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# State School Fund Lands: Validity of Exchanges and Cancellations of Tax Sale Certificates

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# STATE SCHOOL FUND LANDS: VALIDITY OF EXCHANGES AND CANCELLATIONS OF TAX SALE CERTIFICATES

*Florida Laws 1949, c. 25186*

## I. The State School Fund

A permanent state school fund was first provided for in the Florida Constitution of 1838.[1] The present Constitution, adopted in 1885, provides for the derivation of the fund[2] and the apportionment of the interest of such fund.[3] The sole constitutional provision in regard to its control is contained in Section 3 of Article XII, which relates to the powers of the State Board of Education of Florida.[4] The broad outlines of the area within which the powers of control are confined is disclosed in Section 5 of Article XII, which provides: "The principal of the State School Fund shall remain sacred and inviolate." It is the bark of this vigilant watchdog that all must heed.

Inasmuch as such constitutional provisions are not self-executing,[5] the Florida Legislature has seen fit to enact statutes conferring authority of wide latitude upon the State Board of Education with regard to the administration of the State School Fund.[6] There is no longer any serious doubt of the power of a legislative body to leave to an administrative agency the task of filling in the gaps, once the field of jurisdiction is delineated and the goal set in definite, though general, terms.[7] Florida Statutes 1941 expressly permits the Board to sell or rent lands held for educational purposes.[8] The constitu-

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[1]Fla. Const. Art. X, §1 (1838).

[2]Fla. Const. Art. XII, §4.

[3]Fla. Const. Art. XII, §7.

[4]". . . the State Board of Education of Florida . . . shall have the management and investment of all State School Funds under such regulations as may be prescribed by law."

[5]State *ex rel.* Parker v. State School Fund Comm'n, 152 Kan. 427, 103 P.2d 801 (1936) (in reference to similar provisions contained in Kan. Const. Art. VI).

[6]Fla. Stat. c. 229 (1949).

[7]*E.g., contrast* Currin v. Wallace, 306 U. S. 1 (1939), *with* Schechter Corp. v. United States, 295 U. S. 495 (1935); *cf.* State v. Atlantic C. L. R. R., 56 Fla. 617, 622-624, 637, 47 So. 969, 971-972, 976 (1908); see Note 2 U. of Fla. L. Rev. 86 (1949); 1 U. of Fla. L. Rev. 288 (1948).

[8]§229.08: "It shall be the responsibility of the state board [of education] to exercise all powers and perform all duties prescribed below: . . . (6) Control

tional question in regard to this provision has not been raised in this jurisdiction,[9] probably because of the direct authorization for such legislation contained in Section 3 of Article XII.[10] Section 5 of Article XII is complied with by maintaining the proceeds of sales in the permanent school fund.

## II. Validity of Exchanges of State School Fund Lands

Section 1 of the statute under discussion[11] is an attempt to add flexibility to the authority of the Board by expressly permitting it to exchange lands held in the school fund for other lands within the state. Whether this extends into leash-range of our watchdog depends upon the facts involved in the particular transactions and their relationship to judicial construction of the statutory and constitutional limitations. As declared in another jurisdiction having a similar constitutional provision,[12] it is the duty of the highest judicial tribunal of a state to enforce the constitutional provision that permanent funds remain inviolate.[13] The statutory requirement that an exchange be "advantageous"[14] is subject to more than one construction.[15] A square presentation, leading to a definitive statement by the courts concerning the extent to which each of the concepts "advantageous" and "sacred and inviolate" can be drawn toward the other without producing a prohibitive conflict, is desirable from the standpoint of certainty in negotiating with the Board.

In a comparatively recent case[16] the Supreme Court of Florida

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School Lands . . . to fix the terms of sale and policies relating to rental or use of such lands . . . ."

[9]*E.g.*, the provision was subjected to judicial review in Watson v. Caldwell, 160 Fla. 398, 35 So.2d 125 (1948), but was not questioned on constitutional grounds.

[10]See note 4 *supra.*

[11]"The State Board of Education of this State is hereby authorized in its discretion to exchange land of the state school fund held by said Board for other land in this State held by any other state agency, or by any county in this State, or by any person, private or corporate, where such exchange will be advantageous to said fund."

[12]Wyo. Const. Art. VII, §6.

[13]Alamo Drainage Dist. v. Board of Comm'rs of Big Horn County, 60 Wyo. 177, 148 P.2d 229 (1944).

[14]Fla. Stat. §229.241 (1949).

[15]*E.g.*, it might be advantageous in respect to value, location, size, shape, etc.

[16]Watson v. Caldwell, 160 Fla. 398, 35 So.2d 125 (1948). The Attorney General sought to cancel deeds effectuating an exchange of lands of equal areas

held that the power to exchange lands in the school fund was already included in Section 229.08 of Florida Statutes 1941.[17] Through Justice Terrell the Court stated: "We construe the language of this act to empower the Board to sell for cash, on terms, or it may exchange for other lands in kind."[18]

That such decision is conclusive as to the constitutionality of the subject act is beyond serious contestation; but that certain exchanges may yet be held invalid as trespassing on our watchdog's domain is equally beyond dispute. It is of paramount significance that the Court in *Watson v. Caldwell*[19] stated that the lands involved in the exchange were "in kind"; that no suggestion had come forth that the lands were not "of equal value"; that "the school fund was not in the slightest depleted"; and that "no constitutional mandate has been shown to have been violated." It is thus indicated that an exchange will withstand any attack provided the land involved are of equal value and in kind, that is, of the same quantity and quality.

Broad as the above judicial construction might appear, it is the obvious intent of the Legislature to implement further the power of the Board by enacting the subject statute, wherein the single limitation on an exchange is that it be "advantageous." The vagueness of this term has been mentioned earlier.[20] If the assumption is made that the lands are not qualitatively equal, yet other consideration is offered so as to meet the quantitative test of equality in pecuniary value, the problem that the Legislature chose to resolve is clearly presented.

Inasmuch as the power to sell lands comprising part of the principal of the State School Fund is an existent fact,[21] it is manifest that the pecuniary value of such land, rather than the land itself, is the fundamental object of preservation; therefore, it follows that an

between the State Board of Education and the Trustees of the Internal Improvement Fund. The exchange was made by the Trustees in obtaining title to lands for the Everglades National Park project. The exchange was held valid. FLA. STAT. §§270.07-270.09 (1949), requiring advertisement and sale to the highest bidder, was held not applicable because exchange is not a "sale"; FLA. STAT. §229.08 (1949) includes power to exchange; integrity of school fund rigidly observed.

[17]See Note 8 *supra.*

[18]Watson v. Caldwell, 160 Fla. 398, 401, 35 So.2d 125, 127 (1948), construing FLA. STAT. §229.08 (1949).

[19]*Ibid.*

[20]See note 15 *supra.*

[21]See note 8 *supra.*

exchange of lands of unequal areas is now permissible so long as that received by the Board is of at least equal pecuniary value. Of course, when there is a disparity in relative values, it should be proper to supplement the value of exchanged land by additional consideration sufficient to compensate for such disparity.

### III. Cancellation of Tax Sale Certificates on State School Fund Lands

Our watchdog[22] is called forth[23] by the Legislature in an effort to divert interested eyes from a succeeding fiat of considerable importance.[24] That such a move is futile is not suggested here; but it does constitute an attempt on the part of the Legislature to anticipate the ultimate holding of the Court as regards the construction of the mandate of our Constitution.

The Legislature has express power to exempt lands in the school fund from taxation.[25] It has the authority to provide for the cancellation of tax sale certificates when void.[26] The Legislature undoubtedly recognized the requisite of initial constitutional invalidity of previously assessed taxes and previously issued tax sale certificates on school fund lands, in the absence of any statutory tax exemption at the time of assessment. Accordingly, in order to vanguard its action, the Legislature ventured upon construction of the organic provision. But the order of the courts is the watchdog's master;[27] if the lands were constitutionally immune from taxation in the first place, it is because the courts will so hold[28] and not because the Legislature has retroactively so provided.[29]

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[22]Fla. Const. Art. XII, §5.

[23]Fla. Stat. §229.241 (1949): "In pursuance of the provisions of the Constitution of this state that 'The principal of the state school fund shall remain sacred and inviolate,' the land comprising part of said fund shall not be subject to taxes of any kind whatsoever, but shall enjoy constitutional immunity therefrom, nor shall taxes of any kind be imposed thereon; nor, since not subject to tax, shall the state or any state agency be liable for taxes or the equivalent thereof sought to be imposed upon said land. All outstanding tax sale certificates against land of the state school fund are hereby cancelled."

[24]*Ibid.*

[25]Fla. Const. Art. IX, §1.

[26]State *ex rel.* Northern Inv. Corp. v. Lee, 136 Fla. 561, 187 So. 368 (1939).

[27]See note 10 *supra.*

[28]Amos v. Mosley, 74 Fla. 555, 77 So. 619 (1917).

[29]*Ibid.*

## IV. Conclusion

The foregoing survey should prompt parties contemplating an exchange of lands with the Board to employ a reliable agent to appraise the properties involved, in order to insure that these lands be at least equal in value, although not necessarily equal in size or located in the same neighborhood. Such action would protect the parties, provided of course that judicial construction of the subject statute be in keeping with the spirit of its enactment, that is, that the Board be permitted to exchange small, excessively confining lands in congested urban areas for larger and more suitably located premises.

It is further submitted that the courts will uphold the legislative cancellation of outstanding tax sale certificates on the ground that the lands have all along been exempt from taxes by virtue of Section 5 of Article XII.[30] These lands may be considered in the light of a trust res held by the state for the benefit of all of its citizens.[31] The underlying principle behind the constitutional restriction is that such lands held in trust by the state should not be subject to tax liability.

The rights of holders of void tax sale certificates are not confiscated; the remedy is merely limited to recovery of the purchase price paid for the certificates.[32]

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[30]"The principal of the State School Fund shall remain sacred and inviolate." Specific exemption from taxation by the state was effected in 1940 by adoption of Fla. Const. Art. IX, §2, forbidding the state to levy any ad valorem taxes other than on intangibles.

[31]McKinnon v. State *ex rel.* Davis, 70 Fla. 561, 70 So. 557 (1915); Pennock v. State *ex rel.* Hood, 61 Fla. 383, 54 So. 1004 (1911).

[32]Fla. Stat. §194.35 (1949).