Report to the Colorado General Assembly:

PUBLIC SCHOOL LANDS IN COLORADO

COLORADO LEGISLATIVE COUNCIL

RESEARCH PUBLICATION NO. 47

December 1960

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COLORADO GENERAL ASSEMBLY

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The Legislative Council, which is composed of five Senators, six Representatives, and the presiding officers of the two houses, serves as a continuing research agency for the legislature through the maintenance of a trained staff. Between sessions, research activities are concentrated on the study of relatively broad problems formally proposed by legislators, and the publication and distribution of factual reports to aid in their solution.

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LEGISLATIVE COUNCIL

REPORT TO THE

COLORADO GENERAL ASSEMBLY

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COLORADO GENERAL ASSEMBLY

LEGISLATIVE COUNCIL

ROOM 343, STATE CAPITOL
DENVER 2, COLORADO
KEYSTONE 4-1171 — EXTENSION 287

December 15, 1960

To Members of the Forty-third General Assembly:

As directed by Senate Joint Resolution No. 24, adopted during the second session of the Forty-second General Assembly, the Legislative Council submits for your consideration a report on the procedures and policies of the State Board of Land Commissioners, together with accompanying findings and recommendations of a subcommittee appointed to carry out this study.

The accompanying material is divided into three parts: 1) A report of findings and recommendations adopted by a majority of the subcommittee, which is printed on green paper. 2) A report of findings and recommendations submitted by a minority of the subcommittee, which is printed on orange paper. As both the majority and minority reports are identical in many instances, the differences contained in the minority report are capitalized in order to provide ready comparison between the two. 3) A report containing research information compiled by the Legislative Council staff for use of the subcommittee to assist in its deliberations, which is printed on white paper.

The Legislative Council, meeting on December 9, 1960, voted unanimously to submit all of this material to the members of the Forty-third General Assembly, and also authorized the chairman to prepare a detailed letter of transmittal expressing additional views of the Council itself.

Because of the widespread interest which has been evidenced in this particular study, some supplemental comments

appear to be called for. The Legislative Council itself is a statutory body designed to function as the research arm of the General Assembly "to examine the effects of constitutional provisions and statutes and recommend desirable alterations, to consider important issues of public policy and questions of statewide interest, and to prepare for presentation to the members and various sessions of the General Assembly such reports, bills, or otherwise, as the welfare of the State may require" (Section 63-5-3, 1953 Colorado Revised Statutes.) The Council has a permanent research staff which is professionally trained in government and public administration. Staff members are non-partisan and, moreover, no attempt is made by the Council to learn the political views of its staff members.

As authorized by Section 63-5-2(1), 1953 C.R.S., it has been the practice of the Council to appoint subcommittees to carry out the studies assigned by the General Assembly. These subcommittees report to the Council on the results of their efforts and the Council, after reviewing the subcommittee reports, takes such action as it deems best and transmits these reports to the General Assembly.

The Chairman of the Legislative Council appoints the subcommittees subject to approval of the membership of the Council. In this connection, it is the general policy to appoint a Council members as chairman of a subcommittee in order that the Council may maintain closer contact with a subcommittee's activities. The vice chairman of a subcommittee is usually selected as a member of a political party and legislative house different from that of the chairman. Members normally are chosen on the basis of interest expressed in the subject, geographical location, and political affiliation.

Senator Paul Wenke, a Republican and a member of the Council appointed by the Lieutenant Governor, was approved unanimously by the Council to chair the subcommittee studying operations

of the State Land Board. Representative Forrest Burns was named vice chairman because he is a member of the opposite political party and legislative house, as well as representing a rural point of view different from those of some of the other members selected. Two members were selected largely because of the intense interest which they expressed in land board activities and because they represented opposite points of views. Two other members were appointed primarily because of their geographical location, and one member because of his experience and interest in game and fish matters which are closely connected with state land.

Between its first meeting in April and its last meeting in November of this year, the committee devoted many days to the subject under consideration and developed a substantial amount of background information from which policy decisions and recommendations could be made. As will be noted from the two reports, there is substantial agreement between the decisions of the majority findings and recommendations and those submitted by the minority. However, the Council believes that the following modifications are warranted, some of which have been suggested by the majority itself but have not been spelled out in detail, and others of which were pointed up by the views of the minority.

1. Subleasing - On page v and on page xxi, both reports discuss subleasing policies of the board. No specific recommendations are made in the majority report but the minority report on page xxx recommended that a statute be enacted specifically prohibiting subleasing. Most of the members of the Council believe that, while subleasing ought not be permitted as a general rule, there might be specific instances when it could be proper under certain circumstances which would bring a greater amount of revenue into the school fund than would otherwise be realized. Accordingly, the Council feels that an absolute statutory prohibition might be unwise, but that statutory and administrative regulation should be imposed to permit subleasing only upon specific request and in unusual circumstances.

Specifically, the Council recommends that State surface lease contracts include the following provisions: "Subleasing without the express written consent of the State Board of Land Commissioners during any part of the lease period will automatically cause loss of priority or preference right to renewal or, at the option of the Board, cause immediate cancellation of the lease."

2. Forest Land - At the bottom of page xii in the majority report (page xxx in the minority report), the Director of Natural Resources is "requested" to submit certain proposals for the conservation, exchange, or other disposition of the State forest. While submission of such material will undoubtedly be made by the director, it would be improper for the Council or one of its committees to request it in this manner. It is nonetheless necessary that the director's views be sought and be taken into consideration as there is clearly some doubt as to the wisdom of the Land Board continuing to administer the State forest as it does other State school lands. Consequently, the Council would change the committee's statement to read: "It is recommended that the General Assembly direct the Director of Natural Resources to submit to it his proposals for the conservation, exchange, or other disposition of the State forest."

3. Conflict of Interest - While the Council is under the impression that all members of the subcommittee were clear in their feeling that members of the State Land Board should not interest themselves in leases of land administered by the Board, it is felt by the Council that perhaps additional emphasis ought to be made on this point. On page xiii, the first sentence of the next to last paragraph should therefore be changed to read: "Legislation should be enacted providing that no Land Board member or employee should have a State lease, directly or indirectly."

4. Appraisals - Appraisals are discussed on page xxiv in language not adopted by the majority report. The Council wishes to call attention to this discussion on appraisal practices which

appears in the minority report and also the recommendations of the minority with respect to appraisals and other matters on page xxxi. However, it would appear that, if the recommendation of the minority to have local appraisals made every six years were to be adopted, this would be in conflict with prior action of the Assembly in connection with the assessment of other real property in attempting to bring about uniformity in appraisement practices. While the regular appraisement of State lands is advisable, whether delegation of this function to a local board is consistent with present trends is questionable.

5. Land Use - All surface lease contracts should include a provision specifying the purpose for which the land may be used and, if the land is used for any other purpose, the lease will be subject to immediate cancellation.

Respectfully submitted,

Charles Conklin

Charles Conklin
Chairman

COLORADO GENERAL ASSEMBLY

LEGISLATIVE COUNCIL

ROOM 343, STATE CAPITOL
DENVER 2, COLORADO
KEYSTONE 4-1171 — EXTENSION 287

November 30, 1960

Honorable Charles Conklin, Chairman
Colorado Legislative Council
State Capitol
Denver 2, Colorado

Dear Mr. Chairman:

Your committee appointed to carry out the study requested in Senate Joint Resolution No. 24, 1960 session, relating to a study of "the procedures and policies of the state board of land commissioners with a view toward securing a maximum revenue yield to the public school fund," has completed its work and submits herewith its recommendations together with accompanying research material.

The committee wishes to express its appreciation to Dr. Edward L. Clark, director of the State Department of Natural Resources, who served as a special consultant to the committee, and to Miss Clair T. Sippel, secretary of the Legislative Reference Office. The committee also would like to thank the board members and employees of the State Board of Land Commissioners whose cooperation and efforts assisted us greatly in our work.

By a unanimous vote of its members, the committee takes this opportunity to commend the staff for the truly objective manner in which it performed and for the many hours of overtime contributed by the staff to the committee's study.

Respectfully submitted,

Paul E. Wenke, Chairman

FOREWORD

Senate Joint Resolution No. 24, adopted in the 1960 session of the Forty-second General Assembly, directed the Legislative Council "to study the procedures and policies of the state board of land commissioners with a view toward securing a maximum revenue yield to the public school fund." At its first meeting following the 1960 session, on March 9, 1960, the Legislative Council appointed the following committee to carry out this assignment: Senator Paul Wenke, chairman; Representative Forrest Burns, vice chairman; Senators Wilkie Ham and Earl Wolvington; and Representatives Yale Huffman, Phillip Massari, and Clarence Quinlan.

The committee held its first meeting on April 27, 1960, at which time it adopted general areas and specific questions for study, as well as appointing Dr. Edward L. Clark, director of the Department of Natural Resources as special consultant to the committee. On May 28, 1960, the committee met for its first conference with members and employees of the State Board of Land Commissioners; the committee also decided to conduct a series of area meetings in various parts of the state to enable interested persons to express their views on policies and procedures of the state land board.

During the summer, area meetings were held in La Junta (June 13), Colorado Springs (June 24), Steamboat Springs (July 30), Durango (August 1), and Fort Morgan (August 20). Subsequently, on October 6 and 7, 1960, the committee met in Denver to enable any additional feelings to be expressed on the part of interested persons and to confer again with members and employees of the state land board.

The committee's meeting of November 12, 1960 was devoted primarily to a review of various comparisons concerning lease rental rates and estimates on the sale of state land which had been prepared by the staff and to instructing the staff in regard to drafting a tentative report for the committee. At its final meeting, on November 29, 1960, the committee went over the tentative language prepared by the staff, making changes in line with the committee's thinking, for submission to the Legislative Council.

Mrs. Kathleen C. Hayes, administrative secretary of the Department of Natural Resources, and numerous employees of the State Board of Land Commissioners were of great assistance in preparing transcripts of five of the committee's meetings.

Miss Clair T. Sippel, secretary of the Legislative Reference Office, assisted the committee by summarizing the laws of 14 other western states having state land. Phillip E. Jones, senior research analyst, had primary responsibility for preparing the research material, assisted by David Morrissey and Janet Wilson, research assistants.

Lyle C. Kyle
Director

November 30, 1960

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The fundamental question before this committee has been how to secure a maximum long-term revenue yield to the public school fund from our school lands.

Securing Maximum Long-Term Return From School Lands

If all of the remaining 2,652,000 acres of school lands could be disposed of by January 1, 1962, at the land board's appraised value, and if the proceeds from the sale could be invested at the average rate received last year (3.17%), the school children of Colorado would be the recipients of greater funds than is now being collected from lease rentals.

However, the committee does not feel that 1962 is the only year that should be considered when looking to securing the maximum long-term revenue to the public school fund - the committee is interested not only in 1962 but in 1972, 1982, 1992, and beyond. Further, the committee believes that much of the land board's difficulties can be alleviated or eliminated through the adoption of various legislative or administrative changes.

No one of course has suggested the possibility of disposing of all state lands by 1962. An orderly sale could probably be had over the next ten or 20 years. But would this porposal be the best solution in terms of long-term revenue? While this committee does not have a crystal ball which will enable it to positively answer "yes" or "no" to this question, the committee can look to the past as a possible guide to the future.

The committee recognizes that the value of state land 30 years ago varied from $1 to $10 per acre. However, if the state had sold all school lands 30 years ago, as some states have done, and if the state could have realized an average of $10 per acre for the approximately 3,000,000 acres, there would have been a total return of $30,000,000. Had that sum been invested, based on the interest on the investments received by the land board over the past 30 years (3.32%), revenues totaling $29,880,000 would have been collected.

On the other hand, income from surface rentals to the school fund during the 30-year period totaled approximately $17,530,000. However, compared to the $10 per acre figure assumed for 1930, the value of the school land in 1960 is estimated at $56,000,000, or an appreciation in value of $26,000,000 over the 1930 figure of $30,000,000. Consequently, on this basis, the school fund is obviously in better shape today than it would have been had the land been sold in 1930. That is, in terms of actual rentals, the school fund has collected $12,350,000 less from rentals than it would have had the land been sold and the money invested, but the increase in the value of the land itself more than makes up this difference by some $14,000,000.

Furthermore, surface leases yielded $1,266,000 in the 1960 fiscal year. The $30,000,000 that would have been realized in 1930 from the sale of the school lands would have yielded only $951,000 in 1960, based on the 3.17 per cent return realized on other investments in 1959, or $314,000 less than rentals yielded.

If land values were to remain stable, it might be wise to sell the school lands now. However, all indications point to an ever increasing value for land, particularly in view of the tremendous population growth experienced recently in this state.

The sale of state school land might also invite the possibility of large acres of land being plowed for quick cash crops, creating dangers of the dust bowl experienced in the 1930's.

It is therefore the considered opinion of this committee that retention of the school lands is presently the wiser course, and the committee feels that the present law relating to the sale thereof is currently adequate.

Use of Administrative Powers

Justice and good administration go hand-in-hand, but they cannot be achieved when administrative policies may be formulated, changed, or suspended on a day-to-day or case-to-case basis. No public body can operate in such a manner as to give the impression, whether true or not, that it is a law unto itself, and still retain the confidence of the people for whom it was established to serve. Furthermore, correcting abuses of administrative rule-making powers by public agencies is every bit as important a function to the legislative branch of government as it is to the judicial branch.

The statutory provisions relating to the supervision of state land by the State Board of Land Commissioners are rather general with the result that a great deal of administrative discretion has been left to the board. Consequently, the board's policies and regulations assume substantital importance in the handling of state land matters.

The board from time to time has adopted regulations and, as it should, has changed its regulations in view of changing conditions. More importantly, however, the board has also suspended its regulations in certain cases and enforced them in others. This has served to confuse and disconcert various persons in their dealings with the board. Comprehensive and clear-cut policies are needed.

Lease Extensions and Competition. The effect of the board's extending leases bears a direct relation to the matter of competition in bidding on leases. That is, a would-be lessee may not be aware of lease extensions which would preclude him from an opportunity to bid at the original expiration date had this date remained unchanged.

A somewhat unclear or inconsistent position is presented by the land board in connection with extending leases or cancelling leases before the original expiration date and issuing new ones. In its bulletin of May 25, 1955, under item number 4, the board reported:

> "...but under the present law that would not work as we are required to post expiration dates in the court houses, and if we arbitrarily issue a new lease for five years, where the old one only had a year or two to run, it would be contrary to law as it would deprive any prospective applicant from his right to make an application for land he desires to lease." (Emphasis added)

However, the land board apparently changed its mind on this point because numerous examples are available where leases were prematurely cancelled and new ones issued, including some not involved in lease consolidations.

In the board's proceedings for December 31, 1956, the following comment appears:

> "Lease P-44 held by Orvin W. Palmer was assigned to Donald Jensen. It was then ordered that Lease P-44 be cancelled as of February 1, 1957, and a new five year agricultural lease was ordered to Donald Jensen at $2.00 per acre per annum..."

The original expiration date under lease P-44 was May 1, 1959, at a rate of $1.75 per acre per year, so the lease was cancelled slightly more than two years in advance.

As allowed by law, the board does not always accept the high bid in granting leases. Four examples of this, which were noted in the board's proceedings, may be of interest. The reason for the board's action in the first and last example is reported, but no specific reasons are included in the proceedings for the other two cases.

During the board's proceedings of October 31, 1955, a lease application filed by Floyd Garretson offering $5.66 per acre per annum was denied, with the following explanation:

> "When this lease was assigned to the present lessee a little over a year ago, the assignment consideration of $1,520.00 was paid. The board, therefore, do (sic) not consider it would be fair or using good business methods to take this lease away from the present lessee as long as he is willing to pay the rental fixed by the board."

Under the lease issued, number S-29159 to Darold, Hillard, and Marlene Yost, the rate on the 304 acres of agricultural land in Phillips County was set at $3.00 per acre per year.

At the board's proceedings of November 15, 1955, the board denied a conflicting grazing lease application of $1.00 per acre by Mr. A. A. Pelton and renewed the lease on 640 acres of grazing land in Cheyenne County to the lessee, Mr. Frank Moyer, at a rate of 45¢ per acre "after careful consideration by the Board." (The land had formerly leased for 20¢ per acre and the appraiser had valued the land at 30¢ per acre at renewal time.)

On November 30, 1955, the land board considered a conflicting lease application by Mr. Richard A. Harris who offered $2.50 per acre on agricultural land and 60¢ per acre on grazing land. "After a careful investigation and determination of all factors involved, lease was granted to the former lessee, August Frank, at a rental rate of $1.50 per acre per annum on 80 acres agricultural land and $0.60 per acre per annum on 951.04 acres grazing land."

The board, on December 31, 1956, ruled that the lessee, Mr. Harry Freeman, did not have to meet the high bid of Mr. M. B. Whittlesay, explaining that "inasmuch as the old lessee has recently paid the full consideration for the assignment of this lease, the Board considers that he is entitled to the renewal of his lease at the advanced rental rates." Mr. Freeman had paid $193 as consideration to the state to acquire this lease which included 50 acres of agricultural land at $1.50 per acre and 590 acres of grazing land at 25¢ per acre. At the renewal time, the conflicting application was $2.00 per acre for the agricultural land and 75¢ per acre for the grazing land. The lease, however, was renewed to Mr. Freeman for $2.00 per acre for the agricultural land and 43¢ per acre for the grazing land.

Lease Assignments. Another rule which has been suspended by the board is the one providing that, in cases of lease assignments, the consideration to the state shall equal one year's rental. In the proceedings of the board for July 31, 1958, the following comments are reported:

> "Lease No. S-29570 was assigned from Leslie H. Parker to Edmund P. Tapp, Jr. and Sons Trust Estate. The rental rate on the lease is $1.00 per acre, which was set by conflict. In approving the assignment, the Board fixed the assignment consideration at $247.50, based on the $1.00 per acre rental rate.
>
> "In reconsidering this matter the Board has agreed that the conflicting rate of $1.00 per acre should not have been the basis used in fixing the assignment consideration.

> "The assignment consideration is therefore amended to $99.00, based on a normal rental rate of $0.40. A credit of $148.50 is, therefore, due the lessee, Edmund P. Tapp, Jr. and Sons Trust Estate..."

The policy of the land board to charge one year's rental as a fee for approving lease assignments, reported earlier on page 13, seems fair and reasonable to the committee. However, the committee questions the justification for the board's reducing the assignment fee in any case when the new lessee knows beforehand what this charge will be.

Subleasing Policies. Subleasing policies followed by the land board vary. In the lease contract, item number four provides:

> "Subleasing during any part of lease period will automatically cause loss of priority or preference right to renewal."

However, exactly what constitutes subleasing is another subject for board determination. In this respect, for example, in its bulletin of May 27, 1955, the board stated that "pasturing of cattle belonging to other than the lessee will not necessarily be considered subleasing." This position was further clarified in the board's bulletin of September 23, 1957, when it said:

> "In view of the present grazing law under which we are operating, we do not consider taking in cattle to pasture a violation of the lease contract..."

At the Board's meeting of January 31, 1955, the Board issued a lease to Mr. John C. Vroman, Jr., with the following comment:

> "This is to be an immunity lease and rental rates are to apply for the full five year term of the lease. Lessee is granted the privilege of subleasing for the term of the lease." (Emphasis added)

The state land board reports that immunity leases are no longer issued as a result of a change in policy in 1956.

Lease Rate Policies. The situation with regard to lease rate policies of the land board is not clear. For example, at the Denver meeting, Mr. Willburn, board commissioner engineer, said that the rental fee is arrived at by the productivity of what the land is being leased for. On the other hand, at the Colorado Springs meeting, Mr. Ramsey, board president, reported that "when a man comes in there, and renewed (sic) a lease for six years, and went out there the next day and put it in a five-year soil bank contract, we knew nothing about that, and cared less, as a matter of fact."

This raises the question as to how the matter of productivity is evaluated if the board does not care to know the purpose for which the land will be used, especially in view of the fact that the board knowingly would issue a lease at 37¢ per acre, part of which, at least, was placed in the federal soil bank program.

Reference is made to Table 7, on page 28, showing that, compared to other states, Colorado ranks high in terms of surface lease rentals, as may be noted in the following summary:

Total Surface Income		Agricultural Leases		Grazing Leases	
Oklahoma	$1.31	Washington	$7.03	Colorado	$.31
Nebraska	1.15	Montana	3.16	Washington	.20
Washington	1.02	Colorado	2.56	Wyoming	.20
Colorado	.42	Idaho	2.10	Idaho	.11
Montana	.41	Arizona	1.97	Montana	.09
North Dakota	.40			Oregon	.08
Idaho	.17			Arizona	.05
Arizona	.10			New Mexico	.05
New Mexico	.05				

Lease Rate Reductions. In reviewing the board's proceedings, a few instances were noted where lease rates were reduced. One instance, reported in the proceedings of February 28, 1955, was to the effect that the board felt the lease to Mr. Carl Hussey was too high whereupon it ordered the old lease cancelled and a new five-year lease issued. The original lease, S-28241, was issued for the period March 6, 1954, to March 6, 1959, at the annual rate of $5.00 per acre on 140 acres of agricultural land and 34¢ per acre on 500 acres of grazing land. The rates under the new lease are $2.75 per acre on the 140 acres of agricultural land and 34¢ per acre on the 500 acres of grazing land.

A similar report to the Hussey lease is noted in the proceedings for June 29, 1956, as follows:

> "Because of the rental rate being excessive, the Board ordered the cancellation of Lease No. S-27709, effective March 25th, 1956, and under Application 56/373 a new five year lease is granted the lessee at a rental rate of $0.40 per acre per annum, the lease to date from March 25th, 1956. Lessee, Eva Adcock."

S-27709, which was a five-year grazing lease beginning on March 25, 1953, carried a yearly rate of $1.25 per acre on 59.75 acres of grazing land.

It is noted that these actions were taken under the provisions of the Colorado statutes, being sections 112-3-9 and 112-3-14.

Soil Banking. The board pointed out to the committee that the law authorizes ten-year agricultural or grazing leases and reported that, in extending some leases to allow lessees to participate in the soil bank program, no lease was ever extended over the original ten-year period. Also, it was stated that these leases were not renegotiated or new leases issued: "No rates were changed, or anything of that sort. We just made an extension."

In regard to the report that no leases were extended for soil banking purposes over the original ten-year period, i.e., ten years from the date the lease was first put into effect, in the board's proceedings for February 28, 1958, lease number S-27958 (Mr. W. A. Forbes, lessee) was extended to December 4, 1964, which lease went into effect originally on December 4, 1953, or 11 years over-all. Section 112-3-18 (1), 1955 C.R.S. Supplement, states: "...No lease of such lands for grazing or agricultural purposes shall be for a longer period than ten years..."

The statement that no lease negotiations or rate changes were made also appears to be in error. In the proceedings for August 15, 1959, two lessees, who had entered into soil bank contracts for terms longer than their state land leases provided, requested that their state land leases be cancelled and new ones issued. This was done at no increase in rental rate for one (Mr. Ralph L. Foxworthy), but the rental rate was increased for the other lessee (Mr. J. E. Baker), from $1.00 to $1.50 per acre on 125 agricultural acres and from 33¢ to 35¢ per acre per year on 435 grazing acres.

On February 15, 1957, the board granted a lease at what appears to be a grazing land rate, part of which at least was to be placed in the soil bank program. The proceedings for that date contain the following statement:

> "In order that State lessee, Leonard C. Tarpenning, may conform to the Soil Bank program, the Board ordered that Leases S-28376 and S-28517 be cancelled as of January 1, 1957, the lands held thereunder to be combined into one lease at a rental rate of 37¢ per acre per annum. Lease to be a six year term lease..."

Prior to this lease consolidation, S-28376 had been established on September 2, 1954, as a five-year lease, at the rate of 32¢ per acre for grazing use. S-28517, to run from January 13, 1955, to January 13, 1960, also had a rate of 32¢ per acre for grazing use.

However, as reported on page 14, state-owned land is no longer eligible to be placed in the federal soil bank program, and this consequently is not now a current issue before the committee.

Denial of Access to Potential Lessees

Some parcels of state land are entirely surrounded by deeded land belonging to one owner. In these cases, competition for the state parcel can be obviated when access thereto is denied by the private land owner. On the other hand, such an isolated parcel may assume a nuisance value beyond its actual value to the owner of the surrounding private land.

While the committee is aware of the problems which can result from this situation, the members do not believe this to be a problem requiring legislative action. The committee would suggest that the state land board explore this situation further to determine if any administrative action should be taken to correct any abuses in these cases and, where an acceptable offer is made, to sell these isolated tracts.

Landowner Services

As mentioned on page 37, some of the western states make allowances for such lessee activities as soil conservation or noxious weed control work. In this state, the law requires lessees to be compensated in the event of lease transfers or land sales for authorized improvements which they have made, including fences, wells, stock tanks, etc., but no specific authorizations are provided to credit lessees for soil conservation, noxious weed control, or similar activities.

The present law adequately protects the investment in improvements by lessees and no additional charge is needed. It is to the lessee's benefit to maintain the land in its most profitable condition and no credits need therefore be provided by the state land board.

Non-resident Lessees

Non-resident lessees of state land appear to cause some concern to Colorado residents who are unable to obtain leases on state land. While some states impose restrictions on non-residents, the committee does not believe it would be constitutional to limit state land leases to Colorado residents only. In addition, this could be a limiting factor in terms of obtaining the maximum revenue yield as it would reduce competition in some instances.

Lessee Improvements on State Land

Lessees may add improvements to their state land under lease in the form of fences, wells, buildings, etc., and the title thereto is retained by the lessee on all such improvements which had received the authorization of the land board. Lessee improvements are also subject to ad valorem taxation.*

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* Section 137-12-1 (5), 137-12-18, 1957 C.R.S. Supplement.

As authorized by law, in the event a lessee no longer controls the lease, he must be compensated for the value of these improvements by the new lessee or owner of the land. One effect of the present provision is to limit lease competition and land sales in cases where there is disagreement over the appraised value of the improvements as set by the land board.

A check of the 1959 report of the State Tax Commission shows that improvements on state land are placed on the tax rolls in only 34 of the 53 counties where this land is located. To illustrate, one state lease alone in Washington County has lessee improvements valued by the land board at $29,611, but no such assessments at all are on that county's tax rolls. In view of the fact that some counties report that their tax base suffers as a result of the state land located therein, the committee would merely point out that a number of counties apparently are not concerned enough now to utilize their full taxing powers on lessee improvements.

Conflict of Interest

Throughout the course of this study the issue of conflict of interest on the part of land board members and employees and other state officials (legislators for the most part) has received a great deal of publicity in the press. The committee not only has been quite aware of this issue but has devoted a substantital amount of consideration to this question. Moreover, the committee would like to point out that it found no evidence to indicate that any state law in this connection was violated nor that any public official exerted pressure upon the land board to receive "favorable" lease terms.

However, the holding of state land leases by the members of the State Board of Land Commissioners and its employees cannot be approved. The current practice by some field appraisers of engaging in private real estate brokerage or sales agent transactions should not be continued.

Emotionalism

Another cause of friction and discontent may well be classified as "emotionalism." That is, because two members of the three-member board are strongly identified with the interests of cattlemen, non-lessees may suspect the existence of an "unholy" alliance between the board and its rancher-lessees. On the other hand, state land lessees appear to be suspicious of any changes in this area as it is a matter which, for many, is felt to directly threaten their economic livelihood. To illustrate, some of these people may be quick to accept any statement as fact which is in support of their position regardless of its validity, or discount anything which does not support their position no matter how accurate it might be; also, rumors are readily believed no matter how fantastic they might be, such as one that the purpose of this committee was to raise state land rental rates to a minimum of $1.00 per acre.

On this point, the committee is not aware of any feasible solution at this time. Some people are suspicious by their very natures, while others are suspicious by design, and no governmental action will ever change them. Some help might be provided by altering the board's composition to include a more representative membership, or the administrative structure could be altered to establish an appeals board. This latter board either could be in addition to or in place of the present full-time board. In any case, these changes would require constitutional amendment, and the committee is by no means convinced that such action is warranted at this time.

Preference to Lessees

Preference to state land lessees is provided by law in that "before land shall be leased to anyone other than the present lessee said present lessee shall be given ten days notice and an opportunity during said ten days to negotiate with the state board of land commissioners concerning a new lease."* As a general rule, the land board has interpreted this to mean that a lessee will have to meet any other bid which the board feels is made in good faith and within reason. Also, by board ruling, lessees usually are given the right to retain land under lease on which an acceptable sales bid has been made at an increased rental rate.

The committee agrees with these actions of the State Board of Land Commissioners and sees no need of legislative changes in regard to preference to lessees. As lessees must have some security in terms of land planning, the preference policy contained in the law is justified, particularly since a lessee must meet any responsible bid to retain the lease. Also, the committee agrees with the June 1, 1959, regulation allowing lessees to retain leases at an increased rental rate rather than selling the land.

Fort Lewis School

As reported on page 14, mineral rights on the land belonging to the Fort Lewis School are to be leased jointly by the State Board of Land Commissioners and the State Board of Agriculture. It seems to the committee that this responsibility should be solely one or the other of these two boards, but not both. In view of the fact that the land board maintains a mineral department headed by a professional geologist, with year-around attention being devoted to oil and gas leasing activities, the committee believes that the land board should be provided complete leasing authority. Such a step would also preclude any future reoccurrence of disagreement between the two boards as to the best time to lease oil and gas or other mineral rights. The committee also believes that the land board's policy of attempting to keep as much mineral rights under lease as possible is sound, and that it would be unwise to speculate with these leases.

* Section 112-3-18 (1), 1955 C.R.S. Supplement.

The committee approves the present policy of the board of advising the State Board of Agriculture and the Board of Regents of the University of Colorado of the sale of any of the lands granted Colorado State University and the University of Colorado.

Unbalanced Distribution of State Land Among Counties

A major cause of friction or discontent results from the unbalanced distribution of state land among the 63 Colorado counties. As shown in Table 1, the amount of state land varies considerably from county to county. Some counties, especially those having large amounts of state land, feel that they have a substantial tax problem as a result of this land not being on the tax rolls. Similarly, resentment may result on the part of some counties since the public school income fund is distributed on an equal per aggregate pupil basis to all counties regardless of the amount of school land located therein.

An additional result from the large concentration of state land in some counties is the creation of large land lessees. For example, grazing leases consisting of more than 10,000 acres of state land encompass 945,000 acres, or approximately one-third of the state land board's surface total of 2,895,000 acres. A related point in this respect is the board's policy of consolidating leases held by one leesee into one lease wherever possible; this practice has brought reports of discontent on the part of potential competitive bidders who may be interested in only a portion of the land under lease.

An obvious solution to the problem of the unbalanced distribution of state land which has been suggested to the committee would be for the land to be sold in an orderly manner. As pointed out earlier, however, the committee believes that it would be unwise for the school fund to dispose of its surface holdings.

The creation of large lessees of state land means to some potential lessees that they cannot compete on equal terms in attempting to secure leases on part of these acres. While it has been suggested to the committee that leases to any one person be limited in size, the committee believes that such a program would not be an equitable solution and could lead to administrative difficulties in the enforcement thereof. Further, the committee believes that if a person is willing to offer the highest bid or meet the highest bid on school land, the school fund should not be penalized by restricting the amount of acres in this manner. Also, in some cases it would be difficult to break up large leases into smaller ones due to water rights, no access to the land other than by the present lessee, and because the value of the improvements which have been added to the land by the present lessee would make it impractical for any one other than the present lessee to utilize the land.

Findings as Related to the State Forest Timber Contracts and Grazing Permits

Timber Contracts. It appears that commercial timber cutting in the state forest will cease by the close of 1962. Three cutting blocks containing 5,300,000 board feet remain to be cut. Twenty-one cutting contracts have been let. The stumpage prices have varied with each contract. Provisions contained in some contracts have not been enforced as to the minimum amount to be cut in any single year. Several contracts have been extended more than once, without any adjustment of stumpage price to market prices which then prevailed. Overcutting the amount of the board feet provided in the original contract has been characteristic, with the overcutting ranging from 24 to 406 per cent. This overcutting, in 11 contracts, and the repeated extension of the original contract, in 17 contracts, has been accomplished without advertising or competitive bidding.

When the remaining timber has been cut, the revenue from the timber will be nil and must come from the grazing leases and the miscellaneous sale of posts, poles, Christmas trees, and pulp wood dependent upon a market for pulp wood.

Good reproduction exists, but much covered area is in need of thinning. Moderate to severe fire hazards exist and will become worse unless fire breaks are installed, slash is minimized, and fire combat equipment is made available closer to the forest.

Grazing Permits. When the state forest was established, those ranchers holding U.S. Forest grazing allotments in the area of the state forest were granted state grazing permits. Prior to June 1, 1956, the rentals were on a per animal month unit basis of 23-1/4¢ for sheep and $1.16-2/3¢ for cattle. In 1956 all permits were renewed and placed on a per acre rental basis with rentals ranging from 8.5 cents to 18.2 cents per acre. All permits were consolidated on June 1, 1959, and reissued for a ten-year period to the State Forest Grazing Association for an amount equal to the total rentals paid by the individual permit holders.

In effect, all grazing permits have been extended without advertising. When one lease was dropped, it was advertised and sold for a bonus payment of $2,550. The Grazing Association now pays an annual rental of $8,904 for 70,317 acres of land at a rate equivalent to 12.6 cents per acre. The state lease to the Association provides that subleasing to any person other than stockholders in the Association will automatically cause loss of priority or preference right to renewal. This provision will be a future hindrance to open competitive bidding for the grazing rights in the state forest.

Recommendations. The committee requests the director of the State Department of Natural Resources to submit to the 43rd General Assembly proposals for the conservation, exchange, or other disposition of the state forest.

Legislative Changes Recommended

While the committee believes the sale of the state's school lands would not result in the maximum long-term revenue yield, certain legislative and administrative changes, if adopted, would serve to alleviate or eliminate many of the difficulties or causes of friction and concern which were found by the committee.

Board's Rule-making Powers. The present law should be amended to require the land board to follow well-defined, standard procedures in establishing, amending, or repealing any of its rules or regulations. All rules and regulations should be adopted in accordance with the Administrative Procedure Act of 1959 (Chapter 37, Session Laws of 1959), and in addition all rules should be submitted to the Attorney General for advice as to their legality. In any event, continuing reports concerning any such actions should be provided the director of the Department of Natural Resources.

Land Values. Land board appraisers should include estimated values in their reports which have some meaning, such as the minimum price which might be expected for sales purposes. The board would then be able to maintain a closer review on the practices and rental rates set by the appraisers, as well as have fairly up-to-date and realistic figures on this land and what rate of return is being realized from lease rentals.

Values of Improvements. In order to provide a means of settling disputes over the appraised value of lessee improvements, and correspondingly increase competition, the committee recommends that the law be amended to require an independent appraisal by someone not connected with any of the parties involved, including the state land board, in cases of conflicting lease applications or sales applications if so demanded by either party.

Conflict of Interest. Legislation should be enacted providing that no land board member or employee should have a state lease. Legislation prohibiting real estate brokerage or sales agent activities on the part of land board employees should also be adopted, but the two foregoing qualifications should not apply to part-time, contractual appraisers. At the same time, the committee feels that a re-evaluation of the salary scale for the board's field appraisers may be called for in order to raise their compensation to a level where the board can retain competent employees wihout supplemental income from real estate brokerage or sales agent dealings.

The committee sees no need or reason to eliminate holding state leases on the part of any public official who is not directly connected with the state land board. If such a position were taken, it would mean that upon becoming a public official, a person would have to sacrifice what might be a vital part of his means of earning a livelihood. This would be particularly punitive in the case of part-time public officials whose services are being provided now in many instances at a private financial sacrifice.