order to give the reader a better idea of the difficulties encountered by him in the selection of land to complete the grants to Montana's schools. We quote from the first report of the State Land Agent in 1891.

I next began a careful examination of the previously selected University sections and school sections, sixteen and thirty-six in each township, and have reported upon 16½ University and 57 school sections, with miniature plats of each and descriptions of soil, timber, configuration, etc. etc. as follows:

Sections 36. T. 28 N., R. 21 W., about three miles east of Lemersville, Flathead Valley. The N. W. ¼ of N. E. ¼ is fenced and in grain, by a person who occupied it about a year ago, knowing it to be school land.

That portion of the section west of Ashley Creek was a dense forest of tamarack, yellow pine, and fir, but the large timber on this part was cut about a year ago⁷³ by parties who have a steam sawmill on the section. . .

⁷² Anderson, McFarland, op. cit., p. 40.

⁷³ State Land Agent, First Annual Report of the State Land Agent, 1891 (Helena, 1891), p. 8.

Section 36, T. 27 N., R. 20 W., is on the northwest shore of Flathead Lake, which takes nearly all the S.W. $\frac{1}{4}$ and about 40 acres of the E.W. $\frac{1}{4}$. Squatters have taken the entire section, but have not title.⁷⁴

Section 36, T. 6 N., R. 21 W., is one-half mile south from main street in the town of Hamilton on Bitter Root and Montana Railway, which passes through the east side of the section.

Five forties were settled upon prior to the survey. The 400 acres remaining is mostly good land. The western portion is much cut up by the Bitter Root River, forming several islands which are partly on the section and are subject to overflow.⁷⁵

Under instructions from the State Board of Land Commissioners I took possession of all lumber, logs, and cordwood on school section 36, T. 28 N., R. 21 W., near Demersville, notifying the trespassers that none of it could be removed until they had settled the matter with the State, which they did a few days afterward, by paying over to the State School Fund \$1,000.00 damages. The property was then released.

Upon investigation it was found that there had been taken in Missoula land district, by settlers before the survey was made, 2,003 and 70-100 acres of school lands, for which the state was entitled to select other lands in lieu thereof, and it was further discovered that the State had lost school lands in the same district because of fractional sections 16 and 36, and because of fractional townships in which 16 and 36, one or both, had not been surveyed, amounting to 26,393 and 42-100 acres, for which, under the terms of Section 2275 and 2276, Revised Statutes of the United States, as amended by the Act of February 28, 1891, the State was granted, as indemnity for lost sections 16 and 36, lands of equal acreage with those lost, to be selected anywhere within the state, making a total of 28,397 and 12-100 acres of school indemnity lands to be selected.

Of this I selected 26,120 acres in the Bitter Root Valley, 2000 acres in Nine Mile Creek Valley, and 160

⁷⁴ State Land Agent, op. cit., p. 9.

⁷⁵ State Land Agent, op. cit., p. 15.

acres near Missoula, leaving 117 acres still to be selected.

I am informed by Surveyor General Eaton that he had great difficulty in letting contracts for surveying the tracts designated by the Board, one tract of two townships not being taken at all, because the price allowed by the United States being too low to afford any margin for profit.⁷⁶

An examination of Section 36, T. 9, N., R. 11 W., and Sec. 36, T. 3 N., R. 3 W., and Sections 16, T. 7 N., R. 4 W., portions of which were claimed as mineral, resulted in a decision that they were mineral lands, and the State Board of Land Commissioners relinquished them.⁷⁷

In his second annual report, 1892, the State Land Agent, R. O. Hickman, said, "The most considerable body of valuable agricultural land remaining in the hands of the United States within the State of Montana is in the north end of Missoula county"⁷⁸ He said further:

When appointed I at once went to this region, knowing it to contain the greatest quantity of good land, but unfortunately for the interests of the State, I could not select it because it was mostly unsurveyed, and as the Great Northern Railway began to build through the valley there was a rush of squatters who soon located all the most valuable land, while the State, being unable to squat on it, could not secure any at all.

In order that the State might be enabled to secure some of this land the State Board made application to Secretary Noble of the Interior Department, to have those townships withdrawn from settlement until after they were surveyed, and finally, in February, 1892, he made an order withdrawing six townships in the upper part of

⁷⁶ State Land Agent, op. cit., pp. 22-23.

⁷⁷ Loc. cit.

⁷⁸ State Land Agent, Second Annual Report of the State Land Agent, 1892 (Helena, 1892), p. 27.

Stillwater Valley, from settlement until the surveys were completed and the State had made its selections, subject, however, to the rights of all squatters who had located thereon prior to the order of withdrawal.⁷⁹

Not only was there the matter of finding sufficient land for lieu lands, where sections 16 and 36 had already been settled upon, but the matter of fraudulent filings came up. The State Land Agent had this to say in 1893:

My assistant (Granville Stuart) also investigated the alleged fraudulent filing of Henry Terou on the S. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ and S. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ of Section 16, T. 4. N., R. 12 W., and found abundant evidence that the filing was fraudulent, and so reported, giving names and residence of witnesses, and had notice of contest served on Terou

My assistant also, at the same time, investigated the alleged fraudulent filing and subsequent fraudulent obtaining of patents by James Kanes to the N. E. $\frac{1}{4}$ of Section 16, T. 4 N., R. 21 W., and found plenty of evidence that he had secured title to said land by fraud and perjury, and so reported, giving names and residences of witnesses. I also reported the case to the United States District Attorney There are about 2,000,000 feet of large yellow pine timber on Kane's claim, and there were about 1,500,000 feet of the same kind and quantity on Terou's claim, but he sold it to J. A. Hedge of Riverside, who had just finished removing it at the time my assistant reached the scene. He also examined into the alleged cutting of saw logs on Section 36, T. 11, N., R. 20 W., and found that Thomas E. Sheridan, who had, by misrepresentation obtained a lease on the S. W. $\frac{1}{4}$ of said section, had sold a large quantity of yellow pine trees that had been blown down by a gale subsequent to his leasing the land, to Wm. McKeen, who had a sawmill nearby, and that McKeen had cut and removed from the land a large number of saw logs from the said down timber. I reported these facts together with the names of witnesses to the Board.⁸⁰

⁷⁹ State Land Agent, op. cit., p. 28.

⁸⁰ State Land Agent, Third Annual Report of the State Land Agent, 1893 (Helena, 1893), p. 6.

Aside from the first duty of the State Board of Land Commissioners, that of transferring to the State the Sections granted by the United States, as sections, whether timbered, grazing, or agricultural, came the task of defining those lands of the fourth class, as outlined in Section I, Article XVII of the Constitution of Montana. It was early brought to the attention of the Board that Section 16, Township 15, North of Range 19, West, came within the provisions of the fourth class, it being immediately adjoining, if not actually within the limits of the city of Missoula.⁸¹ When the people of the said city of Missoula demanded it, and in compliance with the provisions of section 45 of the Act of the Legislative Assembly regarding the disposal of State Lands, the Board proceeded to have the said section surveyed, laid off in lots, blocks, streets, alleys, etc., as required by law. The law stipulated that school lands known as sections 16 and 36, or any part thereof, or any other State Lands, situated in, or adjacent to a city or town, may be surveyed or laid off in lots or blocks, streets, alleys, avenues, highways, or public squares, to conform to the local subdivisions of such city or town and the State Board of Land Commissioners shall cause correct maps and plats of such lands to be made and recorded.⁸²

⁸¹ State Land Register, Report of the Montana State Board of Land Commissioners, 1891 (Helena, 1891), p. 12.

⁸² Montana State Legislative Assembly, 1891, Second Session Laws (Helena, 1891), p. 174.

The survey was approved by the Board of County Commissioners of Missoula County and the city council of the city of Missoula, and copies of the plat were filed in their respective offices. The south half of the section was laid off in lots of 30 x 100 feet, and the north half in blocks of five acres each.⁸³

The State Land Agent reported, later:

On the tenth day of September last the Board of County Commissioners of Missoula County, in compliance with the instructions of this Board, appointed Sam'l Mitchell, P. J. Kline, and A. J. Gibson, a Board of Appraisers to appraise the lots in the south half of the section. The appraisers in due time proceeded to make the appraisal, and on the 27th. day of October, 1891, made a sworn return thereof to the County Clerk. Their report shows the total value of the half section to be \$198,505. Upon receipt of the report of the appraisers, an advertisement was prepared of one-half the lots or blocks in said school addition, said alternate lots or blocks for sale at auction on Monday, the 21st. day of December, 1891, as provided by law. Lots on which improvements had been found and appraised were to be sold for a cash payment of thirty per cent, and the balance in seven annual payments, with interest at seven per cent. per annum on the deferred payments, and on the unimproved lots fifty per cent. cash, balance as above stated for improved lots. There can be no doubt but that a large sum of money belonging to the school fund will find its way into the State Treasury from the proceeds of the sales of land in this section.⁸⁴

There were three provisions made by the Federal Government as to when the State could select lieu or indemnity lands. First, when sections sixteen and thirty-six, or any portion thereof have been settled on prior to survey, under

⁸³ State Land Register, op. cit., p. 12.

⁸⁴ State Land Agent, op. cit., p. 12.

the provisions of the pre-emption or homestead laws; Second, where such sections are mineral, or are included within any Indian, Military, or other Reservations, or are otherwise disposed of by the United States; Third, when sections sixteen or thirty-six are fractional in quantity, or where one or both are wanting by reason of the township being fractional, or from any natural cause whatever.⁸⁵

⁸⁵ Anderson, McFarland, op. cit., p. 66.

CHAPTER V

TOTAL LAND GRANT TO MONTANA

It might be well at this point to give the figures on the total grant to Montana for school and other purposes. By virtue of the grant of sections sixteen and thirty-six alone to the public schools of Montana, the State received a total of 5,188,000 acres of land. As we have seen before in this report some of these listed sections were already taken, so that the State had to accept lieu or indemnity lands for them. The duties of the Land Board also included the task of selecting lands to make up the grants to other institutions in the state. By section 14, of the Enabling Act, a grant of seventy-two sections was made to the State University. This land was to be selected and sold at not less than ten dollars (\$10.00) per acre and the proceeds placed in a permanent fund for University purposes. By Act of Congress on March 9, 1904, the "south half, and the south half of the north half of section 26, Twp. 13 N., of Rg. 19 West, adjoining the original campus was granted for University purposes".⁸⁶ The first grant consisted of 46,080 acres and this latter grant of 480 acres. Then, by Act of Congress of March 3, 1905, a grant of 160 acres was made for a biolog-

⁸⁶ United States Statutes at Large, (Washington, D.C., 1905), Vol. 33, p. 64.

ical station.⁸⁷ This land has been selected on Blue Bay on Flathead Lake, making a total of 46,720 acres for the University of Montana.⁸⁸ The Agricultural College, by section 16 of the Enabling Act, was granted 90,000 acres. The same section also made an additional grant of 50,000 acres, making a total of 140,000 acres for the State Agricultural College at Bozeman, Montana.

A grant of 100,000 acres was also made for the School of Mines by section 17 of the Enabling Act, and by the same section provision was also made for grants of 100,000 acres to the State Normal Schools, 50,000 acres to the State Reform School, and 50,000 acres to the Deaf and Dumb Asylum. Montana, by the Enabling Act, section 12, was granted 52,000 acres, and by section 17, 150,000 acres for Public Buildings at the State Capitol. This makes a total grant to the State of 5,856,720 acres. Except for sections sixteen and thirty-six that were found to be in place and not settled upon by homesteaders or any previous grant, all the rest came under lieu or indemnity land and had to be selected according to the provisions quoted above. Minor grants to the State included a grant to the State for a Military Camp.⁸⁹ This

⁸⁷ Ibid., p. 163.

⁸⁸ State Land Register, Biennial Report of the State Land Register, 1919-1920 (Helena, 1920), pp. 8-9.

⁸⁹ Loc. cit.

granted one section of land within Fort Ellis Military Reservation, then abandoned, in Gallatin County for a permanent military camp, "or other public uses". By State Senate concurrent resolution, approved January 30, 1923, this land is now dedicated to the Agricultural Experiment Station.

In 1895 the Governor was authorized to select two sections within abandoned Fort Maginnis Military Reservation in Fergus County, "for the maintenance of a soldiers' home, or for other public purposes".⁹⁰

On February 11, 1915, a grant of 2000 acres, at the price of \$2.50 per acre, within the abandoned Fort Assiniboine Indian Reservation, was made for the establishment of "agricultural, manual training, or other educational institution".⁹¹ The land had valuable buildings on it. The State Legislative Assembly of Montana had already consummated the deal and had established and located "The Northern Montana Agricultural and Manual Training School", at Fort Assiniboine.⁹² Two thousand acres were selected in Hill County.⁹³

In section 15 of the Enabling Act, the Penitentiary

⁹⁰ United States Statutes at Large (Washington, 1895), vol. 28, p. 938.

⁹¹ United States Statutes at Large (Washington, 1895), vol. 38, pp. 803-809.

⁹² Montana State Legislative Assembly, 1913, Thirteenth Session Laws (Helena, 1913), pp. 131-134.

⁹³ Ibid., p. 131.

at Deer Lodge City, Montana, and all the lands reserved therefor, were granted to the State of Montana. This amounted to 9 and 75/100 acres.

To find land within the boundaries of the State for all these grants (Table I, p. 47) was the task of the State Board of Land Commissioners and their Staff. Indian Reservations took up a considerable amount of land and many times included thousands of sections of school land. Montana has seven Indian Reservations with a total area of 6,410,597 acres.⁹⁴ Many of sections sixteen and thirty-six were included in these Reservations. The right was given, however, for Montana to select lieu lands for these.

Selecting lieu lands for sections sixteen and thirty-six on Indian Reservations also proved a difficult matter. The Enabling Act read that no lands embraced in Indian, military, or other reservations of any character, should be subject to the grants or to the indemnity provisions of this act, "until the reservations shall have been extinguished and such lands be restored to and become a part of the Public Domain".⁹⁵ As an example we can cite the opening of the Fort Belknap Indian Reservation by Act of Congress on March

⁹⁴ State Land Agent, Third Annual Report of the State Land Agent, 1893 (Helena, 1893), pp. 10-11.

⁹⁵ Anderson, McFarland, Revised Codes of Montana, 1935 (Helena, 1935), Vol. I, p. 63.

3, 1921.⁹⁶ When an Indian Reservation was opened each Indian was entitled to an allotment of land for himself and for his children. This act, opening the Reservation to allotment, recognized the right of the State to sections sixteen and thirty-six, but also gave the Indian the opportunity to select from sections sixteen and thirty-six. The act then goes on to make provision for the State to select lieu lands for those taken, within the Reservation.

The total area of school sections in the Reservation was 33,938.83 acres. Of these 14,247.38 acres were allotted to Indians or reserved for their benefit. After the allotments were made it was found that not one acre of land was left in the Reservation from which the State could select their indemnity lands. The State was then informed that it could select the 14,247.38 acres of lieu lands outside the boundaries of the Reservation.

As it happened Montana had just relinquished 17,725.13 acres of land to the United States, which it had hold under the Carey Act. Montana at once filed indemnity selections on this land. The selections were denied by the Commissioner of the General Land Office, and Senator Walsh of Montana introduced a bill into Congress on June 30, 1926, granting to the State of Montana the preference right to

⁹⁶ United States Statutes at Large (Washington, 1925), Vol. 41, p. 1359.

select and file in the local land office, to compensate for the loss of sections sixteen and thirty-six in the Fort Belknap Indian Reservation. The bill languished in Congress, but finally became law early in 1927, and Montana received all the relinquished land.⁹⁷

This illustrates the difficulties encountered by Montana in securing land in lieu of that granted to the public schools by the United States. The establishment of National Forests began during the administration of President Cleveland. By 1926, seventeen of those had been reserved in Montana. They have a gross area of 18,853,793 acres, equivalent to one-fifth of the entire State. This took in about 1,000,000 acres of sections sixteen and thirty-six, which were therefore lost to Montana schools. Where these sections had been surveyed and the survey approved previous to date creating the forest, the title of the State was recognized; if not, the State had no right to them, and was forced to select lieu lands.⁹⁸

The State Land Agent kept on selecting lieu lands and located all sections sixteen and thirty-six, which were clear. To date, 1939, practically all lands granted to the public schools of Montana, through grant of sections sixteen

⁹⁷ State Land Register, Report of the Register of Lands, 1921-1922 (Helena, 1922), pp. 10-43.

⁹⁸ Ibid., p. 12.

and thirty-six, are up to date. Liou lands have been selected, and clear lists are on file. Clear lists were certified approvals to lands selected by Montana from the United States. They took the place of deeds to the individual, but actually were not the same as patents. The State Land Board has been endeavoring to secure patents as rapidly as possible, but they come in very slowly, years being required for the patents to come through from Washington.

Up to 1934 the State's title in these public school lands rested only on the Granting Act, court decisions, and upon rulings of the General Land Office. Legislation was enacted by Congress and signed by the President on June 21, 1934, authorizing the issuance of patents to all lands granted to States.⁹⁹ According to the terms of the law, the State wishing patents must make application to the local land office, giving the description of every tract for which a patent is wanted. The application must then be published in newspapers designated by the land office. This expense is to be borne by the State. The State Department of Lands and Investments has made application for all of its public school lands. According to information received from the Commissioner of State Lands and Investments, Mrs. Nanita Sherlock, only some 717,182.33 acres are certified.

⁹⁹ Commissioner of State Lands and Investments, Biennial Report of the Department of State Lands and Investments, 1932-1934 (Helena, 1934), p. 6.

TABLE I¹⁰⁰TOTAL FEDERAL LAND GRANTS TO THE
STATE OF MONTANA

Grant	Acres
Public School	5,133,000.00
State University	46,720.00
Agricultural College, Morrill Grant	90,000.00
Agricultural College, Second Grant	50,000.00
School of Mines	100,000.00
State Normal School	100,000.00
Deaf and Dumb Asylum	50,000.00
State Reform School	50,000.00
Public Buildings (State Capitol)	132,000.00
Soldiers' Home	1,275.61
"Militia Camp", now used as Agricultural Experiment Station	640.00
Agricultural and Manual Training School	2,000.00
State Penitentiary	9.75
Total Grant to Montana	5,860,645.36

¹⁰⁰ Commissioner of State Lands and Investments, Biennial Report of the Department of State Lands and Investments, 1936-1938 (Helena, 1939), p. 4.

CHAPTER VI

ADMINISTRATION OF PUBLIC SCHOOL LANDS

The initial plan for the administering of Montana's enormous public school grant has already been described. A State Board of Land Commissioners was to be established, which was to have "The direction, control, leasing, and sale of school lands of the State . . . under such regulations and restrictions as may be prescribed by law".¹⁰¹

In 1891, the Governor was authorized to appoint a State Land Agent, and the latter was given the right to appoint, "with the consent of the State Land Board, such assistants as may be required for the proper performance of his duty, and to carry out the provisions of this act; . . .".¹⁰²

The first State Land Agent appointed by the Governor and approved by the State Land Board was Granville Stuart. His duties were as given in the paragraph above. From the first meeting the Superintendent of Public Instruction acted as Secretary. Under this arrangement most of the actual business was conducted by the Board itself. By Act of the State Legislature, approved March 7, 1895, the office of

¹⁰¹ Anderson, McFarland, Revised Codes of Montana, 1935 (Helena, 1935), Vol., I, p. 161.

¹⁰² Montana State Legislative Assembly, 1891, Second Session Laws (Helena, 1891), p. 174D.

State Register of Lands was created.¹⁰³ The first Register, Mr. S. A. Swiggett, assumed office on March 25, 1895. His duties were that he "shall have general charge of all lands belonging to the State, of all lands in which the State has an interest or which are held in trust by the State". He shall keep the books and the records of the State Land Office in such manner as to "show and preserve an accurate chain of title from the general government to the purchaser of each smallest subdivision of land".¹⁰⁴ In general, it adds, he is to keep a good set of books, records, maps, and plats, so that a record of all transactions and business of state lands will be evident at all times. His duty shall also be to "receive, record, and transmit to the State Treasurer all moneys received from sales, leases, permits, fines, or other sources, arising from State Lands".¹⁰⁵ He also was instructed to "personally conduct sales of land advertised for sale", and to "execute contracts of sale, lease, permits, or other evidences of disposal of state lands", and "to make an annual report to the Governor".¹⁰⁶

In 1897, the Register was authorized to appoint as

¹⁰³ Montana State Legislative Assembly, 1895, Fourth Session Laws (Helena, 1895), p. 89.

¹⁰⁴ Ibid., p. 90.

¹⁰⁵ Loc. cit.

¹⁰⁶ Loc. cit.

many persons, not to exceed three, as were needed in the selection, appraisal, and reappraisal of state lands and the timber thereon. He was also allowed an assistant State Land Agent for seasonal work, and the State Board of Land Commissioners was authorized to appoint one clerk, who was also to act as clerk to the Register and Land Agent.¹⁰⁷ The Assistant Register was made permanent in the 1899 Legislative Assembly Session, when the Register was authorized to appoint an assistant Register with the approval of the State Board of Land Commissioners. His salary was to be \$1500.00, and was to be paid from funds derived from the sale and leasing of state lands.¹⁰⁸

In 1909 the salary of the Register, his Deputy, the State Land Agent, his Assistants, State Forester, and his Assistants, the Clerk of the State Board of Land Commissioners, together with the pay of all the assistants and clerks in the State Land Office, shall be paid out of the moneys in the several land grant income funds, and shall be apportioned among the several funds from which the several funds are derived.¹⁰⁹

¹⁰⁷ Montana State Legislative Assembly, 1897, Fifth Session Laws, (Helena, 1897), pp. 92-93.

Montana State Legislative Assembly, 1899, Sixth Session Laws (Helena, 1899), pp. 85-86.

¹⁰⁹ Montana State Legislative Assembly, 1909, Eloventh Session Laws (Helena, 1909), p. 299.

A general revision and codification of the State Land laws was effected by the Legislative Assembly on March 4, 1909. As with the law of March 6, 1891, this new law also brought all legislation enacted to date in one law, and also added needed legislation for the simplification and efficiency of the department of lands. One of the most needed changes was effected by turning over the duties of the Secretary of the Board to the Register of State Lands. The Secretary's duties were to include those of keeping records, making and signing all leases of State Lands issued by him; to make and countersign all patents, be secretary and keep minutes of all meetings of the Board.¹¹⁰ From then on the Register of State Lands became the most vital office in the entire Department. Under this law of 1909, the office of State Forester was also created. His duties were, under the Board, to "have charge of timber lands of the State", to be "Secretary of the Forestry Board", to have charge of all fire-wardens; to protect and improve state parks and forests; to prevent and extinguish fires; to enforce the laws on forest and brush covered lands and prosecute for violations to our forest lands.¹¹¹ The law gave the State Forester authority to appoint volunteer fire-wardens. It made every

¹¹⁰ Eleventh Session Laws, op. cit., p. 289.

¹¹¹ Ibid., pp. 293-294.

sheriff, deputy-sheriff, under-sheriff, game-warden, and deputy game-warden, ex-officio fire-wardens. Supervisors and rangers of Federal Forests in the State may be appointed volunteer fire-wardens, if they accept the duties.¹¹²

The Forestry Board is authorized in section 20 of this law, wherein it reads, "The Register of State Lands, together with the State Land Agent, and the State Forester shall constitute a Forestry Board, of which the Register of State Lands shall be Chairman . . .".¹¹³ The duties of this Board shall be to ascertain reforestation methods, prevent forestry waste, destruction by fire and to report to the State Land Board. They may also reforest water-sheds and expend such funds as the State Legislature provides.¹¹⁴

On March 7, 1911, section 22 of chapter 147 of the session of 1909 was amended to give the right to appoint one clerk, whose salary was not to exceed \$1500.00 a year, and to employ needed office force.¹¹⁵ This was amended on February 7, 1917, when the Register of State Lands was empowered to appoint one clerk, salary of \$1500.00, and also to employ other office help, with the right to designate one

¹¹² Eleventh Session Laws, op. cit., p. 294.

¹¹³ Ibid., p. 298.

¹¹⁴ Ibid., pp. 298-299.

¹¹⁵ Montana State Legislative Assembly, 1911, Twelfth Session Laws (Helena, 1911), p. 256.

as Cashier, or Receiving Clerk.¹¹⁶ In February, 1917, the State Land Agent was authorized to appoint such persons to assist in the selection, appraising and re-appraising, to receive pay only when doing field work, not to exceed \$125 a month and actual expenses. In the same law the State Forester was allowed to appoint an assistant forester when needed, whose salary when working was not to exceed \$150 per month.¹¹⁷

Another addition to the administrative force was made in 1917, when the State Board of Land Commissioners was authorized to appoint a chief examiner to hold office during the pleasure of the Board, to examine once in each year each and every tract of land upon which a mortgage had been given to secure a loan, and to report to the Board the conditions of the land, whether it was cared for, etc. His salary was to be \$2500.00 a year, plus his travelling expenses. The Register's salary was raised to \$3600.00 a year, payable monthly; the State Land Agent's salary to \$3250.00, and the Deputy Register's salary to \$2500.00.¹¹⁸

According to legislation enacted in 1925, the Governor and Senate were to appoint a State Forester, whose gen-

¹¹⁶ Montana State Legislative Assembly, 1917, Fifteenth Session Laws (Helena, 1917), p. 9.

¹¹⁷ Ibid., pp. 64-65.

¹¹⁸ Montana State Legislative Assembly, 1917, Fifteenth Session Laws (Helena, 1917), pp. 201-206.

eral duties included supervision of State Forests. His salary was to be \$3,000.00 a year, plus expenses, and his term of office was to be four years. He was authorized, with the consent of the State Board of Land Commissioners, to appoint help for his office, wardens, scalors, cruisers, estimators, and forest assistants necessary. Additional duties were to supervise all work in the state forests, secure payments to the State Treasurer for all timber before cut, count the number of logs, stamp them, scale, keep records on timber, and to publish a biennial report of conditions and activities of the State Forester.¹¹⁹

On July 1, 1928, the title of State Land Department was changed to the Department of State Lands and Investments. The Register of State Lands became "Commissioner of State Lands and Investments".¹²⁰ This change in the name of the Department was logical when one considers the size of the funds that had been built up since 1891. At first the duties of the Board consisted of locating and securing title to all lands granted to the public schools, and other state institutions, by the Federal Government. The State of Montana had been given permission to sell, lease, or rent this land and a number of its values, such as timber, stone,

¹¹⁹ Montana State Legislative Assembly, 1925, Nineteenth Session Laws (Helena, 1925), pp. 337-342.

¹²⁰ Montana State Legislative Assembly, 1927, Twentieth Session Laws (Helena, 1927), p. 161.

grazing rights, etc. As the years went by, more and more money was received from rents, royalties, leases, and sales. The duties of the Department became burdened with huge funds which it was obliged to invest and use for the benefit of public schools and other institutions.

Again, as many times in the past, the Legislative Assembly reaffirmed the duty of the State and State Board of Land Commissioners to guard these public land grants, when it wrote into law the following:

. . . In the exercise of these powers, the guiding rule and principle shall be that these lands and funds are held in trust for the support of education . . . and that it is the duty of the Board so to administer this trust as to secure the largest measure of legitimate and reasonable advantage to the State¹²¹

Under this law the Department was instructed to meet regularly on the second Wednesday of each month; however, special meetings may be called when necessary. In section 5, part two, of the law, the Governor was instructed to appoint, with the consent of the Senate, a Commissioner of State Lands and Investments, "who shall be the chief administrative and executive officer under the Board in all matters except those pertaining to the State Forests"¹²² The State Forester was excepted, because he was made "the chief administrative and executive officer under the Board

¹²¹ Twentieth Session Laws, op. cit., p. 162.

¹²² Ibid., p. 163.

in all matters pertaining to the State Forests".¹²³ His duties were not changed from what they had formerly been.

One assistant commissioner, one cashier, one secretary, one chief field agent, and such other employees as the Board deemed necessary for the proper performance of the work of the office, were to be appointed, subject to the approval of the Board of Examiners.¹²⁴

As was natural the costs for administration increased from year to year, as the duties of the Department became more and more wide-spread and involved. Year by year more land was added to the property of the State Public Schools, as indemnity lands were selected. More land was leased, sold, or rented. Additional forest land had to be taken care of; additional mineral rights had to be protected, and investments became larger and larger. Table II, p. 57, taken from the annual report of the Department of State Lands and Investments, gives the cost of administration for the year 1937-1938. This includes only the cost of administration for the main office. On the same page, Table III, will be found the cost of administration in the field. As we have seen, the work of the Department was divided into the work in the main office, and the work in the field.

¹²³ Twentieth Session Laws, op. cit., p. 163.

¹²⁴ Loc. cit.

TABLE II

COST OF ADMINISTRATION
From July 1, 1936, to June 30, 1938

	July 1, 1936 to June 30, 1937	July 1, 1937 to June 30, 1938
1. Salaries:		
Commissioner	\$ 3,600.00	\$ 3,600.00
Assistant Commissioner	1,638.70	2,000.00
Other Salaries	15,747.32	14,472.39
2. Official Bonds	60.00	65.00
3. Industrial Accident Insurance	57.73	31.43
4. Legal Advertising	756.15	605.00
5. Furniture, Equipment, and Repairs	718.70	322.15
6. Postage	1,738.83	885.00
7. Other Operating Expenses	2,131.96	1,908.97
Totals	\$26,449.44	\$23,839.99

TABLE III

COST OF ADMINISTRATION
IN THE FIELD

	July 1, 1936 to June 30, 1937	July 1, 1937 to June 30, 1938
1. Salaries:		
Chief Field Agent	\$ 3,250.00	\$ 3,250.00
Others	5,245.20	5,954.69
2. Traveling and Other Operating Expenses	5,028.24	5,639.59
3. Capital and Repairs	691.10	39.83
Totals	\$14,214.54	\$14,884.11
Totals for the Entire Department	\$40,663.98	\$38,774.10

The total cost of administration of the Department from 1891 to 1938 is given in Table IV, p. 61. As will be noted from this table there was a decided increase in expenditures from 1917 to 1924. This was due, in most part, to the tremendous volume of additional business involved in the Farm Loan Plan.

The officers of the State Land Department have changed considerably between 1891 and 1938. However, there has been a tendency recently to keep the same persons in office. This will be seen in Table V, p. 62, taken from the Biennial Report of the Department of State Lands and Investments for the years July 1, 1936 and ending June 30, 1938.

The personnel of the State Land Office has grown from its small beginning in 1889. Then, concerned only with the location of State Lands, and not having much money at its disposal, the Department's staff was small. Now, however, with six million acres of located lands, and millions of dollars in investment funds, the Department has grown to a staff of eighteen. Table VI, p. 63, shows the personnel of the State Land Office as of September, 1938.

As the personnel has grown with the business of the Department, so the cost of administration has grown. When one considers the volume of business of the Department for each of the past few years, it is surprising that the cost of administration has not mounted higher. No data are avail-

able on the cost of administration for the first years of the Department, and those figures are given in Table IV which were available.

Expenses of administration, including those of collecting, platting, leasing, and selling of all State Lands, and all expenses connected with the preservation or sale of timber thereon, were to be paid by the Treasurer on warrants issued by the State Auditor, and on vouchers certified by the State Board of Land Commissioners, that said expenses were necessary and actually incurred in the selection, location, and appraisal and classification, platting, leasing, or selling of the State Lands. These moneys were to be paid out of money in the several income funds and the State Board of Examiners was to designate the fund from which it was to be paid.¹²⁵

In 1927 certain scales of payment were laid out concerning amounts to be paid for various services. For issuing a miners prospecting permit a fee of ten dollars (\$10.00) was to be charged. This could be increased as the State Board of Land Commissioners saw fit. For any other permit the charge was to be one dollar (\$1.00). Two dollars and fifty cents (\$2.50) was to be the charge for a lease, and five dollars (\$5.00) for issuing a certificate of purchase.

¹²⁵ Montana State Legislative Assembly, 1909, Eleventh Session Laws (Helena, 1909), p. 326.

For approving and entering an assignment of lease or for issuing a certificate of purchase a fee of one dollar (\$1.00) was charged; five dollars (\$5.00) for issuing a deed for right-of-way easement or other easement; five dollars (\$5.00) for a patent to any land sold; one-half of the fee stated for issuing a certified copy of any of the listed fees. For making a township plat, showing certain State Lands, the fee was to be fixed by the State Board of Land Commissioners, according to the amount of work involved.

TABLE IV¹²⁶

EXPENSES OF LAND OFFICE SINCE 1897

1892	\$	1916	\$49,196.25
1893		1917	64,690.10
1894		1918	88,350.62
1895		1919	95,913.31
1896		1920	66,752.64
1897	15,812.34	1921	38,867.56
1898		1922	59,465.40
1899		1923	72,400.57
1900		1924	79,585.17
1901		1925	54,286.82
1902		1926	36,892.45
1903		1927	37,006.99
1904		1928	42,399.81
1905	15,832.72	1929	44,738.18
1906	13,076.84	1930	39,536.28
1907	16,114.53	1931	44,289.06
1908	20,449.98	1932	40,351.27
1909		1933	41,498.08
1910		1934	29,621.62
1911)	86,390.00	1935	31,636.78
1912)		1936	39,583.84
1913		1937	40,663.98
1914	49,417.65	1938	38,774.10
1915	56,030.64		

¹²⁶ Commissioner of State Lands and Investments, Biennial Report of the Commissioner of State Lands and Investments, 1936-1938 (Helena, 1938), p. 72.

TABLE V¹²⁷OFFICERS OF STATE LAND DEPARTMENT
1891 - 1938

Year	Register of State Lands	State Land Agent	State Forester
1890-1892		Granville Stuart	
1893-1894		R. O. Hickman	
1895-1896	S. A. Swiggett	J. M. Page	
1897-1900	H. D. Moore	Henry Neill	
1901-1904	(Thos. D. Long John P. Schmit	Henry Neill	
1905-1908	John P. Schmit	Henry Neill	
1909-1912	F. H. Ray	C. A. Whipple	C. W. Jungborg
1913-1916	Sidney Miller	C. A. Whipple	John C. Van Hook
1917-1920	Sidney Miller	C. A. Whipple	John C. Van Hook
1921-1924	H. V. Bailey	Geo. W. Cook	R. P. McLaughlin
1925-1927	I. M. Brandjord	L. E. Choquette	Rutledge Parker
Year	Commissioner of State Lands and Investments	Chief Field Agent	State Forester
1927-1928	I. M. Brandjord	L. E. Choquette	Rutledge Parker
1928-1930	I. M. Brandjord	L. E. Choquette	Rutledge Parker
1930-1937	I. M. Brandjord	L. E. Choquette	Rutledge Parker
1937-1938	Nanita B. Sherlock	H. C. Biering	Rutledge Parker

¹²⁷ Commissioner of State Lands and Investments, op. cit., p. 4.

TABLE VI¹²⁸PERSONNEL OF THE STATE LAND OFFICE
SEPTEMBER, 1938

Name	Title
Nanita B. Sherlock	Commissioner
Curtis Burns	Assistant Commissioner
Betty Waters	Bond Clerk
Mary Connors	Cashier
Walter Williams	Assistant Cashier
Bonnie Fox	Lease Clerk
Vinnie Weggenman	Senior Clerk
Margaret Bjorneby	Stenographer
Jane Ragen	Stenographer
Norah F. Cooper	Stenographer
Eva Janet Smith	Stenographer
Maxine Baker	Typist
H. C. Biering	Chief Field Agent
Iad Henry	Secretary
James W. Masterson	Deputy Field Agent
George A. Burr	Deputy Field Agent
E. K. Preuitt	Deputy Field Agent
Paul Leonhardy	Deputy Field Agent

¹²⁸ Commissioner of State Lands and Investments.
Data secured by request.

CHAPTER VII

INCOME FROM PUBLIC SCHOOL LANDS

All moneys taken in from any source from State Public Lands are classified in two groups. Under the first, come all those receipts which go into permanent funds for the schools; and, under the second, all funds which are used for the aid to schools, through apportionment yearly. This classification was specified in Article XI, section 2, of the State Constitution, as follows:

The public school fund of the state shall consist of the proceeds of such lands as have heretofore been granted, or may hereafter be granted, to the state by the general government known as school lands; and those granted in lieu of such lands acquired by gift or grant from any person or corporation under any law or grant of the general government; and of all other grants of land or money made to the state from the general government for general educational purposes, or where no other special purpose is indicated in such grant; all estates, or distributive shares of estates that may escheat to the state; all unclaimed shares and dividends of any corporation incorporated under the laws of the state, and all other grants, gifts, devises, or bequests made to the state for general educational purposes.¹²⁹

The above specified that all income was to be used directly for the use of public schools. There was speculation as to whether the funds for administration should come from the general state government or from income from school lands. Finally, in 1919, a law was passed by the State Leg-

¹²⁹ Eleventh Session Laws, op. cit., p. 326.

islative Assembly which said that not one dollar of income from public school lands could be used for expenses of administration by the State Board of Land Commissioners. It specified that every bit of the income must be used for the benefit of public schools.¹³⁰

According to the State Constitution, these funds shall forever remain inviolate, "guaranteed by the state against loss or diversion," ¹³¹

As has been stated, there were two kinds of income arising from the public school land grants to Montana. One was from the direct sale of the land itself, or from the sale of some values in the land or under it; the other came from rentals on the land and from interest received on capital arising from the land. The Constitution stated that,

Ninety-five per centum (95%) of all the interest received on the school funds of the state, and ninety-five per centum (95%) of all rents received from the leasing of school lands and of all other income from the public school funds shall be apportioned annually to the several school districts of the state in proportion to the number of children and youths between the ages of six (6) and twenty-one (21) residing therein respectively, but no district shall be entitled to such distributive share that does not maintain a free public school for at least six months during the year for which such distribution is made. The remaining five per centum (5%) of all the interest received on the school funds of the

¹³⁰ State Land Register, Report of the Montana State Board of Land Commissioners, 1924-1925 (Helena, 1925), p. 12.

¹³¹ Anderson, McFarland, Revised Codes of Montana, 1935 (Helena, 1935), Vol. I, p. 164.

state, and the remaining five per centum (5%) of all the rents received from the leasing of school lands and of all other income from the public school funds, shall annually be added to the public school fund of the state and become and forever remain an inseparable and inviolable part thereof.¹³²

Other vital instruments in the setting up of Montana as a State were the Organic Act and the Enabling Act. The former, in paragraph 14, directed that when the lands in the Territory of Montana shall be surveyed, preparatory to bringing them into the market, "sections numbered sixteen and thirty-six in each township in said Territory shall be, and the same are hereby, reserved for the purpose of being applied to schools in said Territory"¹³³ Then, in the Enabling Act, approved February 22, 1889, providing for the admission of Montana into the Union as a State, section 10 provided that when the state was admitted into the Union, sections numbered sixteen and thirty-six in every township "are hereby granted to said states for the support of common schools".¹³⁴

The Enabling Act makes the same provisions for the disposal of funds derived from these lands, as does the Constitution, quoted above. Proceeds from the sale and other permanent disposition of any of the lands, and from every

¹³² Anderson, McFarland, Revised Codes of Montana, 1935 (Helena, 1935), Vol. I, p. 55.

¹³³ Ibid., p. 63.

¹³⁴ Ibid., p. 96.

part thereof, were to constitute a permanent fund for the support and maintenance of the public schools. Rentals on leased lands, interest on land payments, interest on funds arising from these lands, and all other actual income, was to be made available for the maintenance and support of public schools. The State was given the option to add any part of the annual income to the permanent funds.¹⁵⁵ As we have already seen on page 66, Montana decided to add five per centum (5%).

At the present time receipts for the permanent funds of the public schools come from the following sources:

1. Land sales: first payments; rights-of-way; five per cent of all income for the year; five per cent of all United States land sales in Montana during the year.

2. Installments on land sales.

3. Timber sales by the State Forester.

4. Oil and gas royalties.

5. Coal, sand, and gravel royalties, etc.

6. Repayments on mortgages.

7. Repayments on bonds.

8. Repayments on warrants.

Income from all sources going into the fund for the support of public schools, known as the Interest and Income

¹⁵⁵ Anderson, McFarland, op. cit., Vol. I, p. 165.

Fund, comes from:

1. Rentals on agricultural and grazing leases.
2. Grazing fees collected by the State Forester.
3. Rentals on gas and oil leases.
4. Interest on land sales.
5. Interest and other income from farm mortgages.
6. Interest on bonds.
7. Interest on warrants, etc.
8. Miscellaneous income.
9. Fees, penalties, etc.

To give a better idea of this income for the Permanent Fund, Table VII is given on the following page. This Table gives such income for the year 1937-1938.

Table VIII, p. 70, shows the income for the same year for the Interest and Income Fund, or for that fund which is used annually for the maintenance and support of public schools through direct apportionment.

Since 1889, when Montana received this enormous land grant from the Federal Government, the permanent fund set aside for the use of the public schools of Montana has grown to a value of \$63,016,733.65. This is shown in Table IX, p. 71. These figures do not take into account the hidden wealth of the land, such as oil, ores, coal, and other minerals, as well as water power.

TABLE VII¹³⁶

RECEIPTS FOR PERMANENT FUNDS FROM ALL SOURCES DURING
FISCAL YEAR JULY 1, 1937, TO JUNE 30, 1938

Land sales, first payments	\$ 20,192.00
Right-of-way	30.00
Right-of-way	2,728.16
5% of United States land sales in Montana	447.71
5% of total income for 1937	42,368.60
Installments on land sales (C.P.'s)	50,851.58
Timber sales by State Forester	34,184.47
Timber sales collected by Register	83.60
Oil and gas royalties	47,491.02
Coal, sand, and gravel royalties, etc.	5,001.53
Total of these initial payments	203,348.67
Repayments on mortgages (above included \$1,518.78 in oil and gas royalties)	27,648.44
Repayments on bonds	1,123,830.87
GRAND TOTAL	\$1,354,827.98

136 Commissioner of State Lands and Investments, Bi-
ennial Report of the Department of State Lands and Invest-
ments, 1936-1938 (Helena, 1938), p. 11.

TABLE VIII¹³⁷

INCOME FROM ALL SOURCES DURING FISCAL YEAR
JULY 1, 1937 to JUNE 30, 1938

Income to Permanent School Fund:	
Rentals on agricultural and grazing leases	\$192,833.34
Grazing fees collected by State Forester	6,288.15
Rentals on oil and gas leases	32,796.28
Interest on land sales (C.P.'s)	65,158.99
Interest and other income from farm mortgages ((\$8,394.30 was wheat allotment pmt.)	98,644.34
Interest on bonds	431,341.00
Wheat allotments payments	25,978.56
Misc. income (\$10.05 refunds)	29,788.54
Transfers	2.39
Totals	\$891,233.55

137 Ibid., p. 9.

TABLE IX¹³⁸
 PERMANENT ASSETS JUNE 30, 1938

Public School Funds	
Value of unsold lands at \$10 per acre	\$45,647,951.90
Deferred payments on land sales (C.P.'s)	1,984,044.43
Farm mortgage loans	4,153,068.92
United States bonds	1,000,000.00
State bonds	3,212,619.25
Co., city, town, and school district bonds	6,316,390.50
Cash with State Treasurer	702,658.65
Total	\$63,016,733.65

¹³⁸ Ibid., p. 15.

1. LAND SALES

In order to understand fully the various types of income accruing to the public school funds from the land grants, an attempt will be made to elaborate on each one to show just how the land is used and the money derived. As has been seen in the different laws passed by the Federal Government, the Organic Act, the Enabling Act, and also in the State Constitution, provision was made that the lands given to the public schools could be sold and the proceeds used for the benefit of public schools. Specific terms and conditions under which this land could be sold were provided by the Legislative Assembly in 1891. Under the law passed in that year the State Board of Land Commissioners was directed to sell the lands belonging to the State at public auction in such manner as they deemed for the best interest of the State, and for the promotion of settlement. Not more than ten thousand acres were to be sold at any one auction,

. . . and each lot of 160 acres shall be separately exposed to sale; smaller lots only shall be sold when it is impracticable to sell as above proscribed, or when in the judgment of the State Board a larger price will be received for the sale of the land, and not more than one hundred and sixty acres shall be sold to any one person except as otherwise provided in this act.¹³⁹

The same law also proscribed that none of the lands granted

¹³⁹ Montana State Legislative Assembly, 1891, Second Session Laws (Helena, 1891), p. 174G.

"shall be sold or disposed of at a price less than ten dollars (\$10.00) per acre".¹⁴⁰

In order to gain as much benefit as possible to the public schools from this land, the State Legislature, in 1909, ordered that all leases, and all conveyances of state lands by the State Board of Land Commissioners shall "contain a reservation to the state of all coal, oil, and gas contained therein".¹⁴¹

As was stipulated in 1891, not more than one hundred and sixty acres of land were to be sold to any one person. This was modified in 1909, when the Legislative Assembly so changed the law that not more than one hundred and sixty acres of land susceptible of irrigation, and not more than three hundred and twenty acres of agricultural land not susceptible of irrigation, and not more than six hundred and forty acres of grazing land, or lands which by reason of altitude are valuable only as hay lands, shall be sold to one person, company, or corporation "and the amount of purchase price paid at once upon sale, shall not be less than fifteen per centum (15%) of the purchase price".¹⁴²

In legislation on state lands in 1891, the Board of Land Commissioners was instructed to advertise the auction

¹⁴⁰ Ibid., p. 174C.

¹⁴¹ Montana State Legislative Assembly, 1909, Eleventh Session LAWS (Helena, 1909), p. 305.

¹⁴² Ibid., p. 308.

in a newspaper or newspapers, giving a full description of the land to be sold, at least four weeks previous to the sale. This law gave it as the duty of the State Board of Land Commissioners to provide for the selection, leasing, sale, or other disposition of all lands granted to the State, or which may hereafter be granted by the general government, or "otherwise under such regulations as may be proscribed by law and in such manner as may secure the maximum possible amount provided therefore".¹⁴³ It was to be expected that with so much land to be sold, and with many thousands of settlers wishing to buy, and also countless individuals willing even to resort to fraud to secure some, that a dispute would arise as to the price for which this land was to be sold. This was taken care of, however, by section 11 of the Enabling Act, also by Article VII, section 2, of the Constitution of Montana. It was also made a part of the working law of Montana in section 6 of the Act of March 6, 1891, where it is directed that no land included in the grant to the public schools of Montana shall be sold for less than ten dollars (\$10.00) per acre.¹⁴⁴ The same section stipulates that if there are lands in the grant that do not warrant the said price, then these lands may be leased, rather than

¹⁴³ Montana State Legislative Assembly, 1891, Second Session Laws (Helena, 1891), pp. 174G-174H.

¹⁴⁴ Ibid., p. 174C.

sold.

The State Legislature had much to say concerning the method of sale. As we have seen, this was to be by auction, after proper advertising in the newspapers. This was again emphasized in 1899 when the law was made to read that not only was the sale to be made to the highest bidder, but it was to be conducted at the State Land Office, and held at the court-house of the county. Sale was to be by the quarter section, separately, and not more than 160 acres was to be sold to any one person, at not less than ten dollars (\$10.00) per acre, nor less than the appraised value. Thirty per centum (30%) was to be paid in cash at once, but the total sales price on timbered lands was to be paid in cash.¹⁴⁵ This was changed in 1903, when it was directed by law that the purchaser was to pay the Register of State Lands the first payment within twenty-four hours, with a bond executed guaranteeing to pay the balance in fourteen equal payments, annually, with interest at five per centum (5%).¹⁴⁶

In 1909 the law was modified to read that a sale of state lands was to be held at least once in every two years, in the county seat of each county. Provision was also made

¹⁴⁵ Montana State Legislative Assembly, 1899, Sixth Session Laws (Helena, 1899), pp. 87-93.

¹⁴⁶ Montana State Legislative Assembly, 1903, Eighth Session Laws (Helena, 1903), pp. 38-39.

that if the purchaser, or his assigns, defaulted for a period of thirty days in the payment of principal or interest, the certificate of sale was to be forfeit and the lands were to revert to the State. Notice to this effect was to be mailed to the purchaser, who was to be given thirty days more in which to pay. After this formality the State Board of Land Commissioners could go ahead and sell the land, and all previous payments were forfeited.¹⁴⁷

The amount of the first payment on a land sale was amended in 1923, so that the purchaser of state lands, except timber lands, could pay down at once as much as he desired, but not less than fifteen per centum (15%) of the sale price, the balance to be paid on the amortization plan, over a period not to exceed thirty-five years, with interest at five per centum (5%).¹⁴⁸ Previous purchasers of State Lands were given the right to convert their contracts into the same plan of amortization. In 1925 the Legislative Assembly further changed the plan of payment by stipulating that the purchaser could pay cash at once as much as desired, but not less than ten per centum (10%) of the purchase price.¹⁴⁹ We can see from this legislation that the State was doing every-

¹⁴⁷ Montana State Legislative Assembly, 1909, Eleventh Session Laws (Helena, 1909), pp. 307-308.

¹⁴⁸ Montana State Legislative Assembly, 1923, Eighteenth Session Laws (Helena, 1923), pp. 25-26.

¹⁴⁹ Ibid., p. 26.

thing in its power to aid the purchaser to make the payments due on his land contract, which was not only good business for the schools but also for the farmers and ranchers of Montana.

Sometimes it happened that all the lands advertised for sale were not disposed of at the auction. In such case the State Board of Land Commissioners was instructed to continue to hold the land for at least ten dollars (\$10.00) per acre, and in the meantime to lease the land for a period not to exceed five years.¹⁵⁰

The down payment on a land purchase, as previously stated, was reduced to ten per centum (10%). It was necessary that the settler on the land should have some monetary interest in the land, in order to keep him from using it for a year or so and then moving on to other land. The County Treasurer was made the collector of the auction, for it was required that,

. . . within twenty-four hours after each sale the purchaser of each tract shall pay to the County Treasurer of the county in which the sale was made, who shall forthwith transmit the same to the State Treasurer, the first payment required thereon, and execute a penal obligation conditioned for the payment, of the residue of the purchase money to the State of Montana, in seven equal, annual payments, with interest at the rate of seven per centum (7%) per annum, which obligation shall be deposited with the State Auditor.¹⁵¹

¹⁵⁰ Montana State Legislative Assembly, 1891, Second Session Laws (Helena, 1891), p. 174F.

¹⁵¹ Ibid., pp. 174H-174I.

Later, 1923, this method of payment was changed to the amortization plan over a period of thirty-five years or less. The State Auditor was required to give the purchaser of land a certificate of sale, and to give him a patent to the land when the amount due on the land was paid in full.¹⁵²

Many times it happened that persons would buy land at auction, live on it for a time, and then abandon it. In such cases the State Land Board could instruct the Attorney General to institute suit to recover either the land or to secure the payments due. This was only where payments had remained unpaid for one year. If the Board did not institute suit, it could sell the land, if it had been abandoned for one year, and all previous payments on the land were thereby forfeited.¹⁵³

Again, in order to secure to the State the full value of the land, the Legislature, in 1929, amended the law so that all coal, oil, oil shale, gas, phosphate, sodium, and other mineral deposits, except sand, gravel, building stone, and brick clay, in State Lands, not reserved to the United States, were to be reserved by the State. All such deposits were to be reserved from sale, except on a royalty or rental basis. This did not apply to foreclosed land.¹⁵⁴

¹⁵² Ibid., p. 174I.

¹⁵³ Ibid., pp. 174I-174J.

¹⁵⁴ Montana State Legislative Assembly, 1927, Twentieth Session Laws (Helena, 1927), p. 46.

The State Land Board was not limited to the sale of land only at auction. In case a sale was held and the land was not bid on or sold, the Board could sell the land later to individuals or corporations at appraised prices. The Board could readvertise for the sale of lands not sold at a previous auction, and at this later one could sell the lands at "not less than ten per centum (10%) less than previously, but not below ten dollars (\$10.00) per acre".¹⁵⁵

It sometimes happened that persons, either when living on leased lands, or having settled on them, not knowing them to be State Lands, made improvements on that land. These persons were given the right to buy in for the appraised value of the improvements, plus the appraised value of the land. Then, when he paid the purchase price, he could deduct from it the value of the improvements. If someone else bought the land, the value of the improvements was to be paid to the party who had made them.¹⁵⁶

The Legislative Assembly was very active in preserving the timber on the state lands sold to settlers until the entire purchase price had been paid. They directed that if a purchaser, before receiving his title in fee simple, therefore, shall cut or destroy any timber upon the land, more

¹⁵⁵ Montana State Legislative Assembly, 1891, Second Session Laws (Helena, 1891), p. 174J.

¹⁵⁶ ibid., p. 174K.

than may be necessary for building and repair of fences and houses on his land, or for fuel for his own use, he or she shall be liable to pay the amount of damages done to the land, "recovered by action in the name of the State of Montana, to be instituted by the Attorney General or the County Attorney of the county in which the land is situated".¹⁵⁷ This was a very important law, for many people at that time found it profitable to secure land by payment of a small sum, then take all the timber from it and abandon it. This was experienced by the State Land Agent in 1892, when he was on his regular cruise of Montana, locating granted lands and selecting lieu lands for the Public School Grant. He found that many men, some sent by certain sawmill syndicates, would go ahead of the surveying parties and locate land under the Timber and Stone Act, at the price of \$2.50 per acre. Under this Act they could select a quarter section of timber land, and some of this land was on mountain-sides so steep, as the Agent goes on to observe,

. . . that it is difficult to climb, erect a small hut and call it a homestead, and manage in some way to get their location noted by the surveyors. Then, after the plats are filed in the local Land Offices, they offer filings for homestead, claiming settlement prior to the survey thereof. After the filings are accepted, they at once commence to strip the land of its value, which is timber, having no intention to complete the title, but only to see how quickly they can cut and dispose of the timber.

¹⁵⁷ Ibid., p. 174L.

¹⁵⁸ State Land Agent, Third Annual Report of the State Land Agent, December 1, 1892 - November 30, 1893 (Helena, 1893), p. 6.

Of course some of this land so stripped, after the survey, turned out to be public school land sections.

Then, as above mentioned, lands were abandoned for a year, they were advertised for sale by the State Board of Land Commissioners. If at the sale the bid did not equal the sum of principal and interest due thereon, then the Board could purchase the land for the State for the amounts due with the costs of the sale.¹⁵⁹

Many times people living near school lands wished to buy them before they had been listed for sale by the Board. The law provided that:

Whenever ten householders of any school district in which the land is situated shall petition the State Board of Land Commissioners to expose to sale any portion or portions of said lands, describing the same, the State Board shall direct the County Commissioners of the County in which the land is situated to cause the same to be appraised by three disinterested householders, each legal subdivision of the land being appraised separately, at its real value, and return the appraisement in writing signed by them to the clerk of the county; and in case any parcel of the said lands shall have been improved the said appraisers shall, in addition to the appraisement of the land, return and file with the said clerk a separate appraisement of the improvements upon said land. The appraisers shall receive four dollars per day for the time actually employed in such appraisement, to be paid by warrants on the Auditor of State on the State Treasury.¹⁶⁰

The County Clerk was instructed to file the appraisement and send a copy to the State Board of Land Commissioners, who

¹⁵⁹ Second Session Laws, op. cit., p. 174L.

¹⁶⁰ Ibid., pp. 174M-174N.

were to instruct the County Treasurer to sell these lands at a sale in the county, to the highest bidder.

As will be remembered by the reader the State Lands were divided into four classes. The fourth classification included those lands situated within the limits of any town or city, or within three miles of such limits. The State Constitution, after describing these classes of state lands, goes on to provide that,

The lands of the fourth class shall be sold in alternate lots of not more than five acres each, and not more than one half of any one tract of such lands shall be sold prior to the year one thousand nine hundred and ten.¹⁶¹

The Legislative Assembly in 1891 described how this land was to be laid off, when it provided such land was to be "laid off in lots or blocks, streets, alleys, avenues, highways, or public squares, to conform to legal subdivisions of such city or town and the State Board of Land Commissioners shall cause maps and plats of such lands to be made and recorded"; when this has been done, the Board may, in its discretion, sell the land at public auction to the highest bidder.¹⁶² The law also stipulated that these lots so platted must be sold separately and in the same manner as other lands.

The Legislative Assembly of 1909 stated that lands

¹⁶¹ Anderson, McFarland, Revised Codes of Montana, 1935 (Helena, 1935), vol. I., p. 221.

¹⁶² Second Session Laws, op. cit., p. 1740.

adjacent to cities and towns having a population of two thousand or more were to be surveyed and laid off as above stipulated. It said further that if these lands were not so surveyed and platted, then the Board of Land Commissioners could divide them into lots or tracts of five acres each or less and sell them in alternate lots and tracts, but that they must be offered for sale separately.¹⁶³ This reference to the fact that the city or town had to have a population of two thousand or more was omitted from the law as amended in 1919.¹⁶⁴

As was already stated, stipulation was made in the Enabling Act of Montana that lands were not to be sold for less than ten dollars (\$10.00) per acre. Considerable agitation was caused by the fact that much of the land granted was only fit for grazing purposes, and was not considered to be worth this amount per acre. It culminated in Congress' passing an amendment to the Enabling Act, May 7, 1932, permitting the sale of lands "valuable for grazing purposes for not less than \$5.00 per acre".¹⁶⁵ This was accepted by Montana through its Legislative Assembly in 1933.¹⁶⁶

¹⁶³ Montana State Legislative Assembly, 1917, Fifteenth Session Laws (Helena, 1917), pp. 408-409.

¹⁶⁴ Montana State Legislative Assembly, 1919, Sixteenth Session Laws (Helena, 1919), pp. 118-119.

¹⁶⁵ United States Statutes at Large (Washington, D.C. 1933), Chapter 172, Vol. 47, p. 150.

¹⁶⁶ Montana State Legislative Assembly, 1933, Twenty-third Session Laws (Helena, 1933), pp. 150-152.

However, the law still maintained the price of \$10.00 per acre on lands considered "capable of producing agricultural crops".

After 1901, many restrictions were made as to what land could be sold, and with what reservations. One of these, in 1911, said that no lands lying between low and high water mark of any navigable lake within the State of Montana, shall ever be sold or leased by the State of Montana, or the State Board of Land Commissioners, however, "lands bordering on navigable lakes can be sold or leased like those of any private individual".¹⁶⁷

The Legislature in 1913 gave the State Board of Land Commissioners the right to sell to any school district of the State, at the appraised value, or to lease for any period of time less than 99 years, at a rental of \$1.00 per year, any tract of land not exceeding ten acres, to be used for school-house sites.¹⁶⁸

In order to cooperate with the Federal Government in the matter of flood control and irrigation, legislation was passed in 1934. In the former year a law was passed giving the State Board of Land Commissioners the right to sell to the United States any land owned by Montana, and wanted by the United States in flood control, river regulation, con-

¹⁶⁷ Montana State Legislative Assembly, 1911, Twelfth Session Laws (Helena, 1911), p. 339.

¹⁶⁸ Montana State Legislative Assembly, 1913, Thirteenth Session Laws (Helena, 1913), p. 266.

servation of water, irrigation, and reclamation work. This land was to be sold at the appraised value, subject to the approval of the Land Board and the price limitations of the Enabling Act and the State Constitution. In the same year and in the same law, provision was made to insert a reservation in all conveyances of state land, to provide for the reservation of easement for right-of-way for ditches, canals, tunnels, telegraph and telephone lines, to be granted to the United States in furtherance of the reclamation of arid lands.¹⁶⁹

As has already been seen mineral reservations were included in all conveyances of school lands to individuals. In 1934 this same provision for reservation of minerals was made applicable to all lands sold to the United States for purposes of water conservation and irrigation. The additional restrictions were also made that all prospecting and exploring for minerals on this land sold to the United States, the mining and removing thereof, and all operations carried on in connection therewith, must be carried on in such manner and under such regulation that they will not interfere with the use of the lands for the purposes for which they have been purchased by the United States.¹⁷⁰

¹⁶⁹ Twenty-third Session Laws, op. cit., p. 111.

¹⁷⁰ Ibid., p. 112.

Additional mineral reservations were made in 1935 when the State Legislative Assembly provided that:

. . . all coal, oil, oil shale, etc., in lands belonging to the State of Montana are hereby reserved to the State. All such deposits are reserved from sale, except on a rental and royalty basis. The purchaser of mortgaged lands is to be entitled to a royalty of 6 $\frac{1}{2}$ % of all gas and oil produced thereon.¹⁷¹

The State reserved the right to enter and prospect on these sold lands, but must pay damages for any harm done the land. In case certain lands were sold by the State and then foreclosed on for non-payments, this land could be resold, but the same reservations that went with the land when they were taken back by the State would attach to them when resold. In case they were not repurchased, then they would be subject to mineral reservations.¹⁷²

Failure of the successful bidder on state lands to make the initial payment or to deliver a bond was increasingly penalized in 1919, when the Legislative Assembly assessed such failure with a penalty of \$200.00 and costs. The Attorney General was instructed to start suit immediately.¹⁷³ In 1933 the failure to make this initial payment was penalized with a forfeit of not less than \$50.00, nor more

¹⁷¹ Montana State Legislative Assembly, 1935, Twenty-fourth Session Laws (Helena, 1935), p. 394.

¹⁷² Loc. cit.

¹⁷³ Montana State Legislative Assembly, 1919, Sixteenth Session Laws (Helena, 1919), pp. 160-161.

than \$1000.00.¹⁷⁴ Still later, in 1939, the law was made to read that every bidder on State Lands of any kind was ordered to accompany his bid with a certified check for not less than 10% of the total appraisement sales price as advertised. The balance of the purchase price, with interest at 5% was to be paid in annual installments through a period of thirty-three years on the amortization plan. This was made slightly different on city and town lots, where the balance was to be paid on the amortization plan over a period of twenty years. The Board was authorized to make a shorter period if it saw fit.¹⁷⁵ This legislation helped both the State and the purchaser. By a 10% initial payment the State was protected against those persons who would purchase the land without any down payment, use it for a year, and then desert. By instituting the amortization plan, the purchaser was enabled to pay for his land over a period of years without undue hardship.

By Senate bill No. 7, passed in 1897, the lessee was permitted to remove improvements made by him on the land within ninety days after his lease expired. In case he did not desire to remove them, the State Land Agent was instructed to appraise them, and the new lessee or purchaser

¹⁷⁴ Montana State Legislative Assembly, 1933, Twenty-third Session Laws (Helena, 1933), pp. 388-389.

¹⁷⁵ Montana State Legislative Assembly, 1939, Twenty-sixth Session Laws (Helena, 1939), pp. 356-357.

could pay this appraised value to the old lessee.¹⁷⁶

Drought conditions prevalent in Montana during certain years made it almost impossible for purchasers of State Land to make their annual payments on the purchase price. In 1929 the State Legislative Assembly, seeing the many cases of foreclosed land sales, made it possible for such ousted land owners to have their cancelled certificate of sale restored to them. The law read that they must make proper application in writing to the State Board of Land Commissioners within one year and six months from the date of cancellation. Then they were required to pay the delinquent installments due, plus interest and penalty interest at 6%, and must furnish proof there were no tax liens on the land.¹⁷⁷

The law further liberalized this procedure in 1935 when it was provided that where the certificate of purchase had been cancelled by the State Board of Land Commissioners, and the lands had not been sold again, the original purchaser, his heirs, or devisees, might within three years from such cancellation, apply to the State Board of Land Commissioners to have the said land resold and for permission to repurchase the same. Upon receipt of three such applica-

¹⁷⁶ Montana State Legislative Assembly, 1897, Fifth Session Laws (Helena, 1897), p. 178.

¹⁷⁷ Montana State Legislative Assembly, 1929, Twenty-first Session Laws (Helena, 1929), p. 191.

tions or applications to purchase other lands of the state from any three adjoining counties, the Commissioner of State Lands and Investments was instructed, within ninety days, to fix a date for a sale in such county as provided by law. If such land as was mentioned in the applications was not under lease, the original purchaser or his successors would have the same preference right in the purchase of the land as the preference right is now given to the lessee of State Lands. The new purchaser was given the right to demand a shorter amortization contract than thirty-three years.¹⁷⁸

More leniency was extended to holders of delinquent certificates of sale in 1939, when the Legislative Assembly decreed that such holders would be able to regain possession of a full paid up title by the payment of delinquent instalments without the payment of penalty interest. This payment must be made before December 1, 1940. If not made, then they would be required to pay penalty interest in addition. Such a provision for reinstatement of a cancelled certificate of purchase was to apply only to such applications made within six years of such cancellation, but the deadline was set at December 1, 1940. To make it still easier to regain possession of his land, after the State had foreclosed on him, the defaulting owner was permitted to con-

¹⁷⁸ Twenty-fourth Session Laws, op. cit., pp. 284-286.

vert the certificate of purchase into a thirty-three year amortization purchase contract, at 5% interest. This thirty-three year amortization contract could include all delinquent payments of installments, penalty and interest, due. The State Board of Land Commissioners was given instructions to consider the best interests of the State in the matter. In some cases where a great amount was owing in installments, and the burden of paying this would be too much for the delinquent owner or holder of the certificate of sale, the legislature provided that he could pay the oldest installment past due, with interest thereon. He must then give evidence that taxes on the land had been paid at least to the date of this installment. The balance could be arranged on the thirty-three year amortization plan as has been mentioned above.¹⁷⁹

From the date of the law, 1939, provision was made that if any purchaser defaulted in payment of installments for a period of thirty days or more, his certificate would be subject to cancellation. The Board was required to mail him a notice of such default and give him sixty days more in which to pay up. Failing to do so, the certificate of sale was to be null and void, and the land would revert to the State. Improvements made on the land by the original

¹⁷⁹ Twenty-sixth Session Laws, op. cit., pp.328-331.

purchaser could be removed by him at any time within ninety days, if not, they then become the property of the state.¹⁸⁰

Since 1889 many settlers have made their homes within the borders of Montana. In the early years they found it rather easy to make a living, as much good land was to be had. More recently, however, lack of moisture, and other causes, have made it more difficult for farmers and ranchers to make any money. The State and the Federal Governments have endeavored to meet this situation by means of enormous irrigation projects. To aid the United States in setting up and working these projects, the Legislative Assembly passed an act in 1905 providing that all state land classed as irrigable, should be disposed of in farm units and conform to all regulations of the United States for such projects. It further stipulated that any land owned by Montana and needed for such irrigation and reclamation works by the United States, should, upon application to the State Board of Land Commissioners, be conveyed to the United States at the minimum price of \$10.00 per acre. The conveyance was also to grant to the United States right-of-way over all state lands, for ditches, canals, tunnels, telephones, and electric transmission lines for the furtherance of such irrigation projects.¹⁸¹

¹⁸⁰ Ibid., p. 332.

¹⁸¹ Montana State Legislative Assembly, 1905, Ninth Session Laws, (Helena, 1905), pp. 116-117.

To secure the maximum results and returns from our State Lands, the Legislative Assembly, in 1905, required the State Engineer to examine all such lands as to the advisability of irrigation and water supply, available near-by water supply, etc. The State Board of Land Commissioners, through the State Engineer, was authorized to construct such irrigation works for said lands as it thought proper and expedient.¹⁸²

Several years later, in 1911, private irrigation companies were authorized to petition the State Board of Land Commissioners to withdraw from sale all State Lands, coming under their project, until completion of the project.¹⁸³

In order to give an idea of the number of acres of public school land that has been sold from year to year since 1897, the reader is referred to the following page, Table X. Table XI, p. 94, shows the amounts of public school lands still remaining unsold in the various counties of Montana. Naturally, these figures are open to scrutiny and question, as thousands of acres of this land have been sold, foreclosed, resold or leased again.

¹⁸² Ibid., pp. 178-179.

¹⁸³ Twelfth Session Laws, op. cit., p. 338.

TABLE X¹⁸⁴SUMMARY OF ALL PUBLIC SCHOOL LAND SALES UP
TO JUNE 30, 1938

Year	Acres	Year	Acres
1897 and prior years	10,070.76	1918	102,584.68
1898	1,316.06	1919	145,905.46
1899	2,442.03	1920	22,096.93
1900	760.00	1921	2,438.44
1901	2,076.00	1922	650.01
1902	9,031.29	1923	731.91
1903	10,294.29	1924	145.83
1904	6,227.41	1925	2,026.62
1905	5,878.82	1926	53,083.14
1906	16,676.28	1927	46,592.39
1907	19,331.27	1928	25,881.72
1908	16,356.36	1929	116,201.05
1909	3,800.86	1930	24,362.25
1910	97,856.38	1931	1,431.00
1911	51,704.06	1932	1,346.50
1912	188,258.13	1933	
1913	84,513.79	1934	308.32
1914	19,050.32	1935	11,015.75
1915	54,745.26	1936	2,193.52
1916	113,770.54	1937	16,740.79
1917	66,071.51	1938	1,950.90
Total			1,358,924.13

¹⁸⁴ Commissioner of State Lands and Investments, Biennial Report of the Department of State Lands and Investments, 1938 (Helena, 1938), p. 25.

TABLE XI¹⁸⁵

LANDS UNSOLD IN SCHOOL GRANT, JUNE 30, 1938

County	Acres	County	Acres
1. Beaverhead	258,651.35	29. Madison	83,739.38
2. Big Horn	89,066.72	30. Meagher	56,087.55
3. Blaine	169,791.36	31. Mineral	6,706.52
4. Broadwater	19,197.84	32. Missoula	35,554.71
5. Carbon	37,532.83	33. Musselshell	60,585.58
6. Carter	139,545.76	34. Park	35,645.16
7. Cascade	72,428.92	35. Petroleum	60,667.31
8. Choteau	224,544.13	36. Phillips	173,367.20
9. Custer	124,850.43	37. Pondera	66,066.64
10. Daniels	236,601.38	38. Powder River	135,893.99
11. Dawson	71,557.39	39. Powell	57,686.53
12. Deer Lodge	8,404.27	40. Prairie	58,987.44
13. Fallon	52,482.96	41. Ravalli	17,095.31
14. Fergus	145,456.60	42. Richland	68,327.64
15. Flathead	72,925.69	43. Roosevelt	16,734.97
16. Gallatin	28,833.94	44. Rosebud	166,752.04
17. Garfield	152,405.14	45. Sanders	36,971.22
18. Glacier	14,119.66	46. Sheridan	30,968.30
19. Golden Valley	43,651.84	47. Silver Bow	12,034.59
20. Granite	19,235.48	48. Stillwater	47,576.30
21. Hill	124,447.82	49. Sweet Grass	50,364.05
22. Jefferson	24,649.86	50. Teton	86,486.18
23. Judith Basin	87,589.39	51. Toole	108,332.92
24. Lake	65,718.13	52. Treasure	33,693.95
25. Lewis & Clark	100,751.08	53. Valley	198,749.30
26. Liberty	92,563.03	54. Wheatland	58,303.55
27. Lincoln	48,844.96	55. Wibaux	28,008.74
28. McCone	88,625.70	56. Yellowstone	77,330.81
Total		4,483,596.54	

¹⁸⁵ Commissioner of State Lands and Investments, op. cit., p. 27.

2. OIL AND GAS

Mineral lands were excluded from public school grants to Montana. Section 13 of the Enabling Act specified this, but added a clause giving the State the right to select land in lieu of this mineral land.

A dispute arose over this restriction of mineral lands. Section 14 of the Organic Act of May 26, 1864, organizing Montana Territory, said that sections numbered 16 and 36 in each township in said territory shall be, "reserved for the purpose of being applied to schools in said Territory, and in the states and territories hereafter to be erected out of the same".¹⁸⁶ Here there is no restriction of mineral or other lands. Therefore this restriction seemed unfair to the Legislative Assembly twenty-five years later. The second session of the State Senate in 1891 sent a testimonial to Congress protesting the restriction on mineral lands, as follows:

Senate Concurrent Resolution, No. 2:¹⁸⁷

Your Memorialists, the Legislative Assembly of the State of Montana, respectfully represent that the restriction of the grant of school lands contained in the Enabling Act of Congress admitting Montana as a State, as contained in the eighteenth section thereof, exempting all mineral lands from the grants, is not in accor-

¹⁸⁶ Anderson, McFarland, Revised Codes of Montana, (Helena, 1935), Vol. 1, p. 55.

¹⁸⁷ Montana State Legislative Assembly, 1891, Second Session Laws (Helena, 1891), p. 314.

dance with the unconditional promise contained in section fourteen of the Act of Congress, May 26, 1864, creating Montana a Territory.

Your Memorialists would further represent that said exemption of mineral lands involved in doubt and endless litigation, attended with great expense, a large portion of our school lands in the hands of the State whose prosperity depends upon the development of its mineral lands. No policy will be adopted but the most liberal one, encouraging the development of such mineral lands as may be included within an unrestricted grant of section sixteen and thirty-six. And your Memorialists would further represent that the restriction contained in that Act, limiting the period of leases to five years, is not tending toward the best use of the land. The bulk of these lands cannot be sold for many years under the further provisions of the same section which fixes the minimum price at which they may be sold at ten dollars per acre. Longer leases will be more advantageous to the State and the lessee, and will encourage permanent settlement and improvement which will not be undertaken under a short term lease.

Your Memorialists therefore pray that such restrictions be removed. Our Senators and Representatives in Congress are hereby requested and instructed to use their best endeavors to secure the modification of the Enabling Act in accordance with the views herein contained. Approved March 4, 1891.

At the same session of the Legislative Assembly a law was passed to provide for a Mineral Land Commissioner for the State of Montana. This law puts the Commissioner at the disposal of the State Board of Land Commissioners, by requiring him to "guard and care for the interest of the State of Montana in all its land grants of public lands from the Federal Government for school and other purposes", and placing him under this Board while on these duties.¹⁸⁸

¹⁸⁸ Second Session Laws, op. cit., pp. 178-180.

Having been excluded from the selection of lands in the state which were mineral in character, the State selected lieu lands for all those found to be mineral. The law granting these lands to Montana being so definite, nothing was said concerning mineral lands in the laws of the second regular session of the Montana Legislative Assembly, 1891.

It was not until 1909 that legislation was passed which referred to mineral lands. Chapter 147 of the session laws ordered that thereafter all leases and conveyances of state lands by the State Board of Land Commissioners, ". . . shall contain a restriction to the state of all coal, oil, and gas, contained therein".¹⁸⁹ The same law also provided,

. . . if coal, stone, coal oil, gas or other mineral not mentioned herein, be found upon the state land, such land must be leased only for the purposes of obtaining therefrom the stone, coal, coal oil, gas, or other mineral, for such length of time, and conditioned upon the payment to the Register of such royalty upon the product, as the Board of Land Commissioners may determine.¹⁹⁰

To some this may seem to conflict with what has been said before concerning reservation of these lands by the Federal Government. The answer is that many lands, either sections sixteen and thirty-six, or lieu or indemnity lands selected by the State, and title confirmed to them by the United States, were thereafter found to contain minerals.

¹⁸⁹ Montana State Legislative Assembly, 1909, Elev-enth Session Laws (Helena, 1909), p. 305.

¹⁹⁰ Ibid., p. 316.

The question then came up, "Can the Federal Congress, even after title has passed to the State, take back these lands at any future time, if they are found to be mineral?". Until such time as this was settled one way or the other, the State considered itself as the legal owner, and legislated as above. It was not until August 11, 1921, that a law was enacted by the Federal Congress, amending the Enabling Act as follows:

Provided, However, . . . : And Provided Further, That any of such granted lands found, after title thereto has vested in the State, to be mineral in character, may be leased for a period not longer than twenty years upon such terms, and conditions as the Legislature may prescribe.¹⁹¹

Here, then, is recognition of the State's ownership in mineral lands to which they had already obtained title.

The year 1927 seemed to be a year of good fortune for the public schools of Montana. The long controversy between Montana and the Federal Government over mineral lands was ended by passage in Congress of Senate Bill No. 564, in 1927, which reads in part:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, subject to the provisions of subsections (a), (b), and (c), of this section, the several grants to the states of numbered sections in place for the support or in aid of common or public schools be, and they are hereby, extended to embrace numbered school sections mineral in character, unless land has been granted to and/or selected by, and certified or approved,

¹⁹¹ United States Statutes at Large (Washington, 1921), Vol. 41, p. 1359.

to any such State or States as indemnity or in lieu of any land so granted, by numbered sections.

(a) That the grant of numbered mineral sections under this Act shall be of the same effect as prior grants for the numbered non-mineral sections, and titles to such numbered mineral sections shall vest in the States at the time and in the manner and be subject to all the rights of adverse parties recognized by existing law in the grants of numbered non-mineral sections.

(b) That the additional grant made by this Act is upon the express condition that all sales, grants, deeds, or patents for any of the lands so granted shall be subject to and contain a reservation to the State of all the coal and other minerals in the lands so sold, granted, deeded, or patented, together with the right to prospect for, mine, and remove the same. The coal and other mineral deposits in such lands shall be subject to lease by the State as the State Legislature may direct, the proceeds of rentals and royalties therefrom to be utilized for the support or in aid of the common or public schools: Provided, That any lands or minerals disposed of contrary to the provisions of this Act shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States district court for the district in which the property or some part thereof is located.

(c) That any lands included within the limits of existing reservations of or by the United States, or specifically reserved for water-power purposes or included in any pending suit or proceedings in the courts of the United States, or subject to or included in any valid application, claim, or right, initiated or held under any of the existing laws of the United States, unless or until such application, claim, or right, is relinquished or cancelled, and all lands in the Territory of Alaska are excluded from the provisions of this Act.¹⁹²

The law further said that its meaning was only to be construed in relation to public school land grants, those

¹⁹² United States Statutes at Large, (Washington, 1927), Vol. 44, pp. 1026-1027.

numbered school sections in place, and that the act was not to apply to, ". . . indemnity or lieu selections or exchanges, or the right hereafter to select indemnity for numbered school sections in place lost to the state under provisions of this or other acts".¹⁹³

The main provision of subsection (a) was that states, including Montana, now secured title to mineral lands, the same as they had heretofore had to non-mineral lands. Subsection (b) now made it mandatory on the part of the State to reserve all coal and mineral rights, rights to prospect or mine, and gave the State Legislative Assembly the right to lease these lands as they wished, but directed that all the proceeds of rentals or royalties therefrom should go to the support of public schools. Subsection (c) excluded lieu or exchanged lands, or other Federal reserved lands from the law.

After this clarification and with the right to retain those sections sixteen and thirty-six, which were mineral in character, the State Legislative Assembly passed several other bills dealing with gas and oil rentals and royalties.

In 1927, Montana passed an all-embracing law which provided for the regulation of its gas and oil production. The State Board of Land Commissioners was authorized to

¹⁹³ Ibid., p. 1027.

lease its public school lands for oil and gas prospecting, exploring, mining, drilling, development, and removal, but retained the right to dispose of the surface of the land. The amount of land owned by one person, that is of the oil and gas land, was limited to 640 acres, unless a person had ownership of more through succession, judgment or other cause. In such case he could keep it for a period of two years only.¹⁹⁴ This was changed by the Legislative Assembly in 1933, when it decreed that a person might hold more than 640 acres, at the discretion of the State Board of Land Commissioners.¹⁹⁵ All land leased by the Board for oil and gas production must be in compact bodies, and a filing fee of \$2.50 and the first years rental, at seventy-five cents per acre, with minimum total rental of \$50.00, was to be paid at the time of the lease. All subsequent rentals were to be paid thirty days in advance. The lessee was to pay the State cash for all oil and gas reserved, the posted field price existing on the day such gas or oil is run into the pipe lines or storage tanks to the credit of the lessee. This was in addition to any bonus actually paid or agreed to be paid by the State to the lessee, for such oil or gas.

¹⁹⁴ Montana State Legislative Assembly, 1927, Twentieth Session Laws (Helena, 1927), pp. 363-364.

¹⁹⁵ Montana State Legislative Assembly, 1935, Twenty-third Session Laws (Helena, 1935), pp. 371-374.

The State Board of Land Commissioners was authorized to exercise the privilege, in writing, not oftener than every thirty days, of having the lessee deliver the State's royalty oil or gas free of cost or deduction, into the pipe lines to which the wells of the lessee might be connected or into storage designated by the State and connecting with such wells. The lessee was instructed to report to the Register of State Lands, on or before the fifteenth day of each month, for the preceding calendar month. In this report he was to show the amount produced, the amount saved, the price obtained, the total sales, and accompany the report with payment for the royalty due the State.¹⁹⁶

To keep the lessee from speculating without returning revenue to the State, the law said that the lessee must drill one well, not less than six inches in diameter, to a depth of 1000 feet, within a period of two years. This depth did not apply if oil or gas were found in commercial quantities at a lesser depth. If oil or gas were not found at 1000 feet the lessee must continue drilling until a reasonable test had been made. The Board was authorized to extend the lease from year to year, not to exceed five years. The lessee was then to pay \$1.00 per year per acre for each year, beginning with the third year.¹⁹⁷ In 1931 the period

¹⁹⁶ Montana State Legislative Assembly, 1927, Twentieth Session Laws (Helena, 1927), pp. 364-367.

¹⁹⁷ Ibid., p. 368.

of the lease was designated as not to be greater than five years, and as long thereafter, during the term of fifteen years as oil or gas in commercial quantities was produced.¹⁹⁸ This was again amended by the Legislative Assembly in 1933 to read that oil and gas leases must not exceed ten years, or as long thereafter during a term of fifteen years, as oil or gas in commercial quantities was found. Also, the time for commencement of drilling was extended from five years to ten years.¹⁹⁹

Any holder of an oil or gas lease at the time this law went into force, 1927, was allowed to exchange his present lease for a new lease which conformed to the terms of the new law. He, however, must conform to the new provisions of the royalty payments within a period of ninety days. In order for the State to know just what kind of a field of oil or gas it had, the lessee was instructed, and by his lease agreed to keep drilling when he had found a well producing oil or gas in commercial quantities. He was to examine the entire field. As to lands found valuable only for oil and gas production, the drilling obligation of the lessee was to be confined to one well for each 160 acres of land included in the lease; except if more was needed to

¹⁹⁸ Montana State Legislative Assembly, 1931, Twenty-second Session Laws (Helena, 1931), p. 546.

¹⁹⁹ Montana State Legislative Assembly, 1933, Twenty-third Session Laws (Helena, 1933), pp. 372-373.

protect the depletion of the field.²⁰⁰

All fees and penalties were to be credited to the State General Fund, but the rentals, according to the Constitution and the 1927 law, were to be credited to the income fund for the public schools. For the same reason all royalties and bonuses were to be credited to the permanent funds of the public schools.²⁰¹

The State Board of Land Commissioners was instructed to advertise the land for re-leasing, at the expiration of any lease, to the highest bidder, at public auction. The previous holder of the lease was given the right to re-lease at the highest figure. The privilege to assign all or a part of any lease was given to the lessee, if it was approved and filed with the State Board of Land Commissioners.²⁰²

By act of the Legislative Assembly in 1933, the State Purchasing Agent was allowed, when instructed by the Governor, Attorney General, and State Treasurer, to buy gasoline, oils and lubricants, and to sell the same at wholesale and retail within the state, and to construct, purchase, or lease and operate, a refinery or refineries for the purpose of refining crude oil, including crude oil owned by the

200 Twentieth Session Laws, op. cit., p. 369.

201 Ibid., p. 370.

202 Ibid., p. 371.

State, and that purchased by him from others. He was then to manufacture and sell gasoline, oils, and lubricants providing that the authority granted should not be exercised except when retail prices were excessive. All sales were to be cash and never at a loss to the State. The moneys received from such business were to be placed in a gasoline marketing fund. The Legislative Assembly then went ahead and appropriated \$100,000.00 to carry out the act.²⁰³ This part of the law, dealing with the State going into the refining and selling of gas, oil, and lubricants, has never been entered into.

The amount of the royalty to be paid by the lessee was to be determined by the Board of Land Commissioners. They ruled on the following scale:²⁰⁴

A. On that proportion of the average production of oil or casing-head gasoline for each producing well not exceeding 3,000 bbls. for the calendar month, twelve and one-half per centum (12½%).

B. On that proportion of the average production of oil or casing-head gasoline for each producing well exceeding 3,000 bbls., but not exceeding 6,000 bbls., for the calendar month, seventeen and one-half per centum (17½%).

C. . . . on that exceeding 6,000 bbls., for the calendar month, twenty-five per centum (25%).

²⁰³ Twenty-third Session Laws, op. cit., pp. 461-462.

²⁰⁴ State Land Commissioner, Biennial Report of the Department of State Lands and Investments, 1926-1927 (Helena, 1927), p. 40.

. . . the royalty on gas . . . at the flat rate of twelve and one-half per centum (12½%).

While the Legislative Assembly permitted prospecting for ores, metals, precious stones, and other valuable minerals, they expressly forbade prospecting permits for ". . . coal, oil, and gas, on any State Land".²⁰⁵ The State Engineer was given the duty, among other things, to

. . . examine all mineral and coal lands and, under the direction of the State Board of Land Commissioners, to make settlement with the lessees of coal lands, and to make examination of any of the lands of the State when directed by the said Board, or by the Register of State Lands, for the purpose of ascertaining whether the same contains coal or other minerals.²⁰⁶

Thus we have a definite plan in the State to find out just what is contained in state lands, in order that the schools of Montana may profit as much as possible.

Oil and gas? Who knows how much is beneath the soil of Montana's public school lands? The next thirty years will tell, and possibly the Federal Land Grants, in this respect, will return billions to Montana's schools.

All oil so far discovered on state lands, with the exception of a small amount on lands belonging to the Capitol Building Grant, has been on lands belonging to the public schools, which constitute approximately ninety per cent of all state owned lands. Ninety-five leases are now, 1938,

²⁰⁵ Twentieth Session Laws, op. cit., p. 182.

²⁰⁶ Ibid., p. 180.

in effect on public school lands, taking in a total acreage of 35,433.23 acres, and returning an annual rental of \$29,356.98. There are also 12 leases on Farm Loan Lands, which are also a part of the public school lands, taking in an acreage of 3,280.05, and bringing in an annual rental of \$3,788.00. During the fiscal year ending June 30, 1938, \$9,571.29 were taken in by the Department in penalties for failure to drill and for extension of time on drilling.²⁰⁷

On January 22, 1934, the State Board of Land Commissioners ruled that all lands for which applications for oil and gas leases have been filed shall be advertised in two issues of the Montana Oil Journal before granting such leases or applications. When there is more than one applicant, the lease is to be issued to the highest and best bidder.²⁰⁸

All rentals on oil and gas mining leases are credited to the Income Fund of the public schools; all royalties are added to the Permanent Fund. The following table, XII, gives the rentals and royalties on gas and oil from 1918 to 1938.

²⁰⁷ Commissioner of State Lands and Investments, Biennial Report of the Department of State Lands and Investments, 1936-1938 (Helena, 1938), p. 31.

²⁰⁸ Ibid., p. 32.

TABLE XII²⁰⁹
 RENTALS ON OIL AND GAS LEASES
 JUNE 30, 1938

Fiscal year ending	Rentals on oil and gas leases	Oil and gas royalties	Totals
Nov. 30, 1919	\$ 15,243.30	\$ none	\$ 15,243.30
Nov. 30, 1920	55,901.00	none	55,901.00
June 30, 1921	29,601.27 *	none	29,601.27
June 30, 1922	29,601.27 *	2,759.71	32,360.98
June 30, 1923	33,430.70	5,132.25	38,562.95
June 30, 1924	39,332.78	6,905.32	46,238.10
June 30, 1925	33,950.00	8,504.18	42,454.18
June 30, 1926	32,300.00	185,189.46	217,489.46
June 30, 1927	38,260.00	313,997.30	352,257.30
June 30, 1928	92,849.78	155,689.97	248,539.75
June 30, 1929	56,147.39	138,806.57	194,953.96
June 30, 1930	93,279.04	150,471.53	243,750.57
June 30, 1931	59,049.36	61,477.33	120,526.69
June 30, 1932	34,093.94	61,331.76	95,425.70
June 30, 1933	23,671.21	33,701.30	57,372.51
June 30, 1934	31,924.77	44,289.94	76,214.71
June 30, 1935	27,929.97	50,286.88	78,216.85
June 30, 1936	35,844.59	85,272.65	121,117.24
June 30, 1937	26,283.46	64,436.68	90,720.14
June 30, 1938	33,620.24	47,915.07	81,535.31
Totals	\$372,814.57	\$1,416,168.40	\$2,288,982.97

* Rentals for the two years averaged.

²⁰⁹ Ibid., p. 52.

3. TIMBER

At the present time the school lands of Montana include 322,326.98 acres of timber land. Timber is a perishable product and since the days of the grants in 1889 much of it has been destroyed by fire, disease, and age. Also, much of it has been wantonly wasted by man, legally and illegally.

In the first report of Granville Stuart, State Land Agent in 1891, we find much material concerning Montana's forests, and the troubles which beset him concerning their preservation. Forest depredation is shown where he tells about the section west of Ashley Creek, which was a thick forest of tamarack, yellow-pine, and fir, "but the large timber on this part was cut about a year ago by parties who have a steam saw-mill on the section, and whose depredations should be attended to".²¹⁰ Later he goes on to tell how he took possession of all lumber, logs, and cordwood on school section 36, T. 28 N., R. 21 W., near Demersvil%. He then notified the trespassers that none of it could be removed until they had settled the matter with the State. This they did a few days afterward, paying over to the State School Fund \$1,000.00 in damages.²¹¹

²¹⁰ State Land Agent, Annual Report of the State Land Agent, 1891 (Helena, 1891), p. 8.

²¹¹ Ibid., pp. 22-23.

In the third Annual Report of the State Land Department, the State Land Agent reported:

There are about 2,000,000 feet of large yellow-pine timber on Kano's claim and there were about 1,500,000 feet of the same kind and quantity on Terou's claim, but he sold it to J. A. Hodge of Riverside, who had just finished removing it at the time my assistant reached the scene. He also examined into the alleged cutting of some logs on Section 36, T. 11 N., R. 20 W., and found that Thomas E. Sheridan who had, by misrepresentation, obtained a lease on the S. E. $\frac{1}{4}$ of said section, had sold a large quantity of yellow-pine trees . . . and that McKeon had cut and removed from the land a large number of saw logs from said down timber²¹²

This was typical of the many problems that confronted the State Land Agent in his attempt to preserve the timber on Montana's Public School Lands for the public schools. On pages 30 and 31 it was stated that individuals and saw-mill syndicates attempted to get control of our forests and, by wantonly cutting them, destroying them. In 1893 the State Land Agent noted:

. . . another class of men are those who induce the Indians of the Chippewa, or other tribes who have not heretofore availed themselves of the allotments of public lands, to come and locate on our best timber land, surveyed and unsurveyed, taking land in severalty in quantities of 160 acres to each adult and eighty acres to each minor child.²¹³

In this way and in many others attempts were made to grasp and destroy one of Montana's greatest resources. As the public school grant lands contained thousands of acres of

²¹² State Land Agent, Third Annual Report of the State Land Agent, 1892-1893 (Helena, 1893), p. 6.

²¹³ Ibid., p. 21.

timber our schools were directly affected. Consequently, every attempt was made by the State Board of Land Commissioners to safeguard our Public School Lands, and to apprehend those who illegally attempted to get control of and destroy our timber, which was meant for the support of public schools for centuries to come. Another subterfuge was used when people settled on land under the Homestead Laws for the timber thereon, selling the timber to the lumber companies before title was perfected. These people would then move on to other places and repeat the process.

In 1891 the Legislature provided, "that in the case of timber lands, the whole of the purchase money shall be paid at the time of the sale", and further stated that no timber lands shall at any time be leased by the State Board of Land Commissioners, but rather, must be sold in the manner provided by law at a price not less than ten dollars (\$10.00) per acre. Then, to prevent people from settling on land merely to strip it of the timber and then move on, the law provided that no settler on land purchased from the State could cut timber, more than for necessary uses, until he had received his title in fee simple.²¹⁴ In 1897 the State Board was instructed to sell the timber at so much per thousand feet, for the best interests of the State. However,

²¹⁴ Montana State Legislative Assembly, 1891, Second Session Laws (Helena, 1891), p. 174H.

this did not include the sale of lodge pole pine or bull pine timber.²¹⁵

In 1909 the State Board was given power to sell timber at such a price as was for the best interests of the State; however, no sale should be less than \$3.00 per thousand feet. No live timber less than eight (8) inches in diameter, twenty feet from the ground, was to be sold or permitted to be cut. All timber cut or sold from State Lands must be so cut and removed as to preserve rules and regulations of standing timber, as to fire, etc., as the State Board may prescribe. Permits to cut live timber were to be given only to the highest bidder at public sale at the State Capitol, after the same routine as to publication, etc., had been observed as for other sales. However, no sale was to be made at less than the appraised value of the land.²¹⁶

The same law provided for a log mark for the State and for a log mark for each purchaser. This was an effort to identify ownership of cut and down timber. Another section of the law ordered that before logs could be used or removed the purchaser must pay in full, and if he did not do so within ten days after receiving draft for the amount due, the State could take possession and sell the logs at public

²¹⁵ Montana State Legislative Assembly, 1897, Fifth Session Laws (Helena, 1897), p. 193.

²¹⁶ Montana State Legislative Assembly, 1909, Eleventh Session Laws (Helena, 1909), pp. 311-312.

auction.²¹⁷

The duties of the State Forester and the Forestry Board, which were to protect and rehabilitate Montana's forests, have been given on pages 53 and 54. In 1925 changes were made in the law, which authorized the State Forester, under the direction of the State Board, to sell timber and any forest crops, provided any timber proposed for sale in excess of 100,000 feet, board measure, must be advertised in a paper of the County at least thirty days prior to the sale. The State Forester was to receive sealed bids, and could reject any and all bids or award the sale to the highest bidder. The purchaser was then to post a bond equal to twenty per centum of the estimated value of the timber on the land. Any breach of the contract by the purchaser was punishable by suspension of the cutting or removal of the timber, and the Attorney General was instructed to take action.²¹⁸

Permits were issued free for dead or down timber or inferior timber, as the State Board ruled, to be used as fuel and for domestic purposes, to residents and settlers of the State. The Board could also issue permits to citizens of the State for commercial purposes, at commercial rates,

²¹⁷ Ibid., pp. 313-316.

²¹⁸ Eleventh Session Laws, op. cit., pp. 339-340.

without advertising, for timber in quantities less than 100,000 feet, board measure. Permits to farmers, ranchers, prospectors, for cutting and removal of timber, were to be regulated by the Board, but were to be only in such quantities of 25,000 board feet or less, and were to be used only for purposes of domestic uses, provided not more than 25,000 board feet were used in any one year. The rate of pay was to be fixed by the Board.²¹⁹

In 1893 the Board was authorized to sell timber on State Lands when the timber was liable to waste. This applied especially to lands that had been cut over according to regular permits, or to timber subjected to waste, destruction or damage by wind-fall, fire, or otherwise. Another section provided that the sale of timber was to be to the highest bidder, at public auction at the office at the State Capitol, after notice had been published once each week for four successive weeks prior in two newspapers, one published in Helena, the other in the county where the timber was growing. The minimum price was to be the appraised value of the land, however, it was not to be sold at less than \$10.00 per acre.²²⁰

Prices for timber sales were definitely set in 1933,

²¹⁹ Eleventh Session Laws, op. cit., pp. 341-342.

²²⁰ Montana State Legislative Assembly, 1893, Third Session Laws (Helena, 1893), pp. 46-47.

when the Legislature ordered that timber should sell at \$3.00 per thousand feet for white pine, yellow pine and spruce, and at a less price than \$1.50 per thousand feet for all other species. Also, in 1933, the Legislature decided that Montana could exchange lands with the United States, when they were adjoining a Federal Forest Reserve, or other Federal Land. For this the State was to get lieu lands, preferably forest lands. Permission was also given to exchange State Lands for County Lands, in order to consolidate the State's holdings.²²¹

At the present time precautions have been taken by the State Board of Land Commissioners and, since 1927, by the Department of State Lands and Investments, to preserve our public school forest lands. Those precautions include the removal of dead timber, fire regulations and rules, re-planting, and guarding against disease. In 1911 citizens of Montana were authorized to be given permits by the State Forester for removal of dead standing timber under such regulations and rules as to prices and quality as may be prescribed by the Board. He was also authorized to issue permits for the removal of down timber, without price, under rules of the Department. As fuel was a necessary adjunct in the settlement of the state, the State Forester was empow-

²²¹ Montana State Legislative Assembly, 1933, Twenty-third Session Laws (Helena, 1933), pp. 151-274.

ered to issue permits to citizens of Montana to cut and take away from the timber lands of the state, timber in small quantities for domestic, building, and fuel purposes only, under such rules of the Department as to price and quantity as it saw fit to impose.²²²

Seeing its forests being wasted and destroyed, the State Legislature, in 1925, ordered that all lands at present or hereafter acquired by the State, principally valuable for the timber on them, or for the growing of timber, or for watersheds, were to be classified as "State Forests", and reserved for forest production and watershed protection. These forests were to be classified as follows: a. Stillwater State Forest. b. Swan River State Forest. c. Coal Creek State Forest. d. Sula State Forest. e. Thompson River State Forest. f. Clearwater State Forest. g. Lincoln State Forest. With the Governor's approval, a State Forester was to be appointed to have general charge of all State Forests.²²³

Thousands of people go about from week to week through Montana's forests, without thought to any destruction which they may inflict through camping, fires, trespassing, or carelessness. Sensing this the State Legislature,

²²² Montana State Legislative Assembly, 1933, Twelfth Session Laws (Helena, 1933), pp. 151 and 274.

²²³ Montana State Legislative Assembly, 1925, Nineteenth Session Laws (Helena, 1925), pp. 337-342.

in 1891, stated that trespass, unlawful cutting, injuring, etc, of timber or removing or knowingly purchasing or receiving such timber so removed, was a misdemeanor, upon conviction, and such persons, corporations, or companies were liable to a fine of not less than \$100.00, nor more than \$1,000.00 or thirty days in the county jail, or not more than six months, or both fine and imprisonment. Also, provision was made in the law, that parties would be liable to a penalty three times the value of the timber so injured, cut, destroyed, felled, girdled, or removed, the money to go to the Public School Fund of the State.²²⁴

In 1931, the State Board of Land Commissioners was allowed to accept, on behalf of Montana, title in fee simple to any land, timbered, or from which the timber has been cut or burned, and in exchange therefor may convey not to exceed an equal value of similar land owned by the State. This was left to the judgment of the Board, according to the best interests of the State.²²⁵ This made it possible for the State to consolidate its holdings in land, and to secure better timber land for land that could be better used for farming or ranching purposes.

Portable saw-mills were declared unlawful in the forest land of the State in 1931, unless operating with a lic-

²²⁴ Second Session Laws, op. cit., pp. 174K-174L.

²²⁵ Montana State Legislative Assembly, 1931, Twenty-second Session Laws (Helena, 1931), pp. 493-495.

ense. Portable saw-mills were rated as those having a rated capacity of less than 5,000 feet per hour of operation.²²⁶

In 1935, by chapter 118 of the Legislative Assembly laws, the State decided to cooperate with the United States in rounding out National Forests, and in protecting contiguous State Lands. The consent of the State was given to the purchase by the United States of such lands in Montana as the Secretary of Agriculture thought were needed. The State of Montana was to retain civil and criminal jurisdiction over such lands, and they were to continue to be subject to the tax laws of the State.²²⁷

The State Board of Forestry was recreated in 1939. Its duties were to be the protection and conservation of all forest resources, forest range and water, to regulate stream flow, and to prevent soil erosion. The Board was to be composed of seven members, appointed by the Governor for a term of four years each. The Board was instructed to assist the State Board of Land Commissioners in the protection, development, and use of all forest land held by the State.²²⁸

²²⁶ Twenty-second Session Laws, op. cit., pp. 275-276.

²²⁷ Montana State Legislative Assembly, 1935, Twenty-fourth Session Laws (Helena, 1935), pp. 210-211.

²²⁸ Montana State Legislative Assembly, 1939, Twenty-sixth Session Laws (Helena, 1939), pp. 270-272.

4. LAND LEASES

Section 11 of the Enabling Act gave the State Board of Land Commissioners the right to lease state lands under such regulations as the Legislature may prescribe, but added that,

Leases for grazing and agricultural purposes shall not be for a term longer than five (5) years; mineral leases, including leases for exploration for oil and gas and the extraction thereof, for a term not longer than twenty (20) years; and leases for the development of hydro-electric power for a term not longer than fifty (50) years.²²⁹

This was confirmed in the law of March 6, 1891, where it was stipulated that where land is so situated that it is not worth the amount mentioned in the law, "that the same may be leased for a term not exceeding five years, and at a rental to be determined by the State Board of Land Commissioners".²³⁰

When granted lands were advertised for sale and no bid was received equal to or exceeding the sum of \$10.00 per acre, then,

. . . the same shall not be sold, but may be leased for a term not exceeding five years; Provided, that in leasing the land the State Board may accept the highest price bid by any person desiring to lease the same, and the person so leasing, thereupon shall immediately sign a written contract of lease, binding himself and his heirs to keep the said land for the full period or term for which the same is leased to him.²³¹

²²⁹ Anderson, McFarland, Revised Codes of Montana, 1935 (Helena, 1935), Vol. I, p. 63.

²³⁰ Montana State Legislative Assembly, 1891, Second Session Laws (Helena, 1891), p. 174C.

²³¹ Ibid., p. 174F.

This lease was to be made at a rate not less than five per cent per annum, payable in advance, on the appraised value of the same, and shall require of the lessee such a bond as shall secure the State from loss or waste; and in no case shall the lessee be allowed to cut or waste more timber, "than shall be necessary for the improvement on the land or for fuel for the use of the family of the lessee".²³²

In the same law the State Board was directed that leases for grazing lands, shall not be "for less than one section, or such part of the section as may be the property of the State". The section prohibits the leasing of lands to any person not a citizen of the United States, or one who has not declared his intention to become such.²³³

On March 19, 1909, the State Legislative Assembly ordered that when lands had been offered for sale and no bid had been received, the lands, except timber lands, were to be offered for lease to the highest bidder as follows:

. . . by quarter sections, or so much thereof as belongs to the State, in the case of lands classified as agricultural (a); by half sections, in the case of lands classified as agricultural (b); and by sections in the case of lands classified as grazing; and smaller tracts shall not be leased, unless it is deemed impossible to lease as above described, or unless a larger price may be obtained thereby; and no land shall be leased for a longer period than five years, nor for a less rental than 5% of the appraised value of such lands.²³⁴

²³² Ibid., p. 174M.

²³³ Ibid., p. 174R.

²³⁴ Montana State Legislative Assembly, 1909, Eleventh Session Laws (Helena, 1909), pp. 316-317.

In another section of the same law, the lessee before 24 hours have expired, shall pay to the Register the first years rental plus a bond, made out by the lessee and two sureties. Lots in incorporated towns or cities could be leased for five years with covenants for renewal to the lessee or assigns for nine more rental periods of five years each, making a total of not to exceed fifty years, the rental to be fixed at the beginning of each five year term.²³⁵

Section 67 of the law ordered that a lease may be renewed thirty days before expiration and a new lease executed if the lessee and the State could agree on valuation. In 1939 this was amended so that, if the lessee had paid all rentals and had not violated any of the terms of his contract of lease, he would be entitled to renewal of his lease at any time within thirty days prior to its expiration, for an additional period not to exceed ten years.²³⁶

Under the law of March 6, 1891, all occupants or cottlers having made improvements on grazing lands, and who do not care to lease the same, "shall have the privilege of disposing of or recovering such improvements at any time within ninety (90) days from the date of the lease".²³⁷ In

²³⁵ Ibid., p. 318.

²³⁶ Montana State Legislative Assembly, 1939, Twenty-sixth Session Laws (Helena, 1939), p. 112.

²³⁷ Second Session Laws, op. cit., p. 174K.

the 1909 code the lessee was given the right to collect the value of improvements on land from the new lessee, and provided for settlement of the dispute if the two could not agree on price. The lessee was given the right to remove improvements within ninety (90) days from the expiration of the lease, and what was left becomes the property of the State. The Board was given the right to extend the 90 days.²³⁸

Disposal of the revenue from leases was taken care of in the law when it directed that the moneys coming in from the leasing of State Lands, "shall be held for the benefit of the respective funds, known as Income Funds, for which said lands were granted, and may be used for any of the purposes contemplated in this Act".²³⁹

Chapter 60 of the Twentieth Session Laws, 1927, created the Department of State Lands and Investments, and codified most of the laws on leasing and other items relating to State Lands. Section 20 stipulated that when only one qualified person asked to lease, he was to get the land at the minimum rental; if two or more, the land was to be leased to the highest bidder.²⁴⁰ As was often the case when a person rented a piece of land, he made improvements on it.

²³⁸ Eleventh Session Laws, op. cit., pp. 322-323.

²³⁹ Ibid., p. 323.

²⁴⁰ Montana State Legislative Assembly, 1927, Twenty-first Session Laws (Helena, 1927), p. 170.

He had the privilege of removing these improvements if he did not renew his lease, or how he could sell them to the new lessee. The 1927 law stipulated that three arbitrators were to be appointed to fix the value on improvements when the lessee desired to sell them to the new lessee, one to be appointed by the old lessee, one by the new lessee, and one by the two arbitrators so appointed, the cost of the arbitration to be paid by the two lessees. The decision could be appealed to the Commissioner, who could cause the chief field agent or his assistant to examine the case. This decision was then final.²⁴¹

By the 1927 law leases could be given to any person, the head of a family, twenty-one years of age, but no person or company was to hold under lease more than one section of land at any one time.²⁴² In 1933 this was changed, allowing the lessee to lease more than one section at any one time.²⁴³ All leases were to expire on agricultural, grazing, town and city lots, on February 28, within five years from the date the lease became effective. The rental value for agricultural lands was retained at 5% of the appraised valuation, but in no case to be less than 50¢ per acre.²⁴⁴

²⁴¹ Ibid., pp. 170-171.

²⁴² Ibid., p. 171.

²⁴³ Montana State Legislative Assembly, 1933, Twenty-third Session Laws (Helena, 1933), pp. 62-65.

²⁴⁴ Twentieth Session Laws, op. cit., pp. 171-172.

As we have already seen this period for a lease was extended to ten years in 1939.²⁴⁵ The maximum annual rental for grazing lands was not to exceed \$100.00 per section, except where the leasing price was more through bidding. Various classes of grazing land existed and the law specified them as follows: Class I,- Extra good grazing land to be leased at \$70.00 to \$100.00. Class II, - Good grazing land, well sodded with grass, \$60.00. Class III,- Fair grazing land, with medium grass, \$50.00. Class IV, - Poor grazing land, thinly grassed, \$40.00.²⁴⁶

To take care of rentals for fractional years, terminating on February 28, next following the date of issue, the terms were to be as indicated in Table XIII, on the following page.

A slight change was made in 1933, making the maximum annual rental for grazing purposes not to exceed \$50.00, except where this amount was increased by competitive bidding. Also the scale for grazing lands was changed somewhat.²⁴⁷ Class I,- Extra good grazing land, to be leased at \$35.00 to \$50.00. Class II,- Good grazing land, well sodded with grass, \$30.00. Class III,- Fair grazing land, medium grass,

²⁴⁵ Montana State Legislative Assembly, 1939, Twenty-sixth Session Laws (Helena, 1939), pp. 112-113.

²⁴⁶ Twentieth Session Laws, op. cit., p. 171.

²⁴⁷ Twenty-third Session Laws, op. cit., pp. 64-65.

TABLE XIII²⁴⁸

RENTALS FOR FRACTIONAL YEARS

	Agric. rental % of full year's rental	Grazing rental % of full year's rental
Leases beginning in:		
March	100%	100%
April	100%	100%
May	90%	90%
June	80%	80%
July	70%	70%
August	50%	50%
September	50%	50%
October	40%	50%
November	30%	50%
December	20%	50%
January	10%	50%
February	5%	50%

²⁴⁸ Twentieth Session Laws, op. cit., p. 171.

\$25.00. Class IV,- Poor grazing land, thinly sodded with grass, \$20.00. Class V,- Any other to be leased as the Board designated.

As the reader can readily see these rentals were reduced by 50%. When one considers that the total annual cost of using privately owned grazing land is 22¢ per acre, and on state grazing land the rental amounts to slightly over 5¢, the public school funds are not receiving as much as they should.²⁴⁹

Under the old scale of rentals, the average annual grazing rental on 2,549,000 acres of school grazing lands under lease on June 30, 1932, was 10.705¢. After the new law went into effect, reducing rentals by 50%, the average annual grazing rental on nearly three million acres was only 5.215¢.²⁵⁰ With these lower rentals, it is harder to sell the land, as under the law it must bring at least \$5.00 per acre.

The minimum annual rental for town, city and other lots was fixed at the appraised value thereof, calculated at the same rate per month for all seasons of the year.²⁵¹

²⁴⁹ Commissioner of State Lands and Investments, Biennial Report of the Department of State Lands and Investments, 1934-1936 (Helena, 1936), p. 77.

²⁵⁰ Commissioner of State Lands and Investments, Biennial Report of the Department of State Lands and Investments, 1932-1934 (Helena, 1934), p. 43.

²⁵¹ Twentieth Session Laws, op. cit., p. 174.

The law provided that a fee of \$2.50 was to be paid by the lessee and the first year's rental was to be paid at once, except all leases effective on and after October 1, when the lessee was to pay both for the fractional year and for the full next year. The rental for the succeeding years was to be due and payable on December 15, preceding the rental year. If it was not paid on or before February 1, the lease was to be automatically cancelled from and after February 28.²⁵²

Sometimes it happened that a lessee of grazing lands desired to cultivate a part of it after he had leased it for grazing purposes. He could then, according to the 1927 law, send the lease to the commissioner and have it changed to pay both a year's grazing and a year's agricultural rentals. Provision was also made, where the rental was not paid in advance, for a share rental. The Board could, whenever it seemed advisable, authorize the leasing of state agricultural lands for a share of its crops delivered at the grain elevator or market, which share was to be what was commonly paid by lessees of privately owned lands as share rent in the locality where the state land was situated; "and in no case shall such share rental be less than one-fifth (1/5) of the entire crop raised, delivered at the elevator". For

²⁵² Ibid., p. 173.

payment of this lease, the state has a lien on the crops and improvements on the land.²⁵³

The law was changed in 1925, so that when a lessee did not comply with the requirements of his lease, it would automatically be cancelled, and the land was to be declared open to other applicants. The lessee was to be notified by registered mail of the date of termination of the lease, and the lessee would have the preference right to a renewal for a period of 30 days after such cancellation; should he do so, then he must pay all delinquent rentals within said 30 days.²⁵⁴

Permission to assign leases was given again in the 1937 Session of the Legislature, which stipulated that such assignment must be made on blanks provided by the Commissioner, but must be filed with him, approved, and a fee of \$1.00 paid. The lessee, assigning his lease, was prohibited from sub-leasing at a disadvantage to the sub-lessee.²⁵⁵

The reader is already aware that the Enabling Act limited grazing leases for a period of five years. As land became scarce, drought burned up the grass, and more and more cattle roamed the range, complaint began to be made

²⁵³ Ibid., pp. 174-175.

²⁵⁴ Montana State Legislative Assembly, 1925, Ninth Session Laws (Helena, 1925), pp. 232-233.

²⁵⁵ Montana State Legislative Assembly, 1937, Twenty-fifth Session Laws (Helena, 1937), pp. 20-21.

that this term was too short a period. Congress finally took up the matter and passed an amendment to the Enabling Act on June 25, 1938. This amendment was accepted by Montana on February 7, 1939, and read in part, "but leases for grazing and agricultural purposes shall not be for a term longer than ten years".²⁵⁶ This extension of the leasing period will mean that ranchers, over this longer period, will be able to do much more in an effort toward the conservation of the range.

According to information from the State Land Office files, 3,044,974.47 acres of grazing and agricultural land of the public school land grant were under lease on June 30, 1938. Of this amount 332,263.67 acres were classed as agricultural lands, and 2,712,725.80 acres as grazing land. The total rentals received for the year ending June 30, 1938, were \$217,534.42, being an average of \$.07144 received per acre of leased land. The average grazing rental, as of June 30, 1938, amounted to 5.4¢ per acre, and for agricultural leases to 65¢ per acre. See Table XIV, page 130.

²⁵⁶ Montana State Legislative Assembly, 1939, Twenty-sixth Session Laws (Helena, 1939), p. 9.

TABLE NO. XIV²⁵⁷PUBLIC SCHOOL LAND AGRICULTURAL AND GRAZING
LEASES IN EFFECT JUNE 30, 1938

Grazing acreage	2,712,725.80
Annual grazing rental	\$147,494.19
Agricultural acreage	25,515.92
Annual agricultural rental	\$ 16,586.85
Acres under crop share leases	306,732.75
Annual crop share rental *	\$ 27,092.48
Total acreage under lease	3,044,974.47
Total rentals received	\$191,173.52

*
The minimum share rental is one-fifth of all crops raised,
delivered in elevator.

Average grazing rentals, per acre	\$.054
Average agricultural cash rental, per acre	\$.650

257 Commissioner of State Lands and Investments, Bi-
ennial Report of the Department of State Lands and Invest-
ments, 1936-1938 (Helena, 1938), p. 40.

5. COAL

Much of the public school land granted to the State was found to contain coal. The law of 1909 instructed the State Engineer to:

. . . examine all mineral and coal lands and, under the direction of the State Board of Land Commissioners, to make settlement with the lessees of coal lands, and to make examination of any of the lands of the State, when directed by the State Board, or by the Register of State Lands, for the purpose of ascertaining whether the same contained coal or other minerals.²⁵⁸

Provision was made to withdraw all coal lands from sale by the same law. It prohibited the sale of coal lands, but gave the state the right to lease such lands to any person or persons, company, or corporation, on a royalty basis. A provision was added, however, which gave the state the right to sell or lease the surface rights of such land, for either agricultural or grazing purposes. The law went on to say, "any other state lands may be designated as coal lands by the State Board and withdrawn from sale when in the opinion of the Board such lands contain coal".²⁵⁹ This latter provision had reference to the first part of the section which stated that all lands classed as coal lands were such when they had been designated as coal lands by the United States Geological Survey, or other authority under the government of the United States.

²⁵⁸ Eleventh Session Laws, op. cit., pp. 296-297.

²⁵⁹ Ibid., p. 316.

A minimum price of 10¢ per ton was ordered by this law, to be paid monthly, on or before the 25th day of each month, for coal mined during the preceding calendar month. If the lessee did not mine for a year, he must pay a minimum rental. Any improvements were to be paid for by the new lessee, in case the old lessee did not renew his lease.²⁶⁰

The 1927 codes reiterated the right of the State Board of Land Commissioners to lease coal lands for "exploring for, mining, removing, selling, and disposing of the coal therein upon the terms and conditions herein stated, and subject to such rules and regulations as the Board may prescribe". This, of course, included all lands owned by the State and those which had been sold, but where the coal rights had been reserved by the State. Only one section could be leased to a person, co-partnership, company, or corporation, and only for a period not longer than five years. However, the Board could adopt rules to renew the lease. This law also changed the basis of rental or royalty paid for the lease of coal lands. The Board was to fix the royalty basis upon the kind, grade, and character of the coal, and the size, shape, and nature of the coal vein, or body, and upon shipping and market facilities. In no case was the royalty to be less than 12½¢ per ton.²⁶¹

²⁶⁰ Ibid., p. 317.

²⁶¹ Twentieth Session Laws, op. cit., p. 179.

Whenever a person wanted a lease on coal land he was to make application in writing, state the quantity of coal he proposed to mine under the lease during the first year and subsequent years. If the lease was granted, the Board was to fix the royalty and demand a deposit of not less than the amount of royalty on the estimated average production for one month of the lease; however, it could ask for a larger deposit, which was never to be less than \$50.00.²⁶²

Anyone familiar with the terrain of Montana knows that, in the Eastern part, wood is very scarce. Homesteaders and settlers coming into the country found it extremely difficult to provide fuel for the cold winter months and for other purposes. Recognizing this problem, and finding that a goodly share of State School and other lands contained vast quantities of coal, the State granted to the Board the right to grant to,

. . . any resident of this State a permit for a term of not more than one year, to mine coal for the use of himself and his family from any deposit of coal belonging to the State of Montana, and not under lease, upon the payment to the State the flat sum of \$5.00 as a royalty for any amount of coal mined by him not exceeding thirty tons of 2000 pounds each.

This section also granted the same privilege to boards of trustees of school districts. If more than thirty tons were required, the additional amount was to be paid for in advance at the rate of 12 $\frac{1}{2}$ ¢ per ton. Applications for this mining

²⁶² Ibid., pp. 179-180.

were to be accompanied by an affidavit that the coal was not wanted for sale or disposal to other parties, but only for the use of the applicant and his family, or for the school district. In the case of coal mining leases, "rentals and bonuses, if any, shall be considered as royalties". Further it stated that all fees, royalties, bonuses, and penalties collected under coal mining leases were to be "credited by the Commissioner to the same funds that such receipts under oil and gas leases on such lands would be credited under the provisions of this Act".²⁶³

In 1938 this was clarified when the law was enacted which defined all rentals from coal leases as royalties, and therefore to be added to the permanent school funds.²⁶⁴

As of June 30, 1938, there were 20 coal leases on public school lands, taking in a total acreage of 3,670 acres, and bringing a return of \$1,375.00 to the public school funds.²⁶⁵ Rentals and royalties received on coal leases, and sand and gravel permits from December, 1918, to June, 1938, are given in Table XV, on the following page.

²⁶³ Ibid., p. 183.

²⁶⁴ Commissioner of State Lands and Investments, Biennial Report of the Department of State Lands and Investments, 1936-1938 (Helena, 1938), p. 32.

²⁶⁵ Commissioner of State Lands and Investments, Biennial Report of the Department of State Lands and Investments, 1936-1938 (Helena, 1938), p. 31.

TABLE XV²⁶⁶

RENTALS AND ROYALTIES ON COAL LEASES, AND SAND AND GRAVEL PERMITS, - December 1, 1918, to June 30, 1938

Fiscal year ending	Coal, Sand and Gravel rentals and royalties
Nov. 30, 1919	\$11,225.84
Nov. 30, 1920	11,486.53
June 30, 1921	4,539.74
June 30, 1922	5,923.20
June 30, 1923	5,148.53
June 30, 1924	4,239.50
June 30, 1925	1,733.25
June 30, 1926	2,254.64
June 30, 1927	1,334.51
June 30, 1928	2,549.45
June 30, 1929	2,033.90
June 30, 1930	1,810.23
June 30, 1931	1,652.41
June 30, 1932	2,555.00
June 30, 1933	1,880.51
June 30, 1934	2,505.99
June 30, 1935	2,432.19
June 30, 1936	5,018.54
June 30, 1937	5,565.59
June 30, 1938	5,001.53
Total	\$80,891.08

²⁶⁶ Commissioner of State Lands and Investments, Biennial Report of the Department of State Lands and Investments, 1936-1938 (Helena, 1938), p. 32.

6. STONE

The law of 1909 also provided for land found to be valuable in stone which could be used for building and other purposes. The Board was allowed to lease this part of the land only for the stone extraction, and then on a royalty basis only, the terms to be as the Board prescribed. The remainder of the section, if the entire section was not stone land, could be leased for agricultural or grazing purposes, but the lease must contain a right-of-way for those extracting the stone.²⁶⁷

Part five of the 1927 law again gave the Board permission to lease those lands which had deposits of stone, lime-stone, oil-shale, clay, gravel, or sand. The Board could lease for removal and disposition of the above, "upon terms and conditions as the Board may determine". The leases were to be on a royalty basis, calculated upon the number of cubic yards removed, the rates to be the same as charged by private individuals. No lease was to be longer than for five years, and the Board could demand a deposit or surety bond, or both. The State Highway Department, County Commissioners, cities, and towns were given the right to use sand, stone, or gravel as they needed it.²⁶⁸

²⁶⁷ Montana State Legislative Assembly, 1909, Elev-enth Session Laws (Helena, 1909), p. 520.

²⁶⁸ Montana State Legislative Assembly, 1927, Twen-tieth Session Laws, (Helena, 1927), p. 184.

CHAPTER VIII

FUNDS AND INVESTMENTS

We have already seen that the Federal Government granted sections sixteen and thirty-six to the Public Schools of Montana. They specified that this land could be sold or leased and the proceeds were to be used for the support of the schools. We have also seen that two funds were set up, the permanent funds, and those funds which could be used yearly for the schools. The latter consisted mostly of rentals, fees, royalties, interest, and penalties.

In 1917 an amendment was passed in the Legislative Assembly stipulating that all fees, fines, forfeitures or moneys received as penalties for the violation of the land laws of the State, and not otherwise disposed of by law, should be paid to the State Treasurer, and by him kept in a separate fund, to be known as the Land Office Expense Fund. The expenses of the State Land Office incurred in the selection, appraisal, classification, platting, leasing, selling, management, and protection of state lands was to be paid from this fund. If not sufficient, then the balance was to come from the several land grant income funds.²⁶⁹ This law was amended in 1919 to read that money in the fund could also be used for the expenses connected with the making out of

²⁶⁹ Montana State Legislative Assembly, 1917, Fifteenth Session Laws (Helena, 1917), p. 171.

farm loans.²⁷⁰ In 1921 the State Board of Examiners was instructed to invest any money available in the State Land Office Expense Fund in State General Fund Warrants.²⁷¹ In 1921, this fund was abolished and the money placed in the State General Fund.²⁷²

Anything that was of a permanent nature in this land grant, as the land itself, the oil or gas in it, the timber, stone, etc., was to be sold and the proceeds placed in the permanent fund. As land was sold, and oil and gas, timber, stone, and gravel, were discovered and sold, a great fund was built up for the schools. In the law of 1891, the State Legislature provided that this fund should be invested, first, in bonds of the State of Montana; second, in such bonds of the several counties of the State as the Board of Land Commissioners should deem most safe and secure; third, in bonds of school districts, provided, that before any of such proceeds should be invested in the bonds of any school district within the state of Montana, the said Board of Land Commissioners should be satisfied by statements of the Trustees of the school district proposing to negotiate the sale of its bonds, that the bonds to be negotiated were the

²⁷⁰ Montana State Legislative Assembly, 1919, Sixteenth Session Laws (Helena, 1919), pp. 330-331.

²⁷¹ Montana State Legislative Assembly, 1921, Seventeenth Session Laws (Helena, 1921), p. 1.

²⁷² Ibid., pp. 104-105.

only bonds issued by the said school district, and that the outstanding indebtedness of said district does not exceed three per cent of the valuation of the property within the said district.²⁷³

In 1927 the Legislative Assembly provided in House Bill No. 77, that:

Before offering for sale any bonds issued by any county, city, or school district in Montana, notice of such issue and the amount thereof shall be given to the State Treasurer by the county, city, or school district in charge of such bonds, and said Treasurer, upon the advice and consent of said Board of Land Commissioners, shall have the preferential right to purchase and pay for all or any number of said bonds out of the permanent school funds or other trust funds in his control at their par value.

These bonds were to run for not over twenty years, with interest at 5% per year, and not less.²⁷⁴

In 1903 the State Board of Land Commissioners was authorized and required to invest and keep invested all moneys of the permanent school fund, university, and agriculture, in any state, city, town, county, or school district securities of the state. Also they could keep them invested in any bonds now issued, or to be issued hereafter against any of the State Land Grant Funds, which in its judgment were a safe investment. It was also made mandatory on the part of all officers in charge of county, city, or school

²⁷³ Montana State Legislative Assembly, 1891, Second Session Laws (Helena, 1891), p. 174A.

²⁷⁴ Montana State Legislative Assembly, 1901, Seventh Session Laws (Helena, 1901), pp. 15-17.

district bond sales to give the State Board of Land Commissioners at least thirty days notice of sale. Failure to do this would result in a fine of \$100.00 to \$1,000.00.²⁷⁵

In 1907, city, town, and school districts were given the right to redeem their bonds, whenever they had accumulated a sinking fund of \$5,000.00 or more for the purpose of paying for the bonds.²⁷⁶

The 1909 law changed the rules on investment slightly. United States bonds could come under the first class investment, together with bonds of the State of Montana. Second, they were to invest in interest bearing warrants upon the general fund of the State; third, in bonds of the several counties and cities of the State; fourth, in bonds of school districts within the State of Montana, provided that before any moneys were so invested, the Attorney General must furnish the Board an opinion as to the legality of the bond, and the Board must be satisfied that such bonds are in all respects legal and a safe investment.²⁷⁷ It was made mandatory for officers in charge of county, city, or school district bond sales, to transmit to the State Board

²⁷⁵ Montana State Legislative Assembly, 1903, Eighth Session Laws (Helena, 1903), pp. 18-19.

²⁷⁶ Montana State Legislative Assembly, 1907, Tenth Session Laws (Helena, 1907), p. 62.

²⁷⁷ Montana State Legislative Assembly, 1909, Elev-enth Session Laws (Helena, 1909), p. 324.

of Land Commissioners, at least thirty days prior to the sale, a copy of the notice thereof, and all facts on the district, valuation, etc. The State Board was given authority to grant permission to any county, city, school district, or town, to redeem their bonds at the expiration of any interest bearing period before maturity, upon giving the Board thirty days' notice. The interest on all land grant warrants was to be paid on the first day of July next succeeding the date of issue, and annually thereafter.²⁷⁸

In the 1909 law the following sources were listed as investments for all moneys belonging to the permanent school and permanent university funds: first, bonds of the State of Montana or of the United States; second, interest bearing warrants upon the general fund of the State; third, such bonds of the several counties and cities of the State as the Board deemed most safe and secure; fourth, bonds of school districts within the State of Montana, provided, that before any were so invested the Board should be satisfied that the bonds were the only ones issued by the school district and that its outstanding indebtedness does not exceed 3% upon the valuation of the property within the district; fifth, any Capitol Building bonds of the State of Montana, now issued, or which may be hereafter issued; sixth, first mort-

²⁷⁸ Ibid., pp. 325-326.

gages on farm land in the State, not amounting in value to one-third of any subdivision, to run for a period not greater than ten years, at 6% interest, said interest and 10% of the whole amount to be paid in annual installments. These latter were to be only on cultivated lands within the state, lands which have attached sufficient water rights, a legal title, and the mortgagee to be in actual residence, and in no case on lands with less appraised valuation than \$10.00 per acre. The mortgage was to run for a greater period than five years, but could be satisfied at any time after five years by payment in full.²⁷⁹

In 1913, irrigation district bonds were included in the list of investments for state school funds.²⁸⁰ Several years later, 1917, the Board was given the right to invest their school funds in first mortgage farm loan savings bonds issued in accordance with the provisions of laws previously made. Federal Farm Loan Bank bonds were also placed on the investment list.²⁸¹ Irrigation district bonds and first mortgage farm loan savings bonds were omitted in 1923, when all bonds were placed on the amortization plan.²⁸²

²⁷⁹ Ibid., p. 324.

²⁸⁰ Montana State Legislative Assembly, 1913, Thirteenth Session Laws (Helena, 1913), p. 24.

²⁸¹ Fifteenth Session Laws, op. cit., pp. 201-206.

²⁸² Seventeenth Session Laws, op. cit., pp. 19-22.

In 1927 the investment list included; first, school district bonds; second, county, city, and town bonds; third, bonds of the State of Montana, and of the United States; fourth, Capitol Building bonds of Montana; fifth, bonds of the Federal land banks, in interest bearing warrants upon the general fund of the State, and in interest bearing warrants upon the general fund, poor fund, road fund, or bridge fund of the several counties of Montana, and in interest bearing school district warrants, and in first mortgages on improved farms of the state, free of prior encumbrances. The State of Montana also reserved the preference right to purchase state general fund warrants.²⁸³

From 1927 and on, all bonds issued, were to be payable on the amortization plan. If not enough of these bonds were issued, the the funds could be invested in others issued by the State or any political sub-divisions, but funds were not to be invested in irrigation district bonds or improvement district bonds. Any bonds then held by the State Land Office were permitted to be converted into amortization bonds. Payment was to be extended through a period of not to exceed twenty years, with interest as the State Board fixed in each individual case. This interest was not to be less than the present interest on the bonds to be converted,

²⁸³ Montana State Legislative Assembly, 1927, Twentieth Session Laws (Helena, 1927), pp. 206-207.

and not to exceed 6%. In case there was any balance in the Income Fund for which there was no immediate demand, it could be invested in general fund warrants and in county warrants upon the general fund, poor fund, road fund, or school district warrants.²⁸⁴

The State Legislature, in 1929, passed a law allowing any school district, town, city, or county, to pay and redeem one or more of its bonds held by the State for the credit of any fund, under the investment administration, at any time before maturity. This did not mean that they could issue refunding bonds to take up their bonds.²⁸⁵

Article XI, Section 5, of the State Constitution provided that:

. . . 95% of all the interest received on the school funds of the State, and 95% of all rentals received from the leasing of school lands and of all other income from the public school funds shall be apportioned annually to the several school districts of the state in proportion to the number of children and youths between the ages of six and twenty-one years, residing therein, respectively.²⁸⁶

Accordingly, this fund has been apportioned each year to the school districts of the state since 1889. The specific amounts distributed are shown in Table XVI, page 145.

²⁸⁴ Ibid., p. 207.

²⁸⁵ Montana State Legislative Assembly, 1929, Twenty-first Session Laws (Helena, 1929), p. 2.

²⁸⁶ Anderson, McFarland, Revised Codes of Montana, 1935 (Helena, 1935), p. 165, Vol. I.

TABLE XVI²⁸⁷

APPORTIONMENT OF INTEREST AND INCOME FUND
1889-1938

Year	No. of children,	Amount	Per capita
1889-1896	39,252	\$ 51,027.60	\$1.30
1897	42,218	17,731.56	.42
1898	46,179	28,630.98	.62
1899	49,478	41,561.52	.84
1900	53,619	80,428.50	1.50
1901	57,212	105,842.20	1.85
1902	61,736	138,906.00	2.25
1903	64,623	168,019.80	2.60
1904	66,583	169,786.65	2.55
1905	69,195	183,366.75	2.65
1906	70,814	205,360.60	2.90
1907	72,498	217,494.00	3.00
1908	73,249	227,071.90	3.10
1909	77,0404	250,380.00	3.25
1910	81,545	305,793.75	3.75
1911	88,805	266,415.00	3.00
1912	98,687	345,404.50	3.50
1913	104,774	419,096.00	4.00
1914	114,032	513,144.00	4.50
1915	126,417	632,085.00	5.00
1916	135,865	713,291.25	5.25
1917	147,453	810,991.50	5.50
1918	159,552	877,536.00	5.50
1919	161,977	890,873.50	5.50
1920	161,625	969,756.00	6.00
1921	156,426	954,418.20	6.10
1922	160,211	785,082.90	4.90
1923	160,410		5.84
1924	157,745		5.67
1925	157,872	818,214.63	5.18
1926	156,383	1,189,966.04	7.61
1927	154,458	1,296,922.04	8.40
1928	152,119	1,172,090.55	7.71
1929	157,747	1,273,858.52	8.08
1930	160,846	1,355,624.82	8.43
1931	160,836	1,086,655.37	6.76
1932	161,372	834,759.02	5.17
1933	161,909	706,926.88	4.37
1934	162,099	791,023.69	4.88
1935	162,807	993,428.18	6.10

TABLE XVI (continued)

APPORTIONMENT OF INTEREST AND INCOME FUND
1889-1938

Year	No. of children	Amount	Per capita
1936	163,053	\$1,005,275.33	\$6.17
1937	163,286	838,206.06	5.13
1938	160,204	805,003.31	5.02

287 Commissioner of State Lands and Investments, Biennial Report of the Commissioner of State Lands and Investments, 1936-1938 (Helena, 1938), p. 37.

In 1903 the law was amended so that a school district was not to receive school moneys from the State if it did not maintain a free school for at least three months during the next preceding school year.²⁸⁸

The Superintendent of Public Instruction was ordered, in the Legislative Session of 1913, between the first and tenth day of February of each year, "to apportion the state school fund among the several counties of the state, in proportion to the number of children of school age, reckoned by the last census". Then it became the duty of the State Board of Land Commissioners to notify the State Auditor on or before the tenth day of January concerning the amount in the fund subject to apportionment.²⁸⁹

The figures quoted in Table XVI should be qualified to the extent that other moneys than from land grants were included in the apportionment. In 1925, 1926, 1927, the total income included almost \$469,000.00 in receipts from the oil license taxes and from metalliferous mines taxes.²⁹⁰ In 1927 the Legislative Assembly said that such proceeds should no longer go to this fund, but into the State Common School Equalization Fund.²⁹¹ From time to time the Statutes

²⁸⁸ Montana State Legislative Assembly, 1903, Eighth Session Laws (Helena, 1903), p. 155.

²⁸⁹ Thirteenth Session Laws, op. cit., p. 207.

²⁹⁰ Commissioner of State Lands and Investments, op. cit., p. 37.

²⁹¹ Twentieth Session Laws, op. cit., p. 367.

have been enacted, providing for funds to add to the Public School Interest and Income Fund. At the present time only one of these additional revenues is in effect, provided by the Legislature in 1937, which calls for an addition to the Fund of 25% of the Electrical Energy Tax.²⁹²

Section 5 of Article XI of the State Constitution was amended and provided for the source of much additional revenue for the public school permanent fund. This amendment was passed by the State Legislature in November, 1920, and became effective on December 6, 1920. The amendment provided that five per cent of the total income for Public School Funds should be added annually to the permanent fund itself, and "become and forever remain an inseparable and inviolable part thereof".²⁹³ This additional revenue has increased the school permanent funds as is shown in Table XVII, page 149.

In order to get some idea of the amount of business transacted by the State Board of Land Commissioners each year, figures have been taken from the annual report of that Board for 1938. They show investments made from the Public School Permanent Fund. The greatest amount, \$750,000.00, was invested in United States bonds. County,

²⁹² Montana State Legislative Assembly, 1937, Twenty-fifth Session Laws (Helena, 1937), p. 194.

²⁹³ Sixteenth Session Laws, op. cit., p. 319.

TABLE XVII²⁹⁴

ADDITIONS TO PERMANENT FUNDS FROM 5% OF TOTAL INCOME
FOR PUBLIC SCHOOL FUNDS
1921-1938

Year	Amount
March, 1921	\$ 7,442.22
March, 1922	41,253.83
March, 1923	49,314.52
March, 1924	46,967.18
March, 1925	43,063.93
March, 1926	53,275.11
February, 1927	68,259.05
February, 1928	61,695.53
April, 1929	67,045.19
March, 1930	71,348.68
April, 1931	57,192.39
April, 1932	43,934.69
March, 1933	37,206.68
February, 1934	41,632.83
January, 1935	52,285.69
January, 1936	52,909.23
January, 1937	44,116.11
May, 1938	42,368.60
Total	\$881,311.46

²⁹⁴ Commissioner of State Lands and Investments, Biennial Report of the Department of State Lands and Investments, 1936-1938 (Helena, 1938), p. 40.

city, and town bonds took \$286,773.94, and school district bonds held totalled \$562,989.72. The total investment was \$1,599,763.66.²⁹⁵

As we have already noted, funds of the permanent school fund could be invested in capitol building bonds. When the Capitol was first built in 1898, at a cost of \$350,000.00, the issue of bonds was not taken up by the Land Board. However, since that time, \$725,000.00 in additional bonds has been floated for buildings on the State Capitol grounds. All of these bonds were purchased by the Land Board with permanent funds.²⁹⁶

When Montana became a State, she was given a land grant, returns from which were to be used for Capitol Buildings. These returns ultimately should retire the entire bond issue of \$1,075,000.00. However, at the present time \$576,177.00 still remain unpaid. With a total of nearly \$29,000.00 being required annually for interest payments on the bonds, and with only \$30,000.00 in returns from the Capitol Building Land Grant, it will take a long time to retire all of the bonds. It is estimated that nearly one million dollars in interest has been paid to date on the total

²⁹⁵ Ibid., p. 13.

²⁹⁶ Commissioner of State Lands and Investments, Biennial Report of the Department of State Lands and Investments, 1934-1936 (Helena, 1936), pp. 25-26.

bonds issued since 1898.²⁹⁷

At the last session of the Legislature, 1939, a law was enacted which authorized the State Board of Examiners to issue state bonds to refund the capitol building bonds, held by the State Board of Land Commissioners.²⁹⁸ As these bonds are now paying 5% to the public schools, and since interest rates have fallen considerably since these bonds were issued, it may be that the school funds will suffer when the bonds are re-issued. The State Board of Land Commissioners, of course, has the right to bid in on the new bonds. These new bonds will be issued on the amortization plan, and consequently a portion of the principal will be paid each year, together with the interest due. It may not be so profitable for the school fund, but it will eventually mean a great saving to the State.

Mr. I. M. Brandford, Commissioner of the Department of State Lands and Investments until 1937, was chiefly instrumental in securing passage of the Constitutional Amendment in regard to the investment of funds under the control of his department. According to the report of the Department for 1936, there were eleven separate investment accounts, representing funds of the public schools, state uni-

²⁹⁷ Ibid., pp. 59-60.

²⁹⁸ Montana State Legislative Assembly, 1939, Twenty-sixth Session Laws (Helena, 1939), pp. 307-310.

versity, state institutions, and funds established for other public purposes. Each of these funds required a separate investment of just the amount in that fund.

Article XXI of the Montana Constitution makes provision for the Montana Trust and Legacy Fund. The State is given authority to accept gifts, donations, grants, and legacies in any amount or to the value of not less than \$250.00 each for the benefit of science, education, benevolent and charitable work. This money is to be held in trust, invested in safe and good securities and the net earnings are to be applied as directed by the giver.²⁹⁹

The Constitutional Amendment, passed in 1938, now makes it possible to include permanent school funds under this plan of investment, as well as those of other state institutions. This will do away with the investment by separate funds and allow the Register of State Lands and Investments to invest all these funds as a unit; in other words, it is a unified investment plan. All funds can be invested as one, yet each will profit in proportion to its size. It is not always easy to find an investment for \$250.00 or \$10,000.00 at a particular time. But with small funds added to the larger, it will be simplified. This is a policy followed by all banks and other investment agencies. Each time

²⁹⁹ Anderson, McFarland, Revised Codes of Montana, 1935 (Helena, 1935), Vol. I., pp. 230-232.

a depositor comes in with any sum, from \$10.00 to \$1,000.00, for deposit, the bank does not immediately, and cannot, invest each particular sum. Instead, they lump them all together for a sizeable investment. With the Department of State Lands and Investments having payments coming in on outstanding bonds in small amounts, this will enable them to re-invest sooner, by giving them a larger amount to invest. The Justices of the Supreme Court of Montana act as a supervisory board over the entire administration of all funds in this "Trust and Legacy Fund".³⁰⁰

³⁰⁰ Twenty-sixth Session Laws, op. cit., p. 731.

TABLE XVIII³⁰¹INVESTMENTS MADE FROM THE PUBLIC SCHOOL
PERMANENT FUND

Year	U. S. Bonds	County, city and school dist. bonds	State bonds
Up to Nov. 30, \$		\$	\$
1902			
1903 & 1904		345,700.00	
1905 & 1906		316,462.00	
1907 & 1908		527,320.00	
1909 & 1910		415,854.05	145,000.00
1911 & 1912		277,595.00	75,000.00
1913 & 1914			
1915			
1916			
1917		811,220.00	
1918		48,000.00	
1919			
1920		66,000.00	
Dec. 1, 1920 to June 30, 1921		60,140.18	
Year ending June 30, 1922		302,240.84	
1923		86,860.37	
1924		588,290.15	
1925	205,769.77	344,008.57	128,083.35
1926	521,952.36	259,520.94	50,000.00
1927	896,800.00	286,013.23	46,395.00
1928	495,000.00	529,397.49	
1929		1,266,930.02	
1930		658,135.64	
1931	97,500.00	1,420,238.88	
1932		562,646.89	
1933		45,825.42	3,074,000.00
1934		481,269.40	
1935		120,900.00	
1936	250,000.00	1,570,955.11	
1937		1,901,492.06	
1938	750,000.00	849,763.66	

TABLE XVIII (continued)

INVESTMENTS MADE FROM THE PUBLIC SCHOOL
PERMANENT FUND

Year	U. S. Liberty bonds	Farm loans	General other warrants
Up to Nov. 30 †		†	†
1902			
1903 & 1904			
1905 & 1906			
1907 & 1908			
1909 & 1910			
1911 & 1912			
1913 & 1914			
1915			
1916			
1917	205,000.00	360,940.00	1,246,577.16
1918	490,000.00	2,025,030.00	375,245.38
1919	310,000.00	966,970.00	567,205.62
1920		1,056,600.00	1,496,982.90
Dec. 1, 1920 to June 30, 1921		268,430.00	579,983.50
Year ending June 30, 1922		217,808.70	
1923		79,721.69	91,274.09
1924		100,743.81	739,265.43
1925			881,844.36
1926			1,033,988.94
1927			914,450.37
1928			1,228,555.72
1929			1,254,957.53
1930			2,208,846.28
1931			2,711,609.82
1932			2,122,303.21
1933			971,912.26
1934			
1935			250,000.00
1936			
1937			
1938			

TABLE XVIII (continued)

INVESTMENTS MADE FROM THE PUBLIC SCHOOL
PERMANENT FUND

Year	Veterans' welfare bonds	Special improvement district bonds	Totals
Up to Nov. 30	\$	\$	\$
1902			404,798.64
1903 & 1904			345,700.00
1905 & 1906			316,462.00
1907 & 1908			527,320.00
1909 & 1910		50,000.00	610,854.05
1911 & 1912			352,595.00
1913 & 1914			3,568,955.76
1915			2,166,207.16
1916			2,085,048.20
1917			2,623,737.16
1918			2,938,275.38
1919			1,844,175.62
1920			2,619,582.90
Dec. 1, 1920 to June 30, 1921	20,000.00		928,553.68
Year ending June 30, 1922			520,049.54
1923			257,856.15
1924			1,428,299.39
1925			1,559,706.05
1926			1,865,462.24
1927			2,143,658.60
1928			2,252,953.21
1929			2,521,887.55
1930			2,866,981.92
1931			4,229,348.70
1932			2,684,950.10
1933			4,091,737.68
1934			481,269.40
1935			370,900.00
1936			1,570,955.11
1937			1,901,492.06
1938			1,509,763.66

301 Commissioner of State Lands and Investments, Bi-
ennial Report of the Department of State Lands and Invest-
ments, 1936-1938 (Helena, 1938), p. 47.

CHAPTER IX

GRAZING DISTRICTS

Grazing has always been one of the chief industries of Montana. In recent years this industry has suffered from drought, and, in general, over-population of the range. In order to conserve the grass on the range, and in some way to regulate the number of cattle on the range, legislation has been enacted since 1933. In that year a law was passed to allow the setting up of incorporated grazing districts.³⁰² Since this law was later amended by the 1935 statutes, it will not be necessary to dwell on its various requirements.

On June 28, 1934, the President signed what is commonly known as the Taylor Grazing Act. This Act will have a considerable effect on the receipts of the Montana School Funds, and therefore some time will be devoted to it. The following is quoted from the report of the Commissioner of State Lands and Investments for the year 1934, a statement accompanying the President's approval of the Act.

It authorizes the Secretary of the Interior to provide for the protection, orderly use, and regulation of the public ranges, and to create grazing districts with an aggregate area of not more than eighty million acres. It confers broad powers on the Secretary of the Interior to do all things necessary for the preservation of these ranges, including, amongst other powers, the

³⁰² Montana Legislative Assembly, 1933, Twenty-third Session Laws (Helena, 1933), pp. 123-218.

right to specify from time to time the number of live-stock which may graze within such districts and the seasons when they shall be permitted to so do. The authority to exercise these powers is carefully safeguarded against impairment by State or local action. Creation of a grazing district by the Secretary of the Interior and promulgation of rules and regulations respecting it will supercede state regulation of grazing on that part of the public domain included within such district.³⁰³

According to the Enabling Act and the Constitution of Montana, the public land grants for schools were to be sold. The Taylor grazing act may make it impossible to secure buyers, and the Commissioner of State Lands at that time, Mr. Brandford, in his report suggested that Montana should try to exchange state lands, "within such grazing districts for other lands of the United States, so that the State owned lands may be consolidated into somewhat compact bodies of considerable size".³⁰⁴

Roughly estimated, the United States Government owns about six million acres of unreserved public lands in Montana. Intermingled with these are about five million acres of State lands, mostly school sections and mortgage lands owned by Montana. Under the Taylor Grazing Act, these lands will be included in grazing districts; therefore, incentive to buy them will be diminished. The state department

³⁰³ Commissioner of State Lands and Investments, Biennial Report of the Commissioner of State Lands and Investments, 1932-1934 (Helena, 1934), p. 74.

³⁰⁴ Ibid., p. 75.

is trying to exchange these state lands for lands of the United States, in an endeavor to consolidate the state holdings in larger units.³⁰⁵

In 1935 the State Legislature passed considerable legislation concerning grazing lands and districts. Its aim was to secure the best possible means of administering, regulating, and improving the grazing lands of the state. In order to help those grazing districts which already were incorporated, to secure full cooperation with the Taylor Grazing Act, and to work out the economical use of the grazing areas of Montana, they established uniform and standard rules and regulations in the issuance of grazing permits, by the formation of cooperative grazing associations, for the purpose of restoring the natural forage resources.³⁰⁶

Section 2 of the law created a Montana Grazing Commission, with a membership of five. These members were to be approved by the Governor, one to be selected from the Montana Wool Growers Association, one from the Montana Livestock Growers Association, one from the Board of County Commissioners, one to be a member of the Incorporated Grazing Association, and one a representative of the Director of

³⁰⁵ Commissioner of State Lands and Investments, Op. cit., pp. 6-7.

³⁰⁶ Montana State Legislative Assembly, 1935, Twenty-fourth Session Laws (Helena, 1935), p. 425.

Grazing under the Taylor Grazing Act. At the first meeting of the Board, they were to nominate three persons, citizens of Montana. From this list the Governor was to select one to be State Grazing Administrator for the State of Montana, to hold office for one year. The duties of the commission were to be the protection, administration, regulation, and improvement of such grazing districts as might now exist under previous laws, as amended. Also they were to regulate, coordinate, and preserve the land and its resources; provide for the orderly use, improvement, and development of the range, and provide for stock passes and drives for cattle. The members of the Commission were to receive \$10.00 a day for and while attending the meetings of the Board. The Commission was given authority to fix the salary of the State Grazing Administrator, and to appoint such other agents and employees, and incur such expenses, as the proper conduct of the business of the Board warranted. It could also impose fees against a grazing district association of Montana, not to be in excess of one cent per head for mature sheep, five mature sheep being considered a "cow unit". The balance of the fund in the State Grazing Fund was to be expended as the Board saw fit.³⁰⁷

Chapter 195 of the 1935 Session Laws set up the rules

³⁰⁷ Ibid., pp. 426-429.

for the formation of State Grazing Associations. When three or more qualified persons desired to incorporate and form a cooperative grazing district, they were instructed to prepare and file articles of incorporation with the office of the Secretary of State. Each Association so organized under the law was granted the power to:³⁰⁸

- (1) Lease or acquire, by purchase or otherwise, lands for grazing or raising of forage crops. It was also authorized to dispose of such lands by trade, sale, or otherwise.
- (2) To fence the land, to provide for reservoirs, and such other facilities as they deemed necessary.
- (3) To lease land from counties, either land acquired through tax sales or otherwise.
- (4) To apportion grazing rights to its members, such rights to be specified by the Directors of the Grazing Association, and to make other laws and rules for its members.
- (5) To issue permits for grazing to members and other residents of the territory, lessees of lands, and stock growers of the district.

All permits were to be for no longer than ten years.

In 1939 the law concerning these grazing districts was re-codified. The law specified that Articles of Incorporation were to include:³⁰⁹

1. The name of the state district, ending with "Cooperative State Grazing District".
2. The name of the county or counties where the district was located, the place where the principal office was to be, and where the business of the district was to be conducted.
3. The membership fee for each member of the district. This fee was not to exceed \$5.00.
4. The term of incorporation, which was not to be more than forty years.

³⁰⁸ Ibid., pp. 429-431.

³⁰⁹ Montana State Legislative Assembly, 1939, Twenty-sixth Session Laws (Helena, 1939), pp. 547-548.

5. The name and residences of all persons who subscribed to the association, showing that each such member owned, or controlled, commensurate property and was a livestock operator within the proposed district.
6. The powers of the district were to be enumerated.
7. The names of the officers and their duties.
8. The purpose for the incorporation of the district.

A plat of the district was to be filed with the county clerk. The powers given to the district by the law were to be:³¹⁰

1. To purchase and market livestock, purchase supplies and equipment, including grass, grass seed or forage.
2. To sue or to be sued in its corporate name.
3. To acquire forage lands, from the United States, State, county, or from private individuals.
4. To control the use of the range, determine the size of preferences and permits. Also, to make by-laws showing the carrying capacity of the range, and to allot the range to members or non-members. Should the carrying capacity of the range change at any season, the Board could increase or decrease the size of these permits.
5. To acquire or construct fences, reserves, or other facilities for the care of livestock, and to lease or purchase lands for such purchases.
6. To fix fees and assessments on the animal basis unit.
7. To specify the breed, quality and number of male breed animals that each member could furnish for the district.
8. To employ and discharge employees.
9. To set up a reasonable reserve fund.
10. To borrow money or to mortgage their assets.
11. To change the boundaries of the district, or to merge with other districts, if they saw fit.
12. To regulate stock driving over the range, including sanitary provisions.
13. To improve the range by seeding, or other conservation measures.

Membership in the district was restricted to persons, partnerships, corporations, and associations who were engaged in

³¹⁰ Ibid., pp. 548-550.

the livestock business, and who owned or leased forage producing lands within or near the district.

Naturally all the foregoing on grazing districts is important to the school lands of Montana. Better regulation of grazing means more profit to the school funds in the long run. Should the range be allowed to go, without any attempt to preserve it, the school lands would shortly be worthless. The above law meant more to the school grazing lands than has been shown so far. In section 16, the following is provided:

Any state land situated within the boundaries of any grazing district created by this act, not otherwise disposed of by the State Board of Land Commissioners, must be leased by such grazing district at a reasonable rental, when offered for lease to the officers of such grazing district by the State Board of Land Commissioners; provided, that the officers of such grazing district may appear or submit evidence in writing before the State Board of Land Commissioners and show reason and cause for a change in such rental. If such cause there be, the said Board may cause a reappraisal of the land in question. It shall be the duty of the Grass Conservation Commission to require that all state districts comply with this section.³¹¹

This Grass Conservation Commission, mentioned in the above paragraph, was created by act of the Legislature in 1939. The purpose of the commission was to conserve, protect, restore, and see that proper utilization was made of the grass, forage, and range resources of the State of Montana. The Commission was to cooperate with the State

³¹¹ Ibid., pp. 550-551.

Grazing Districts and with the Taylor Grazing Act. The Commission was to consist of five members, appointed by the Governor and Senate, for a term of four years. Its powers were to be to prepare and standardize forms to be used; to subpoena witnesses; to hold hearings or to delegate this power to others. Any three or more persons, who own or control property and are livestock operators in the area, may submit a plat to the Commission; then they may formulate Articles of Incorporation.³¹²

³¹² Ibid., pp. 539-547.

CHAPTER X

SOIL CONSERVATION DISTRICT

In the last session of the legislature, 1939, a Soil Conservation Commission was also formed. It was very evident that farm and grazing lands of the State were being wasted and depleted, due to wrong methods of farming, to dust, drought, etc. This Commission was to consist of seven members. Any ten occupiers of land in the proposed soil conservation district could file with the State Soil Conservation Commission for a conservation district to be set up. Then it became a matter of petitions, hearings, etc., until the district was formed, and a board of supervisors elected. The District was to investigate soil erosion and to publish results of its surveys, to conduct demonstration projects, to take preventative and control measures for the conservation of the soil, and to acquire such machinery, land, and property, as was deemed necessary to the carrying on of its duties.³¹³

Montana has become irrigation conscious in recent years. Drought, grasshoppers, and depletion of the soil have taken their toll. Irrigation projects are giving new life to the farmers. In 1909 the Legislature gave the

³¹³ Montana State Legislative Assembly, 1939, Twenty-sixth Session Laws (Helena, 1939), pp. 128-140.

State Board of Land Commissioners authority to grant right-of-way to ditches for irrigation purposes. In the same law the Board was permitted to sell arid lands, for not less than \$10.00 per acre, when the purchaser agreed to build ditches and irrigate the land, and to sell only one-half of any section, and then only in alternate sections. The purchaser was to assure the Board that irrigation water was sufficient to water the remaining one-half section at reasonable rates.³¹⁴

Authority was given to the State Board of Land Commissioners in 1937, to accept for Montana title in fee simple for any land in Montana, owned by or title to which may be hereafter acquired by the State Water Conservation Board of Montana, and to convey in exchange any state owned lands of approximately the same area and of value not higher, when such exchange would be beneficial to any project approved by the Water Conservation Board, and at the same time be an advantage to the State Land Grants to Public Schools.³¹⁵

³¹⁴ Montana State Legislative Assembly, 1909, Eleventh Session Laws (Helena, 1909), pp. 303-305.

³¹⁵ Montana State Legislative Assembly, 1937, Twenty-fifth Session Laws (Helena, 1937), p. 520.

CHAPTER XI

EASEMENTS

Right of Eminent Domain may be exercised in the following cases, according to the Legislative Session of 1899.³¹⁶

1. All public uses authorized by the Government of the United States.
2. For public buildings and grounds for the use of the State, and for all other public uses authorized by the Legislative Assembly of Montana.
3. For public buildings and grounds, for the use of county, city, town, or school districts, for canals, aqueducts, flumes, ditches or pipes conducting water, heat, or gas, for the use of inhabitants of any county, city, town, or other division.
4. For wharves, docks, bridges, private roads, railroads, canals, etc.
5. For railroad tunnels, etc., for mines, milk and smelters, etc.
6. For private roads, from highway to farms.
7. For telephone or electric light lines.
8. For telegraph lines.
9. For sewerage of any county, city, or town.
10. For tramway lines.
11. For electric power lines.

In 1909 the Legislature ordered that right-of-way shall be granted by the State Board of Land Commissioners over state lands to any county or city for public highways, providing the right-of-way must follow the sectional or divisional lines, if this is physically practicable. They also authorized the granting of right-of-way for ditches, reservoirs, railroads, private roads, telegraph or telephone

³¹⁶ Montana State Legislative Assembly, 1899, Sixth Session Laws (Helena, 1899), pp. 135-136.

lines, or for any other public uses.³¹⁷

In 1939 the procedure for obtaining an easement or right-of-way, was clarified when the law stipulated that an application for an easement on state lands should be made to the State Board of Land Commissioners, and was to describe the proposed right-of-way, according to a survey, and was to show the necessity of such right-of-way. The application was to be accompanied by two exact copies of the official plat of the proposed right-of-way, which was to be verified by the county surveyor. The law further stated that the Chief Field Agent was to view the proposed right-of-way, and the State Board of Land Commissioners was to fix the compensation. This was to be according to the full market value of the land, together with damages to the remaining land, and other costs. If the land under consideration was under certificate of sale or contract, then this person must be a party to the contract and consent to the right-of-way in writing.³¹⁸

As indicating the amount of business done in easements, Table XIX, page 169, shows the number issued from July, 1936, to June, 1938.

³¹⁷ Montana State Legislative Assembly, 1909, Elev-enth Session Laws (Helena, 1909), p. 303.

³¹⁸ Montana State Legislative Assembly, 1939, Twenty-sixth Session Laws (Helena, 1939), pp. 224-226.

TABLE XIX³¹⁹EASEMENT DEEDS TO STATE LANDS ISSUED FROM
JULY 1, 1936 TO JUNE 30, 1938

For what purpose	No. of deeds issued	Acres	Compensation	Fees
Rights-of-way for public highways	65	390.26	\$5,485.84	\$325.00
Telephone, telegraph, pipe and power lines	50	93.29	1,433.83	250.00
Schoolhouse sites	2	2.01	37.50	10.00
Canals, ditches, reservoirs, and dikes	23	180.03	3,276.41	115.00
Totals	140	665.59	\$10,233.28	\$700.00

319 Commissioner of State Lands and Investments, Biennial Report of the Department of State Lands and Investments, 1936-1938 (Helena, 1938), p. 26.

CHAPTER XII

APPRAISAL

Constant reference has been made to the "appraised value" of state land. In one case the report of the State Land Agent was cited to the effect that it was difficult to secure the necessary help to have land appraised, due to the low pay allowed the men. The Act of 1891 had allowed \$4.00 per day for the time actually spent in appraising state lands. These lands could not be sold or leased until they had been appraised. It was found that men could not be secured to do this work at the stipulated wages, because their expenses amounted to that much while on the job. On page 4 of his report for 1892, the State Land Agent stated:³²⁰

. . . an investigation being made by this Board it was found that this objection was well taken, and that the necessary expenses would be about \$4.00 per day. Under these circumstances the Board was compelled to make an order allowing in addition to the per diem of \$4.00, the actual and necessary expenses incurred. . . .

In 1891 the Board of Land Commissioners was instructed to re-classify the State Lands at least once in every five years. They were also to provide plats of all state lands, and to designate which lands could be irrigated, and the supply of water available. Further, they were instruc-

³²⁰ State Land Agent, Second Annual Report of the State Board of Land Commissioners, 1892 (Helena, 1892), p.4.

ted to make plats of all State Lands, and to classify them as to soil, grass, timber, water, stone, lime, mineral, class, etc.³²¹

When a petition was signed by twenty-five or more bona-fide residents of one and the same section of the said fourth class public school lands of the State of Montana, and presented to the State Board of Land Commissioners, and praying for a re-appraisement of any of the lands, it was then the duty of the Board, within thirty days, to order and require the State Land Agent to re-appraise the land under dispute. The State Land Agent was then instructed to re-appraise and fix the valuation within a period of twenty days.³²² In the same year the legislature provided that:³²³

. . . any person or persons holding any of the said lands under certificate of sale from the State of Montana, whose contract or contracts have not been forfeited, shall receive a credit on such contracts to the amount of the difference of such valuation fixed by the re-appraisement, and the valuation fixed by the previous appraisement

The law further provided that the State was not required to repay any money to any persons who had made payments on land contracts to date.

In 1897 the Legislature decreed that when a complaint

³²¹ Montana State Legislative Assembly, 1891, Second Session Laws (Helena, 1891), p. 174E.

³²² Ibid., pp. 341-342.

³²³ Ibid., p. 343.

was made to the State Board of Land Commissioners, ". . . by at least ten householders of any school district in which state lands are situated, that such lands or any portion thereof, are appraised too high or too low . . .", the Board was to direct the State Land Agent to re-appraise the land, and then if the Board was satisfied that such land was too high or too low, they might value the same at their real value.³²⁴

In 1899 the State Board of Land Commissioners was given the power, in its judgment, to re-appraise all lands held in trust by the state, once in every five years. Also the Board was given the right to re-appraise the land at any time they saw fit.³²⁵

In 1909 the Board of Land Commissioners was ordered to draw up plats to show lands capable of irrigation, and to show water supplies. Class III of state lands was to be sub-classified into ". . . (a), agricultural lands not susceptible of irrigation, and (b), agricultural lands not susceptible of irrigation. . . .". Sub-division 4 of such classes, ". . . shall be sub-classified into (a), lands within the limits of any incorporated city, and (b), lands

³²⁴ Montana State Legislative Assembly, 1897, Fifth Session Laws (Helena, 1897), pp. 178-179.

³²⁵ Montana State Legislative Assembly, 1899, Sixth Session Laws (Helena, 1899), pp. 87-93.

not within the limits of any incorporated city".

The Board was authorized to re-classify when they deemed it necessary.³²⁶

Chapter 60 of the Twentieth Session of the Legislature, gave the four classes of land already enumerated, but then changed the division of Class III, agricultural lands, into irrigable lands, and non-irrigable lands. Class IV was sub-divided into lands within the limits of any town or city, and lands not within such limits, but within three miles thereof. The Board of Land Commissioners was instructed to appraise the land at its true value, and not to take into account in determining and fixing such values, ". . . temporary inflation or depressions in land prices and fluctuations in the economic and financial conditions of the State".³²⁷

³²⁶ Montana State Legislative Assembly, 1909, Elev-enth Session Laws (Helena, 1909), pp. 300-301.

³²⁷ Montana State Legislative Assembly, 1927, Twen-tieth Session Laws (Helena, 1927), pp. 167-168.

CHAPTER XIII

MINERAL CLAIMS

Locations of mining claims not exceeding 600 feet in width and 1500 feet in length, each, may be made upon lands belonging to the State, as follows:³²⁸

The discoverer of a body of mineral in either a vein, lode, or ledge, or mineral in a placer deposit, shall immediately post conspicuously a notice that he has made such a discovery, on the date stated in such notice, and shall complete such location in all respects as prescribed by the laws of this State for the location of mining claims upon the public lands of the United States, except that notice of such location need not be recorded in the office of the county clerk, but such notice shall be filed with the Register of State Lands. Such procedure shall empower the locator to retain possession of and to operate said claim for the period of one year, at the end of which time he shall be required to purchase said claim at \$10.00 per acre, or take a lease thereof at such price, or upon such terms, as may be agreed upon between him and the State Board of Land Commissioners.

The lessee must prove the claim more valuable for mineral purposes than for any other, but no mining claim can be located on any coal or oil lands; and no lands classified under IV of the Constitution, may be sold as mineral lands, but the mineral therein may be sold separately from the surface.³²⁹

In 1927 the Legislature provided that permits may be

³²⁸ Montana State Legislative Assembly, 1909, Eleventh Session Laws (Helena, 1909), p. 519.

³²⁹ Ibid., p. 320.

issued granting exclusive rights to "prospect and explore for ores, metals, precious stones, and other valuable minerals, except for coal, oil and gas, on any state lands to which the title has vested and safely secured in the State". This provision also extended to those lands which had already been sold and the mineral rights had been reserved. Permits for exploration for minerals were not to exceed five years, and were not to be for more than one section of land. The Board could prescribe the minimum amount of prospecting and exploration work to be performed in each year, and could fix the penalties. A minimum fee of \$10.00 was to be assessed and this was to be payable in advance. This permit did not include removal of any minerals from the land. Then, in case the prospector did discover minerals on the land, he would have to submit proofs to the Board, and would then have the preference right to a mining lease to such land or the ores, precious stones, or metals, on such terms and conditions as the Board prescribed. The law called for payment on the lease on a royalty basis, this royalty to be not less than 5% of the value of the ores, precious stones, metals, or other valuable minerals, at the mouth of the mine.³³⁰

This was somewhat changed in 1933, when the Legislature prescribed that permits were not to be for a longer

³³⁰ Montana State Legislative Assembly, 1927, Twentieth Session Laws (Helena, 1927), pp. 182-183.

term than five years, and the prospector was to describe the land to be prospected, which was not to exceed 40 acres. A minimum prospecting, equivalent to \$100.00 a year, was to be done on the claim. When the prospecting had brought results, the lease given was not to exceed twenty years, provided the minimum development work of \$100.00 a year had been done, and the royalty to the State was to be 3% of the values of the ores, metals, and other minerals.³³¹

The term, metalliferous minerals, was interpreted to mean gold, silver, lead, zinc, copper, platinum, iron, and all other metallic minerals, by the law of 1937.³³² By the same law the State Board of Land Commissioners was empowered to lease state lands, including beds of navigable streams, and beds of navigable waters, and the reserved mineral rights of the state in lands heretofore or hereafter sold or leased, to persons, corporations, or assigns, for the purpose of prospecting for, and for mining metalliferous minerals and/or gems. The time of the leases was to be determined by the Board. No removals of minerals or precious stones was to be made during the prospecting period.³³³

³³¹ Montana State Legislative Assembly, 1935, Twenty-third Session Laws (Helena, 1935), pp. 454-456.

³³² Montana State Legislative Assembly, 1937, Twenty-fifth Session Laws (Helena, 1937), pp. 477-478.

³³³ Ibid., pp. 478-479.

Royalties were to be not less than 5% of the returns from the land, or the full market value of the product removed from the land.³³⁴ No mining lease was to be given by the Board to any lands upon which a lease was now on for coal, oil, or gas, unless with the written permission of the lessee.³³⁵ All fees and penalties assessed were to go to the General Fund of the Schools. All rentals were to go to the Income Fund of the Schools, and the royalties to the Permanent Funds of the Schools.³³⁶

The 5% provision for royalty is rather small when one considers that the common royalty on the output of privately owned mines of the state is 10%.³³⁷

³³⁴ Ibid., pp. 480-481.

³³⁵ Ibid., pp. 482-483.

³³⁶ Ibid., pp. 484-485.

³³⁷ Commissioner of State Lands and Investments, Biennial Report of the Department of State Lands and Investments, 1934-1936 (Helena, 1936), p. 75.

CHAPTER XIV

POWER SITES

Because irrigation was a valuable asset to the state school lands, it was therefore recognized that power sites would be of tremendous value to the State. Montana's school lands consisted of forests, streams, lakes, prairies, and also of power sites. Dams cannot be thrown across rivers at any and all places. There must be a peculiar formation where a dam can be built, conforming to the natural channels and having a place for backwater storage. Up to 1931, nothing had been enacted in the Legislature which dealt with this phase of public school lands. When it was found that certain power sites under consideration by private corporations were on school lands, legislation was enacted to provide for the best interests of the State.

In 1931, the Legislature stipulated that the law was to cover not only the state owned land upon which the dam was to be built, but also the land which was to be covered by the reservoir. It was made unlawful to sell or advertise for sale any state lands which constituted power sites, or part of power sites capable of developing hydroelectric energy in commercial quantities; and the State Board of Land Commissioners was empowered to issue leases or licenses to any person, after the application for a power site lease had

been received and investigated. Then the Board was to cause notice of the proposed lease or license to be published, not less than once each week for six weeks previous to their meeting, in two newspapers of general circulation in the state, one of these to be in the neighborhood of the power site. Power was given the State Board of Land Commissioners to reject any and all bids, but municipalities were to be given preference if the bid from them was advantageous to the state. Rentals were to be paid annually or semi-annually, but were to be not less than the full market value of the estate or interest disposed of. The lease was not to be for a greater length of time than fifty years.³³⁸

Sometimes it happened that the state power site was a part of the larger power site of the United States. Then provision was granted the State Board of Land Commissioners to grant a joint license with the United States. According to the law, if the state owned the entire power site, then the Board was authorized to provide, over a period of fifty years, for amortization of the capital invested in the dam, machinery, equipment, and appurtenant works, not including the distributing system, so that ultimately the state was to become the owner of the power site and dam.³³⁹

³³⁸ Montana State Legislative Assembly, 1931, Twenty-second Session Laws (Helena, 1931), pp. 272-274.

³³⁹ Ibid., pp. 275-276.

CHAPTER XV

FARM MORTGAGES

In the chapter on investments it was seen that permission was given to the State Board of Land Commissioners to invest their permanent funds in mortgages on good improved farm lands. The amount of these loans made on farm lands was not to exceed $2/5$ of the actual cash value of the lands, and the funds so invested should be secured by a first mortgage, and the land was to be free from any other prior encumbrance or liens. This type of mortgage was to run for a period of not less than three years nor more than ten years, with interest at the rate of 6%, payable annually to the Register of State Lands. One provision of the law was that when a mortgage runs for ten years, the mortgagee had the privilege and option, after three annual interest payments, of paying on any interest bearing date, in addition to the interest, ten per cent or any multiple thereof of the principal secured by such mortgage. Section 11 took up the matter of default in repayment of the loans, when it stipulated that in such a case the State Board of Land Commissioners was to notify the Attorney General, who was to foreclose by due process of law. If in such foreclosure sale none bid the full amount due upon the mortgage, together with costs and expenses and interest, the Register of State

Lands was to bid in the property in the name of the State of Montana for the amount due. Then, if the property was not redeemed, a sheriff's deed was to be given to Montana, and the land disposed of as other state lands.³⁴⁰

When more applications were on file for loans on farm lands than there were funds in the various permanent funds, the State Land Commissioners had the authority to sell the mortgages, notes, and obligations which the said mortgages were given to secure. Notice was to be given of such public auction, and the various items were not to be sold for less than the unpaid balance in principal and interest accruing to the date of the sale. One stipulation was added which contributed to the work of the State Board of Land Commissioners, and that was that the new owners of the mortgages and securities could make the Register of State Lands the collector for the amounts due.³⁴¹

This section was amended in the 1919 Legislative Session, when it gave the Board the right to sell and assign any and all bonds, warrants, and other securities in which such funds were invested, at either private or public sale, provided, however, that none of the above should be sold for a less amount than the unpaid principal and the unpaid in-

³⁴⁰ Montana State Legislative Assembly, 1917, Fifteenth Session Laws (Helena, 1917), pp. 201-205.

³⁴¹ Ibid., p. 206.

terest accruing up to the date of the sale, and provided further, that the State of Montana should never be liable for the payment of any portion of the principal of such mortgages, notes, obligations, bonds, warrants, or other securities so sold, or the interest thereon.³⁴²

The same chapter was amended in 1919, so that all mortgages given to secure loans of such funds on farm lands, were to be made in the name of the State as mortgagee, and all such mortgages were to run for a period of not less than three years, nor more than nineteen years, with interest at 6% per year. In the same section the State Board of Land Commissioners was given authority, in its discretion, to permit the full payment of any mortgage at any time prior to maturity thereof.³⁴³

With a considerable sum, millions, being invested in farm loans, and with this type of loan being made more and more unsafe, due to drought and other conditions, attempts were made to strengthen the law concerning the qualifications for such loans. Provision was made in 1923 that all applicants for farm loans must be actual farmers. The basis for such loans was also changed so that all such mortgages in the future were to be on the amortization plan, to run

³⁴² Montana State Legislative Assembly, 1919, Sixteenth Session Laws (Helena, 1919), p. 334.

³⁴³ Ibid., p. 336.

for a period of thirty-five years at 6% interest, instalments on principal and interest to be paid annually or semi-annually. All loans could be paid in full before maturity, but if paid before the expiration of five years from the date of the loan, a fee equal to one per cent of the original loan was to be required. If the pre-payment came between five and ten years, from the date of the loan, then the fee was to be one-half of one per cent of the original loan.³⁴⁴

In 1921, legislation was passed so that all farm mortgages in effect at the time could be converted into amortization mortgages upon application, when the State Board of Land Commissioners deemed it safe and wise, but no loan could be made for more than forty per cent of the actual value of the land.³⁴⁵

From time to time the Legislature changed various provisions of the laws concerning these loans. One such change took place in the 1927 Session, which decreed that whenever a state farm loan becomes due or delinquent the mortgagor, assignee, or vendee might make application to the State Board of Land Commissioners to have the loan con-

³⁴⁴ Montana State Legislative Assembly, 1923, Eighteenth Session Laws (Helena, 1923), pp. 20-21.

³⁴⁵ Montana State Legislative Assembly, 1931, Seventeenth Session Laws (Helena, 1931), p. 121.

verted into a thirty-three year amortization loan and mortgage at interest of 6%, secured by a first mortgage on the land. Interest and principal could be included in the loan. This meant delinquent interest and principal, and also penalty interest and such sums advanced by the State under the mortgage. This was optional with the Board. In order to safeguard the permanent school funds in these mortgages, the law gave the State prior lien on the crops, excepting threshermen's liens and seed liens. Also the mortgagor was given the right to repurchase the foreclosed land within one year or within one year from the date of the quitclaim deed or other conveyance to the State, by the payment of the full amount of judgment due the State, with interest at the rate of 6% from the date of the judgment to date of the repurchase. One provision was that the purchaser must pay 10% of the entire judgment with interest at 6%, the balance to draw interest at 5% on the thirty-three year amortization plan.³⁴⁶

One objection to the original farm loan act of 1917 was that no local agencies assumed a part of the responsibility, both in making and in the collection, of the interest and principal. Another objection was that originally it was not on the amortization plan, and farmers would pay huge

³⁴⁶ Montana State Legislative Assembly, 1927, Twenty-first Session Laws (Helena, 1927), pp. 197-200.

sums in interest yearly, without reducing the principal due the State.

In the Register's Report for 1921-1922, we see that as of June 30, 1921, there were 2,297 loans in force, amounting to \$4,472,170.00, with delinquent interest of \$157,340.00. On June 30, 1922, there were 2291 loans on the books, valued at \$4,517,882.00, with delinquent interest of \$282,574.77. Up to June 30, 1922, the Department of State Lands and Investments had to pay out \$45,297.66 for taxes in order to protect the State's title to these lands.³⁴⁷ As a result of drought and adverse farm conditions, loans were not inspected and the Register goes on to say:

. . . as a natural result we today have upon our books loans upon which neither interest nor taxes have been paid, loans upon which interest, taxes, and accrued interest are 50% more than the total amount of the original loans. Recommendations for loans were made by Inspectors who apparently had no knowledge either of land values or human nature, or of moral risk. It would appear that it was the policy to loan money as fast as possible and as long as it would last with a ruthless disregard of the State's rights. No mortgage company or bank, loaning money in such a way, would be able to exist six months. A policy was pursued that would be ruinous to any business concern, and result in bankruptcy.³⁴⁸

By the end of the fiscal year 1917, the loans amounted to \$360,940.00, and to \$2,385,970.00 at the close of 1918.³⁴⁹

³⁴⁷ State Land Register, Biennial Report of the Register of State Lands and Investments, 1921-1922 (Helena, 1922, p. 5.

³⁴⁸ Ibid., p. 6.

³⁴⁹ Ibid., p. 6.

During 1919, \$966,970.00 was invested in Farm Loans and \$1,056,600.00 in 1920.³⁵⁰ \$268,430.00 was invested in these loans in 1921, and \$217,808.70 in 1922.³⁵¹

Appraisals for farm loans were made in 1917, 1918, 1919, and 1920. Then land values were higher than later on. The Register of State Lands says in his 1921-1922 report:

In examining our abstracts it develops that the State has made loans double the amount which have been made by private loan companies. A loan of \$1,000.00 on a quarter section had been taken up by the state and a loan of \$2,000.00 made in lieu³⁵²

\$79,721.69 were invested in farm loans in 1923, and \$100,743.81 in 1924.³⁵³ This was the last year in which these loans were made. Conditions among farmers were such in the latter 1920s and the early 1930s that they could not meet the payments of these loans. According to the terms of the loan, the farmer would pay interest annually, but no principal. Being delinquent he would have to see his farm foreclosed, and this was not good for the best interests of the State. Mr. Brandford has long advocated a form of repayment, commonly called the amortization plan, previously

³⁵⁰ Register of State Lands, Report of the State Board of Land Commissioners, 1918-1919 (Helena, 1919), p. 9.

³⁵¹ Register of State Lands, Report of the State Board of Land Commissioners, 1919-1920 (Helena, 1920), p. 21.

³⁵² Register of State Lands, Report of the State Board of Land Commissioners, 1921-1922 (Helena, 1922), p. 5.

³⁵³ Ibid., p. 18.

mentioned and explained. To again illustrate, take an example of a \$1,000.00 amortization mortgage and bond at 5%. Under the old bond the holder could pay interest on the entire principal each year and the loan could go on forever. But add $1\frac{1}{4}\%$ for amortization, making each payment $6\frac{1}{4}\%$ or \$62.50, and the whole debt will be extinguished in thirty-three years. Another illustration can be made with a bond of \$32,000.00, at 5% interest, for a term of twenty years. The total interest on the old form of bond for that length of time would be \$32,000.00. Under the amortization plan of bond the actual interest would be only \$18,990.38. Anyone can readily see that the saving would be \$13,009.62.

All farm loan laws were repealed in 1933. In 1935 the State Legislature, recognizing that they had allowed the State Board of Land Commissioners to invest in farm mortgages during 1917, 1918, 1919, 1920, 1921, 1922, 1923, and 1924, the sum of \$4,648,750.00; that the Board had to pay taxes on the lands given as security for such loans, and also was obligated to pay other expenses in the amount of \$600,000.00 in order to protect the State; that more than 85% of all lands given as security had been obtained by the State through foreclosure or quit-claim deeds; that the unpaid principal invested in these mortgages, including un-repaid taxes and other costs paid from the public school funds, exclusive of all unpaid accrued interest, amounted

to \$4,250,625.95, agreed to repay the full amount to the Public School Fund.³⁵⁴ The exact wording of the obligation was that:

. . . such public school funds, inviolate by the Constitution, therefore, the State hereby recognizes its liabilities for such public school fund under the said section 3 of Art. XI of the Constitution; that it acknowledges its obligation thereunder forever to keep such public school funds inviolate and also its guarantee against the loss or diversion of any part of the said fund, including the aforesaid sum of Four Million Two Hundred Fifty Thousand and Six Hundred Twenty-five and 95/100 (\$4,250,625.95), as of January 1, 1935.³⁵⁵

To rectify the matter the State agreed to take over and assume all of such farm loans now existing as such, all the lands taken over by the state under such mortgage through foreclosure proceedings and otherwise, and all tenements, hereditaments, appurtenances, and all sale and re-sale contracts, certificates, rights, claims, etc; and the State agreed to repay to the public school permanent fund the sum mentioned above, together with interest on the balance remaining from time to time unpaid at the rate of 2% per annum, "from the proceeds of such farm mortgage loans and lands, and from such other sources other than the state general fund, as the Legislative Assembly may provide".³⁵⁶

³⁵⁴ Montana State Legislative Assembly, Twenty-fourth Session Laws (Helena, 1935), pp. 228-229.

³⁵⁵ Ibid., pp. 229-230.

³⁵⁶ Ibid., p. 230.

These mortgaged lands were to continue to be administered by the State Board of Land Commissioners, and the status of the mortgagors and others was not to be affected. The State Treasurer, State Auditor, and the Commissioner of State Lands and Investments were to set up a state farm loan sinking fund. Into this fund were to be paid all receipts from the mortgaged lands, including principal and interest or other payments, such as rentals. The money was to be collected by the Commissioner of State Lands and Investments and paid over to the State Treasurer and by him placed in the Farm Loan Sinking Fund. All other moneys received by the State Treasurer from other sources provided by the Legislature for repayment, were to be placed in the Farm Loan Sinking Fund. In order to protect the interest of the State in these lands, the State Board of Land Commissioners was authorized to audit and order to be paid all claims against the State for taxes upon these mortgaged lands, to prevent loss of title, and also to pay foreclosure costs, fees, and costs of abstracts and advertising. All these costs were to be paid from the Farm Loan Sinking Fund. On the last day of March, June, September, and December, the State Treasurer was to transfer from this Fund to the Public School Fund, a sum equal to the interest then accrued and unpaid on the balance of the aforesaid sum of \$4,250,625.95, at 2%, if there was sufficient money available. At the same time he

was to transfer to the Public School Permanent Fund any balance in the State Farm Loan Sinking Fund.³⁵⁷

In 1938, since the above law went into effect on March 13, 1935, \$440,000.00 have been transferred to the public school funds, of which \$186,747.48 have gone to the Public School Permanent Fund. In the same year the Attorney General ruled that 640,000 acres of mortgaged lands may now be sold for the amount of the investment, without including the accrued interest in sales price. Many mortgagors, since then, have taken advantage of this ruling and are buying back their lands. About 440,000 acres of this land is now not under sales contracts.³⁵⁸ In 1939, the State Legislature gave the mortgagee until March 1, 1941, to redeem foreclosed land.³⁵⁹ All in all, the State has endeavored to make it easy for the farmers of the State to make their payments on their farm loans, and to redeem their land. This will result in better relations toward the public school funds, and in the long run will make for greater returns to that fund. Under the Farm Loan Act of 1917, and its amendments, 2,522 state farm loans were made, aggregating

³⁵⁷ Ibid., pp. 231-232.

³⁵⁸ Commissioner of State Lands and Investments, Biennial Report of the Department of State Lands and Investments, 1936-1938 (Helena, 1938), pp. 35-36.

³⁵⁹ Montana State Legislative Assembly, 1939, Twenty-sixth Session Laws, (Helena, 1939), pp. 253-256.

\$4,648,750.00. The last new farm loans were made on December 24, 1924, so that the reader can see that the law is practically a dead letter.³⁶⁰

The Register's report for 1938 gives a fine summary of the entire Farm Loan situation. The first loan was issued on December 23, 1916, and the last one on December 24, 1924. In all 2363 original loans were made and 803,162.23 acres were involved. \$4,648,750.00 was invested. Up to June 30, 1938, 438 loans were paid in full, and in 1938, 1925 loans were still in effect in some form. The State has taken title to 95.6% of all loans, or 1842 loans. Loans to the number of 584 have been amortized and are in effect in that form to date. In order to protect its interest in these lands, the state was forced to pay out the sum of \$628,977.90 in taxes, foreclosure costs, abstracts, continuations, and other costs. In 1938, 852 Farm Loan leases were in effect, and efforts were being made to lease the balance of these lands.³⁶¹

³⁶⁰ Commissioner of State Lands and Investments, Biennial Report of the Commissioner of State Lands and Investments, 1932-1934 (Helena, 1934), pp. 39-40.

³⁶¹ Commissioner of State Lands and Investments, Biennial Report of the Department of State Lands and Investments, 1936-1938 (Helena, 1938), p. 35.

CHAPTER XVI

SUMMARY AND CONCLUSIONS

An attempt has been made in this report to give a general, and sometimes specific, account of the history and administration of Public School Land Grants in Montana. The background for this policy of land grants for education and other purposes was traced back to colonial days in order to give the reader a better understanding of the entire situation.

In its Constitution and subsequent statutes enacted by the Legislative Assembly, Montana took care to safeguard this public school land. It was difficult in the early days to locate and establish title to this land. The greed of large corporations and individuals was largely responsible, as the land was valuable for minerals, for agriculture, and for grazing purposes.

Income from these public school grants gradually began to come in. Returns were from land sales, oil and gas leases, royalties, timber sales, leases, coal, stone, and gravel permits and royalties, mining claims, easements, power-sites, fees, penalties, besides returns from investments of the funds so received. These returns necessitated increased legislation and, as has been seen, many new laws concerning these school grants have been made at each legis-

lative session.

Returns from land sales, easements, 5% of income, timber sales, 5% of United States Land Sales, oil and gas royalties, coal, sand, and gravel royalties, repayments on mortgages, bonds, and warrants were placed in the Permanent Fund of the Schools. This fund grew from nothing in 1889 to nearly \$25,000,000.00 in 1938. Therefore, from a State Land Department, committed to the task of selecting and locating land in the state to fulfill its Federal School Grant and other institutional grants, the same Department has grown into an investment department handling millions of dollars. It was quite understandable, therefore, when in 1927 the Department's name was changed to that of the "Department of State Lands and Investments".

Sections 16 and 36 out of each 36 sections in every township in Montana figures out to 1/18, or slightly over 5 $\frac{1}{3}$ %, of the entire acreage of the state. In total acreage it amounts to 5,188,000 acres. Of this a total of 1,358,924.13 acres has been sold, with 4,483,596.54 acres yet remaining under the control of the Department of State Lands and Investments.

In a few words, the Department is committed by the Constitution to secure the maximum returns from this land for the public schools of the State. "Vigilant watching" and careful legislation is needed. It was noted how, in 1917,

the State permitted the State Board of Land Commissioners to invest the permanent funds of the schools in farm mortgages. The loans remained unpaid, interest was unpaid, and the state was even forced to pay taxes on the land in order to keep some hold on it. Years passed, and it was not until 1935 that the Montana State Legislature enacted legislation pledging the State to repay this farm mortgage investment to the schools.

Many schoolmen and others, unacquainted with the school grant situation, and with the present farm and ranch conditions, have advocated high leases, high sales prices, and high royalties. They have ignored the fact that for years ranchers and farmers have suffered tremendous setbacks, due to drought, grasshoppers, and low prices. They have also ignored the fact that trying to get the maximum returns from school lands, year in and year out, has meant a depletion of the range and of the land.

A critical situation has been reached in the entire land leasing policy of the Department of State Lands and Investments. Either the people of Montana must stand by and see the school lands plundered of all its grasses and therefore its income, or they must cooperate with the ranchers, farmers, and Federal and State set-ups, in an endeavor to replenish and conserve the range. They must cooperate to the extent that they are willing to enter into a policy of

conservation - conservation of the water, conservation of the soil, and conservation of the grass. In the latter part of this report it was shown how the Taylor Grazing Act, the State Soil Conservation Act, the State Grass Conservation Act, and the State Grazing Act, besides the Water Conservation Act, have been passed in an endeavor to conserve the ranges and assist in the rehabilitation of our farmers and ranchers.

According to a bulletin compiled by Dr. R. R. Renne, "Montana Land Ownership", Bulletin No. 322, June, 1936, Montana State College, Bozeman, Montana, it was found that only 42% of the agricultural area of Montana was owned by private individuals, resident and non-resident. Railroads, Investment and Mortgage Corporations, Commercial Banks, Insurance Companies, Federal Land Banks, Joint Stock Land Banks, and miscellaneous corporations owned 14%. The Federal Government owned 35.6%, the State, 5.7%, and the Counties 2.7%, a total of 44%.

The inefficiency of this is, that all of these various agencies are competitors for the schools' 5% of the State's lands, in both sale and lease. If any returns are to be secured from school lands, the state must compete with these other agencies for the use of their land, and must bargain with stockmen or various grazing associations.

The 1939 Legislative Assembly passed one important

piece of legislation when it changed the authorization of grazing districts, whereby it was ordered that when any state school land, or other public land is located within the boundaries of a grazing district, that district must lease all of such land at a fair rental. Because of this most of the school lands of the state will now be leased.

One must always bear in mind, however, that the Enabling Act instructed Montana to sell these granted lands, and to use the returns for the benefit of the public schools. It would be the part of wisdom to exchange those lands included in the grazing districts for other unreserved land of the United States. This will make it possible to consolidate Montana's land in larger units, and, without the need to rent them at low fees to grazing associations, there might be better opportunity for sale. However, it would be well before any action is taken in this direction, to wait and see what results are obtained by the various arrangements mentioned above.

Slightly more than one-third of the state school lands are being leased. The Department of State Lands and Investments, in its report for 1930, said that the main reason for this was the lack of trained and sufficient field men. To properly look after, classify, lease, and sell, nearly 5,000,000.00 acres of school land, is a job that requires a large field staff, which the Department does

4,483,596.54

not have. If, by adding several more men to the field staff of the Department, the school funds would be increased by a hundred thousand dollars, a wise move would have been made. On page 72 it was seen that the total valuation of the school lands to the state of Montana, including all funds, amounted to \$65,010,733.65. For the administration of this large estate, the Register of State Lands and Investments is paid the annual salary of \$3600.00. No private concern, handling the vast amounts passing through the Department of State Lands and Investments, would secure a competent officer for \$3600.00 a year.

Timbered school lands can be sold for cash only. Until such time when they are sold, they should be carefully watched. A policy should be made that would call for the sale of the trees when they are at their peak, and a replacement policy which will keep the forests growing for future generations.

Oil and gas are beginning to be produced in commercial quantities from school lands, under lease and royalty payments. The next ten years will show just how much Montana has of these much demanded products. Constant vigilance is required of our field force to see that all areas are explored, that fields are not drained by private companies, and that the maximum returns are secured. The same warning should be given for the coal and other mineral

lands, except that in the case of these latter, the royalty should be increased to conform to the generally accepted figures in private business.

Montana has today some 4,483,596.54 acres of school lands from the original grant remaining unsold. The people of Montana must begin to realize that a new frontier has been reached in the administration and care of this land. They must realize that the old policy of exploitation must be replaced by the new policy of conservation and reclamation.

BIBLIOGRAPHY

BIBLIOGRAPHY

- Abbott, C. N., Montana in the Making. Billings, 1931.
- 7 Incent*
Anderson, Lewis F., History of Common School Education. New York, 1909.
- Anderson, Milton, and Carl McFarland, Revised Codes of Montana, 6 vols. Helena, 1935.
- Bancroft, Hubert Howe, History of Washington, Idaho, and Montana. San Francisco, 1890.
- Commager, Henry Steele, Documents of American History. New York, 1934.
- Cubberly, Ellwood P., The History of Education. Cambridge, 1920.
- _____, Readings in American Education. New York, 1934.
- Cyr, Frank W., Arvid Burke, and Paul R. Mort, Paying For Our Public Schools. Scranton, 1938.
- Donaldson, Thomas, The Public Domain; Its History With Statistics. Washington, 1884.
- Hibbard, B. H., History of Public Land Grant Policies. New York, 1924.
- Hill, R. T., "The Public Domain and Democracy," Studies in History, Economics, and Public Law. New York: Columbia University, 1910.
- Houseman, Robert L., "The First Territorial Legislature in Montana," Pacific Historical Review, IV (1935) No.4.
- Knight, Edward W., Education in the United States. New York, 1929.
- Macdonald, William, Select Documents of United States History, 1776-1861. New York, 1919.
- Montana Legislative Assembly, Session Laws, 1891-1939. Helena, 1891-1939.
- Montana Mineral Lands Commission, Annual Report of the Montana Mineral Lands Commission, 1890-1895. Helena, 1895.

Register of State Lands, Biennial Report of the State Board of Land Commissioners, 1906-1926. Helena, 1906-1926.

Register of State Lands and Investments, Biennial Report of the Department of State Lands and Investments, 1928-1938. Helena, 1928-1938.

State Land Agent, Annual Report of the State Land Agent, 1891-1904. Helena, 1891-1904.

Swift, F. H., Public Permanent Common School Funds in the United States, 1795-1905. New York, 1911.

Treat, P. T., The National Land System. New York, 1910.

United States Statutes at Large, vols. 2-47.