THE PUBLIC LANDS OF TEXAS AND THEIR USE
FOR THE BENEFIT OF EDUCATION

THESIS

Presented to the Graduate Council of the
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Fulfillment of the Requirements

For the Degree of

MASTER OF SCIENCE

By

John M. Webb, Jr., B.S.
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CHAPTER I

EARLY ATTEMPTS TO PROMOTE EDUCATION IN TEXAS

Educational Efforts of the Spaniards

The educational efforts of the Spaniards in Texas were directed toward two distinct ends: the training of the savage native tribes in the fundamental habits of civilized life, and imparting the simpler elements of learning to the children of the small body of colonists and of the soldiers of the several garrisons. Nacogdoches and San Fernando de Bexar were the two settlements of any importance throughout the period.

During the Spanish regency, numerous intermittent efforts of the government attempted to encourage parents to send their children to school, and later, under heavy penalties, sought to compel them to do so, for the reason that the rudiments of education were considered of great importance both to the Catholic church and to the state. Official records and proclamations are replete with evidence that Spanish authorities were anxious to have primary schools established, but, in the main, at private expense. The larger garrisons and towns came to maintain schools from voluntary contributions of heads of families and company

1Frederick Eby, Education in Texas, Source Materials, p. 1.
funds. Through the years repeated efforts were put forth by the governors, the auyuntamientos and by private parties to establish schools and maintain them in continuous operation, but the conditions were very unfavorable.

Mexican Policy

During the decade preceding the revolt of Mexico, protests were directed at the Spanish Monarchy for failure to provide schools. Following the independence of Mexico from Spain, education was held to be under the jurisdiction of the Federal constitution. Apparently a keener interest in education was manifest in the new nation. Schools were ordered established throughout the several departments of the state of Coahuila and Texas, and were actually carried on in a number of settlements in keeping with the ideals of education commonly held by the Mexican population.

The same year that Mexico threw off the Spanish authority, Anglo-American colonists permanently entered Texas. They immediately began planning to train their children according to their own conception of education. Their ideas of schools and their efforts to promote education were in general conflict with the Mexican efforts to establish a system of education privately financed, publicly inspected, and decidedly religious and nationalistic in purpose.

2 Ibid.

3 Lewis B. Cooper, The Permanent School Fund of Texas, p. 8.
A decree of the state of Coahuila and Texas in setting off town squares, provided that one block was to be set aside for a school and other buildings of public instruction. Regardless of the fact that a number of congressional decrees were issued concerning the establishment of a school system, provisions for education in Texas remained inadequate under the sovereignty of Mexico.

Stephen F. Austin cherished a deep regard for education and evinced a constant desire to promote schools. Austin proposed that the Congress of Mexico should have the power to establish a general system of education and to appropriate the public funds or any public property for the endowment and support of schools, academies and colleges or other literary institutions.

This is perhaps the first reference ever made by any citizen of Texas to the policy of appropriating public lands and property to a permanent fund for the endowment of education.

The first land grant to schools was made by decree of congress of the state of Coahuila and Texas. This decree set aside four sitios (4,428 acres) of land to the town of Nacogdoches in 1833 to be used exclusively as a fund of the primary school wherein the Castilian language and subjects required by the Federal constitution were to be taught.

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5 Cooper, *op. cit.*, p. 8.

The lands granted were to be located within the municipality and to be absolutely free from all disputes and claims. They could be used only to obtain rent or similar revenue since their transfer by sale was forbidden. This land grant marked the beginning of appropriation from the public domain to endow public schools of Texas.

Progress in the Republic of Texas

When a new government is established, sovereign and national in its character, all of the land within its jurisdiction belongs to the people, not as individuals, but as a whole, except that which may have been theretofore acquired by individuals under such rights as may be respected by the new government. The land which has not been acquired by individuals is known as the public domain, and is subject to such disposition as the new government might determine. This was the condition in Texas when the Mexican rule was overthrown and the Republic of Texas established. The public lands were under the jurisdiction of the provisional government from November 13, 1835, until the Constitution was adopted and put into operation in 1836. The Government of the Republic of Texas administered the public domain until February 16, 1846, at which time Texas was annexed to the United States. Since annexation, land matters have been under the jurisdiction of the State of Texas. Texas is the only state that has had complete control over both the

7Land Office Report, 1920, p. 36.
public lands within its boundaries and the proceeds arising from the administration and sale of the lands.

The land system of Texas had its origin in the Spanish civil law which was the rule of decision in Texas prior to its attainment of independence from Mexico and throughout the four succeeding years. However, the English common law was, in general, substituted for the Spanish civil law by an act of the Texas Congress in 1840. Yet, some features of the civil law, especially laws passed by the State of Coahuila and Texas and by the independent government of Texas relating to reservations and grants of land, were specifically retained. Notwithstanding this partial adhesion to Spanish jurisprudence, the fact that Texas was settled by Anglo-Americans meant, inevitably, that many features of the English legal system, to which Texans were accustomed, would be applied to land, as well as to other property. The result was a fusion of the Spanish and English systems of jurisprudence in Texas. Both land measurements and the characteristic size of surveys distributed to individuals vary between the two systems. At first the Spanish system of land measurement was used almost exclusively, and in spite of its preference

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8 Aldon S. Lang, Financial History of the Public Lands in Texas, p. 23.


10 Lang, op. cit., p. 25.
for the English measures, the Texas government has been forced to deal constantly with the old Spanish system.

The General Land Office, in 1858, sent circulars to all surveyors, instructing them in the Spanish system of land measures. A comparison of the two systems of land measurements, the Spanish and the English, is shown in Table 1.

TABLE 1

A COMPARISON OF SPANISH AND ENGLISH SYSTEMS OF LAND MEASUREMENTS

<table>
<thead>
<tr>
<th>Square Varas</th>
<th>Acres</th>
</tr>
</thead>
<tbody>
<tr>
<td>1,000,000</td>
<td>1 labor</td>
</tr>
<tr>
<td>25,000,000</td>
<td>1 league</td>
</tr>
<tr>
<td>5,645.376</td>
<td>4,840 sq. yds</td>
</tr>
</tbody>
</table>

Lineal Measure

<table>
<thead>
<tr>
<th>Spanish</th>
<th>English</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 foot</td>
<td>11 1/9 inches</td>
</tr>
<tr>
<td>1 vara</td>
<td>33 1/3 inches</td>
</tr>
<tr>
<td>108 varas</td>
<td>100 yards</td>
</tr>
<tr>
<td>1900.8 varas</td>
<td>1 mile</td>
</tr>
</tbody>
</table>

Although the Texas government has attempted, generally, to follow the English system and the land policy as applied in the United States, the Spanish-Mexican influence has ever been present.

The area of Texas between the date of independence and November 25, 1850, was estimated at 379,054 square miles, or

\[11\text{Ibid.}, p. 26.\]
242,594,560 acres. On the later date, the State ceded to the United States 164,687 square miles, or 67,000,000 acres of land in return for $10,000,000 in cash and United States bonds. This transaction settled the boundary dispute between Texas and the United States and left Texas with an area estimated at 170,926,080 acres. The boundaries of Texas, together with the length of each portion are estimated by the General Land Office as follows: The north line of the Panhandle, 169 miles; the east line of the Panhandle, 132 miles; the north line on Red River, 620 miles; the east line from Red River to the Sabine River, 106 miles; the east line on the Sabine river (meanders) to the Gulf, 299 miles; the south line on the coast of the Gulf of Mexico, 375 miles; the west line on the Rio Grande, 1250 miles; the north line along the southern boundary of New Mexico, from the Rio Grande to the southeast corner of New Mexico, 207 miles; the west line of the Panhandle, 310 miles. With calculations from these figures, the perimeter of Texas is shown to be 3,468 miles.

The public domain of the newly-formed Republic of Texas included all land within the boundaries of the state except 26,280,000 acres previously granted to individuals by Spain and Mexico. The public domain thus included some 216,317,560 acres. If the disputed 67,000,000 acres that were later sold

12 Land Office Report, 1920, p. 36.
Fig. 1.—Map showing the Boundary Compromise of 1850\textsuperscript{13}

\begin{itemize}
\item Territory ceded to the United States
\end{itemize}

\textsuperscript{13}Frances Donecker and Ralph W. Steen, \textit{Our Texas}, p. 178.
to the United States are excluded the public lands still comprised an area of 144,646,080 acres.

The physical area of state lands was enormously large, and fanciful notions were entertained concerning their value. A steady procession of land-seekers came to Texas during the ten years of the Republic. It is certain that early Texans grossly exaggerated the value of their lands. However, the State had a domain that would have gratified the ambition of a monarch.

The Declaration of Independence, signed at Washington, Texas on March 2, 1836, was the result of a deepening sense of wrongs suffered during many years. The subsequent defeat of Santa Anna resulted in the establishment of the Republic of Texas. The neglect of public education was one of the chief grievances charged against the Mexican Government. As early as 1832, the Convention assembled at San Felipe de Austin complained of this negligence and urged that lands be set apart for the support of schools. Along with the other charges made in the Declaration of Independence, was this:

The Mexican Government has failed to establish any public system of education, although possessed of almost boundless resources (the public domain) and although it is an axiom in political science that unless a people are educated and enlightened, it is idle to expect the continuance of civil liberty, or the capacity for self-government.15


The Constitution of the Republic of Texas, adopted March 17, 1836, made it "the duty of Congress, as soon as circumstances will permit, to provide by law a general system of education." Following so quickly upon the ringing charge of the Declaration of Independence, and written practically by the same group of men, the extreme brevity and generality of this provision is somewhat disappointing. Yet, considering the variety of difficult situations and the more pressing problems confronting those responsible for drawing up the organic law of the new government, the brief reference to education was highly desirable since it left the way open for more deliberately-planned statutory provisions for a school system and gave time to build up public opinion favorable to public education.

The first Congress in 1837 was silent on the subject of popular education, but the election of Mirabeau B. Lamar to the presidency of the Republic in 1838, foreshadowed early and positive action. To Lamar goes the credit of initiating the free school system. A native of Georgia, Lamar had received a fair education and was profoundly interested in all forms of culture and enlightenment. He was widely renowned for his sympathy with popular education. In this respect, he was vastly superior to his predecessor in office.


Sam Houston, whose enthusiasm for the establishment of schools was not at all pronounced at this time. Houston never mentioned the subject of education in his early messages. On the other hand, in his first message to Congress in December, 1838, Lamar made an impassioned plea for immediate and favorable action. In his profound, intelligent and widely-quoted classic address, Lamar said:

Education is a subject in which every citizen, and especially every parent, feels a deep and lively concern. It is one in which no jarring interests are involved, and no acrimonious political feelings, excited; for its benefits are so universal that all parties can cordially unite in advancing it. It is admitted by all that cultivated mind is the guardian genius of democracy, and while guided and controlled by virtue, the noblest attribute of man. It is the only dictator that freemen acknowledge, and the only security that freemen desire.18

President Lamar proposed to endow a system of public schools and recommended in his address to the senate and the house of representatives on December 20, 1838, as follows:

The present is a propitious moment to lay the foundation of a great moral and intellectual edifice, which will in after ages be hailed as the chief ornament and blessing of Texas. A suitable appropriation of land to the purpose of general education can be made at this time without inconvenience to the government or the people; but defer it until the public domain shall have passed from our hands, and the uneducated youths of Texas will constitute a living monument of our neglect and remissness.19

Following this message, the Committee on Education presented a lengthy report to Congress in January, 1839. The


report contained an intelligent, stirring appeal on the importance of education and the needs of adequate and permanent financial support to guarantee a trained professional personnel with which to staff the schools. It recommended the adoption of a bill appropriating certain lands for the establishment of a general system of education. The report directed the attention of members of congress to the enormous public domain of virgin lands of the Republic, and to the boundless sources of natural wealth still dormant in its soil, its forests, and its minerals.
CHAPTER II

LEGISLATION TO ENDOW SCHOOLS UP TO 1873

County Endowment

The report of the Committee on Education in 1839, proposed a bill on education which laid the foundation for the present endowment of public education in Texas. This bill became a law January 26, 1839. Attempts of the First and Second Congress to appropriate lands for the support of education had failed, joint resolutions having been continuously side-tracked.

The Bill of January 26, 1839, provided that three leagues (13,284 acres) of land should be surveyed and set apart in each county for the purpose of establishing a primary school or academy. At the same time fifty leagues (221,400 acres) were provided for the endowment of each of two colleges or universities. For the immediate organization of the means of public instruction, no provision whatever was made, and the law fell far short of expectations. Criticism at once arose from the more ardent friends of public education.

About six weeks after the passage of the bill, an elaborate and yet sensible plan of organization for a

---1J.J. Lane, History of Education in Texas, p. 26.---
A complete system of schools was presented to President Lamar by Andrew J. Yates. In a letter to Lamar, Yates expresses the following ideas:

The late law (Act of January 26, 1839) would seem, from its tenor, to have contemplated the provision of a separate fund for academies and schools for each county in the Republic. It does not expressly provide thuswise and very fortunately so, because it must be evident that such a course would be unequal in its effects upon different sections of the country. There are many counties, where very valuable and choice lands cannot be had at this time, and if such counties (which are the most populous and therefore in most need of good schools and financial aid, immediately) are compelled to derive their funds from lands located in other counties less populous, they must make a sacrifice of those lands, and receive less benefit from them than the less populous counties would do, which will not need aid for some time to come. In addition to this consideration, every county will have a separate organization and mode of disposition of its funds, and some will have a much better fund for the purpose than others. If the appropriation were made a general fund under the control of officers appointed by the government, it would seem a uniform system of education, and a uniform distribution of the benefits of the fund.

In the location of land for this fund, much advantage might accrue from the appropriation of some of those valuable lands that have been confiscated to the government; others might be obtained by making an exchange of school lands with the owner of lands in the midst of compact settlements, as there are few persons who own several thousand acres of land in a body who would not willingly exchange a few hundred acres for the same quantity of land more remote from settlements, considering themselves amply remunerated in the increased value of the remainders of their tract, by having a school or academy established upon part of it.2

In all probability, as a result of these suggestions, together with a powerful appeal from President Lamar in which he recommended the organization of a Bureau of Education for

the control of school lands and the establishment of a national system of education, a new law was passed in February, 1840. By this new law, a fourth league of land was authorized to be set apart for each county, the entire four leagues to be surveyed as early as convenient. The chief justice and his associates in each county were appointed to act as a board of school commissioners. They were empowered to divide the counties into school districts, to examine candidates for teachers' certificates, and to inspect and supervise the schools. These practical provisions were designed to initiate a system of public education.

According to the educational conceptions of the time, this endowment was fairly generous. Each county was to receive 17,712 acres. Three of the leagues could only be leased; the fourth could be sold by the county school commissioners and the proceeds used in school developments.

The laws of 1839 and 1840, in a large measure, recognized that the state could assist all grades of instruction, elementary, secondary, and higher. Primary schools were considered necessary for offering the elements of learning to the masses. Academies were designed to furnish a supply of teachers for the primary schools and to prepare students for higher education. Two universities were projected to

3Frederick Eby, The Development of Education in Texas, p. 88.
foster the highest learning in languages, literature, science
and philosophy.

In these laws, the Texas legislature was following
examples set by other states. As early as 1783, Georgia
authorized the governor to set aside land for erecting free
schools in each county. With reference to the disposition
of lands in the Western Territory, the Congress of the Con-
federacy provided in an ordinance of May 20, 1785, "There
shall be reserved the lot No. 16 of every township for the
maintenance of public schools within said township." This
was an endowment of 640 acres of land (one section of land,
one mile square) in a township 6 miles square, for the
support and maintenance of public schools. The Northwest
Ordinance of 1787 made the reservation of the sixteenth
section perpetual. Later similar endowments were granted
for new states. In this action, the United States estab-
lished a principle of dedicating its public lands to the
cause of education.

A comparison of the lands which have been donated to
the counties of Texas under the laws of 1839 and 1840 with
those given by the Federal government to other states up to
the year 1840, will show that the statesmen of Texas were
making generous provisions for a school system.

### TABLE 2

STATES RECEIVING THE SIXTEENTH SECTION

<table>
<thead>
<tr>
<th>States</th>
<th>Date of Grant</th>
<th>Acres</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ohio</td>
<td>1803</td>
<td>710,610</td>
</tr>
<tr>
<td>Alabama</td>
<td>1803</td>
<td>901,725</td>
</tr>
<tr>
<td>Mississippi</td>
<td></td>
<td>838,329</td>
</tr>
<tr>
<td>Louisiana</td>
<td>1806</td>
<td>798,085</td>
</tr>
<tr>
<td>Indiana</td>
<td>1816</td>
<td>601,049</td>
</tr>
<tr>
<td>Illinois</td>
<td>1818</td>
<td>985,141</td>
</tr>
<tr>
<td>Missouri</td>
<td>1820</td>
<td>1,162,137</td>
</tr>
<tr>
<td>Arkansas</td>
<td>1836</td>
<td>928,057</td>
</tr>
<tr>
<td>Michigan</td>
<td>1836</td>
<td>1,003,573</td>
</tr>
<tr>
<td>Texas</td>
<td>1839-40</td>
<td>4,209,413</td>
</tr>
</tbody>
</table>

Texas had set aside a generous amount of land for the school system, in comparison with other states, but the efforts to bring about the establishment of schools by means of these land grants did not measure up to the expectations of the authors of the bills of 1839 and 1840. Land was so abundant and consequently so ridiculously cheap that no funds could be immediately secured either from sale or lease. There was a wide-spread feeling that these

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5Frederick Eby, *The Development of Education in Texas*, p. 89.
school lands should be held intact until the country was more thickly settled, when they would bring high prices and a large endowment could be realized. There was also a great popular indifference to the establishment of county schools. Twenty months after the enactment of the law of 1839, granting each county three leagues, not a single survey had been made. By 1855, only 41 counties had completed their surveys; 20 had made partial surveys; and 38 had made no effort whatever. There is no evidence that any county in early times used its land for the establishment of schools.

The real importance of these educational acts of the Republic lies not in the fact that a system of public education was actually established, but in the fact that an endowment said to be greater than that provided by any other American state, was begun for the support of public education.

The wisdom of appropriating four leagues of land to the several counties and of placing independent jurisdiction over them in the hands of county civil officials has been questioned many times. There is no doubt that the authors of the bills appropriating the land desired the early establishment of schools in each county. But vastly greater

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7 Ibid., p. 216.
progress would have been made if the state had retained control of these lands and organized the schools, instead of relying on the county officials to take the initiative. The county officials were not interested in the promotion of culture, and as a consequence, complete inaction resulted.

A powerful cause for the neglect of these early plans for county schools lay in the fact that the people generally believed in private and religious training. A rapid increase in immigration followed the Revolution of 1836. The great majority of the new settlers came from the old South. They brought with them their aristocratic ideals of life, class distinctions, and the traditional practices of education of the states from which they came. Slavery was introduced, and Texas took on the plantation form of social and industrial life. It became a cotton-growing state of large individual plantations worked by slaves. The tide of immigration spread thinly over the vast areas of fertile soil, producing a scattered rural civilization. But while the Southern element predominated, there were immigrants from the Northern States as well. These people were not accustomed to cotton farming, but were interested in commercial and professional pursuits. Large colonies of Germans were likewise formed in the central part of south Texas. Thus the population became ever more heterogeneous, and the diversity of culture and educational conceptions increased. This lack of common ideals on educational matters has been an important factor in the fitful course of school affairs in Texas.
Prior to the admission of Texas to the Union, each of seven private colleges or universities had been granted four leagues of land from the public domain by charter. The acts appropriating land to establish and assist in the support of private higher educational institutions came to be an accepted policy of Congress in the absence of public state-supported colleges. The first grant of this nature was to DeKalb College January 26, 1839. An act establishing Rutersville College and donating four leagues of land was approved by Lamar in 1840.

The policy of special grants to private education was continued for several years. Special grants to colleges and seminaries totaled 172,319 acres.

The fruit of the land endowment appropriated to the counties for schools did not ripen during the life of the Republic, nor was it highly beneficial to education during the third of a century under state control. The primary reason for this situation was involved in the efforts of the state to dispose of the public domain for both fiscal and non-fiscal purposes at the same time. The Republic gave away land chiefly to individuals, whereas, the state was most generous in bestowing gifts of land on corporations for internal improvements. The state government was giving

8 Cooper, op. cit., p. 16.
away land while the counties were trying to sell or lease their land endowment. Land was a drug on the market, and proved to be an impractical means of getting revenue to run the schools. No system of public schools arose during the time of the Republic, but the policy of granting land for educational purposes begun in 1839 was recognized, continued, and expanded by the state.

The period from 1845 to 1858 is very important and may be considered the origin of the state permanent school fund. It is characterized in the beginning by constitutional provisions of 1845 and numerous acts and proposed bills of the legislature. The first state constitution provides:

All public lands which have been heretofore, or hereafter may be granted for public schools, to the various counties, or other political divisions of the state, shall not be alienated in fee, nor disposed of otherwise than by lease for a time not exceeding twenty years, in such manner as the legislature may direct.

All new and old counties in the state that had not received their four leagues of land for educational purposes were entitled to them under the constitution. The laws of the Republic permitting the counties to sell their school lands were repealed.

In accordance with these measures, all counties organized prior to the annexation of Texas received their four leagues of land. The state government extended from time

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10Lang, op. cit., p. 123.

to time the same privilege to counties organized after annexation.

Furthermore, the legislature was enjoined to set apart not less than one-tenth of the annual revenue of the state derivable from taxation, as a perpetual school fund, the income from which was to be distributed to schools in the respective counties. As formerly, the counties were slow in selecting and locating their lands, and, because of the abundance of land very little revenue was derived from the system of leasing to which they were restricted by the state constitution. It would have been a better plan to have the county lands administered as a part of the state school fund subject to control by the state.

In a message, February 19, 1846, President Anson Jones ventured the belief that if the public domain were to be properly husbanded and disposed of, it would be unnecessary to resort to taxation to provide for the future support of the state government, a system of common schools, and other institutions for the intellectual, moral, and religious improvement of the rising generation. With such a population as Texas possesses, characterized as it is with great intelligence and enterprise, a genial climate and fertile soil, it will be her own fault if she does not reach an importance and a social elevation not surpassed by any community on earth.\(^{13}\)

A law passed on February 11, 1850, gave to each county

\(^{12}\)Constitution of 1846, Art. X, Sec. 2.

that had been organized since February 16, 1846, four leagues of land, but it was twenty-five years before another award was made to newly organized counties. The Constitution of 1866 placed the county school lands under the care of the legislature, which was authorized to sell them, but this was rendered virtually ineffective by the inclusion of a provision that gave the counties the power to veto any legislative provision for the sale of their lands.

The matter of disposing of county lands and administering the county funds was further dealt with by the legislature in the same year. On November 1, 1866, an act was passed which authorized the police courts of each county to sell lands belonging to the county at public auction, and at a fair price. The lands were to be sold in lots suitable to actual settlers, and the money from the principal was to go into the perpetual public school fund of the state. Interest from the principal was to be used to pay the tuition of all the white scholastic population of the county. This measure was, however, destined to be short-lived, for an act of June 30, 1868, suspended all sales that had been made under the Act of 1866.

Early State Endowment
Just as Texas reserved and appropriated public lands to

14Lang, op. cit., p. 124.
counties for school purposes, it also adopted the plan of
reserving public lands in order to build up a permanent
school fund for the state. And just as the policy of re-
serving lands for counties was faithfully followed up until
four leagues, speaking generally, had been provided for each
county, so the policy of reserving state school lands was
continued and enlarged as long as there was any vacant domain
to reserve.

Consequently, a dual system of public school lands has
grown up in Texas, one part of which consists of county
school lands, which are subject to the disposition of the
Commissioners' Court, and the other, the state school lands,
which are centrally controlled by the Commissioner of the
General Land Office, subject to the disposition of the
legislature.

Provision for state education and the support of a pub-
lic school system was inadequate in every respect prior to
the administration of Governor Pease, when a forward step
was taken and some progress made. Schools and education
formed the subject for a great quantity of rhetoric and
oratory which gave expression to high and noble purposes.
Every president of the Republic and practically every gov-
ernor expressed his faith and placed high hope in an edu-
cated citizenship as the first requirement of a democratic
social order, and indicated the significance of schools in

16McKitrick, op. cit., p. 94.
messages to the legislature. Lesser statesmen joined in the chorus of praise for education, and political parties placed planks in their platforms stressing its importance. All of these efforts failed to get immediate results. However, during the Pease administration public approval of state support and control of public education began to crystallize around the concept of a state permanent school fund rather than around county and local school endowments.

A state public school system was proposed by Pease, who made his race for the governorship on the question of establishing a public school system and the policy of state assistance in building railroads. Thus, he united the two most powerful agencies in the progressive development of the state, the endowment of the public school system and the financing of railroad companies. This plan of uniting the two great needs of the day won a large number to the cause of popular education. On the one hand(11,22),(994,981) it appealed to those who were interested in the construction of railroads. On the other hand, the majority of the supporters of public schools looked upon the scheme as a sound business policy. The United States bonds were bringing only five per cent, and the railroads would be willing to pay six. The security appeared to be ample and unquestionable.

Pease was one of the foremost educational statesmen of

17Frederick Eby, Education in Texas, Source Materials, p. 225.
In his message to the senate and the house of representatives in December, 1853, he said:

In recommending measures for your consideration, I shall mainly confine myself to a few of those important and leading ones, that seem to have been designated by public opinion for the action of the present legislature, the early adoption of which will tend rapidly to develop the resources of the State, and to promote the happiness of its citizens.

Of these measures one of the most important is to make a suitable and permanent provision for the support of public schools. The highest and most sacred duty of a free government is to provide the means of educating its citizens in a manner that will enable them to understand their duties and obligations; this, too, is a measure that is enjoined upon the legislature by the constitution.18

The general lack of available means of supporting education furnished a ready excuse for the neglect to establish schools during the two decades following the revolution with Mexico. When Pease became governor, he informed the legislature that the excuse no longer existed. He told the lawmakers that the state then had ample means at its command and the opportunity to establish a system of public schools that would extend its benefits to every child within its boundaries.

The bill to establish a system of common schools was reported in the senate on November 28, 1853. Numerous amendments were proposed and additional reports requested.

18 Pease, Elisha M., Executive Record Book, p. 6.

19 Cooper, op. cit., p. 20.
The act of January 31, 1854, provided for the establishment of a system of public schools, and made a substantial addition to the public school fund by appropriating to it $2,000,000 of the five per cent United States bonds that remained in the treasury and that had been received in the boundary settlement of 1850. Up to this time one-tenth of the annual revenue, which had been designated for the support of free schools, had been allowed to accumulate in the state treasury. But this small fund and the rentals from the county lands were inadequate for the purpose of a public system of education. Unquestionably, the situation, growing more desperate each year, would have remained quiescent so far as public action was concerned, had it not been for the large sum of money received from the boundary award. This important law established the first public system of education in the state. It had several significant features which reveal the educational conceptions of Texans at that time.

The first section of the law dealt with the appropriation of the $2,000,000 of the five per cent United States Indemnity Bonds as a permanent endowment for the maintenance of common schools. Only the income of this fund was to be distributed each year on the per capita basis. It was termed "The Special School Fund."

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20 Frederick Eby, The Development of Education in Texas, p. 115.

21 Randolph O'Brien, A History of the Schools of Cooke County, Texas, p. 54.
Provision was made for the immediate organization of common schools. The state treasurer was appointed ex officio superintendent of common schools and was charged with carrying out the law. The county judge and commissioners were constituted a county school board. This board was instructed to divide each county into convenient school districts and to see to the election of three trustees in each school district. The county tax assessor was charged with taking the scholastic census.

Democracy prevailed in the organization of the system. The trustees were required to call an election in the district to determine the location of the school. They were also to call a meeting of all the patrons of the school to decide the length of the school term, the kind of teacher they desired, and the salary they were willing to pay. The local trustees elected the teacher in accordance with the wishes of the patrons and exercised a general supervision over the conduct of the school.

On receiving at the close of the state fiscal year their portion of the per capita state apportionment, the district trustees were to apply the total amount to the payment of the teacher's salary. Any deficit in the amount was to be assessed equitably among all the paying patrons. Only those districts which had provided a good and substantial schoolhouse with the necessary fixtures could avail themselves of the state bounty.
Another provision in the law was for the tuition of the indigent and orphaned children in each county. A list of the children whose parents were unable to pay their share of the teacher's salary was to be made up by the trustees. This list and the amount due for tuition from such children were to be sent to the county judge. This officer in turn notified the state treasurer who paid the amounts for the tuition of this unfortunate class of children out of the one-tenth of the annual revenue of the state set aside by the constitution for free public schools.

The last section of the law which had the appearance of an afterthought was its most vital feature. By this section, the district trustees had nothing to prevent them, after being instructed by the majority of the patrons of the schools, from employing the teacher of a primary department in any college or academy and converting such primary department into a common school for such district. This section, apparently so harmless, was one of the chief barriers to the establishment of a state system of public schools.

This was the first occasion that the people of Texas undertook to formulate a practical plan for the organization of a state school system. By this time, the various divergent educational views and conceptions had resulted in forming distinct parties. The law of 1854 represents the views of these different parties and is a compromise. In the formation of the important features, there appeared three
divergent types of school organization: a system of public schools, pauper schools, and private schools enjoying the bounty and support of the state. But in the working out of the system only two antagonistic groups were present. One group consisted of the private school interests and those who advocated provision for indigent and orphaned children. The other group, the minority, believed in the establishment of a free school system open to all the white children of the state.

Most of the members of the legislature were willing to accept the compromise in the hope that the school fund might be loaned to the railroads to assist in bringing about more rapid construction. While the law undertook to establish common schools, it was largely an excuse for distributing state funds. Yet it offered the only system of public education which was at all feasible in that day.

This act passed in January, 1854, was intended to go into immediate operation. By October, the ex officio state superintendent stated that eighty-nine of the one hundred 22 counties had reported their scholastic population. The law made it possible to establish public schools in case the people in various districts desired that this be done. But there were serious difficulties in the way of realizing the plan. There were few districts which could meet the

22 Frederick Eby, The Development of Education in Texas, p. 120.
requirement in regard to the schoolhouse and equipment. No provision was made by the legislature for securing buildings by public means; so the districts had to turn to voluntary subscriptions for this purpose. Local taxation was not permitted, except by special legislation and under circumstances which were practically prohibitive.

So far as the organization of a system of common schools was concerned, little was actually accomplished. Throughout the entire state and with few exceptions, the people resorted to the use of private schools which under the law could be designated common schools.

While the bill to establish a system of schools was under consideration, attempts were made to amend it so as to donate three million dollars instead of two, and to require the amount to be invested in railroad securities. These amendments were lost, but they show a persistent effort to have the fund promote internal improvement in keeping with the two main planks of the platform on which Pease was elected governor. The sentiment for state aid in developing railroads was strong and two years later, an act providing for the investment of the bonds in railroad securities was passed. A board made up of the governor, the comptroller, and the attorney general, was authorized to make the loans to railroad companies incorporated by the state. The loans were secured by six per cent first lien mortgages on the roads. Each company was required to pay two per cent each year into
a sinking fund held in the state treasury. Prior to the Civil War, loans had been made to six companies to the amount of $1,476,000 and the interest and sinking fund payments were fully and regularly paid to that date.

The act of August 12, 1856, opened to location and settlement the Mississippi and Pacific Railroad Reservation and provided for sale to settlers of land in the reserve in lots of 160 acres, at fifty cents per acre, the proceeds to be given to the special school fund. The interests of the school fund were further safeguarded by an act passed a few days later which decreed that the statute of limitations should run in favor of no one who either had settled or thereafter settled upon reserved educational lands; this statute also applied to unappropriated public domain.

On August 29, 1856, the general school fund and the special school fund were blended and made one, forming the principal of what was known as the school fund. The interest on the school fund was distributed annually to the counties according to scholastic population.

In 1858, the legislature adopted a measure of far-reaching importance. The first successful step toward taking

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24Ibid., p. 503.  
25Frederick Eby, Education in Texas, Source Materials, p. 296.  
any part of the public domain to endow general education and to enlarge the permanent school fund was taken. Provisions made for sale of the public lands prior to this date were not general in scope but applied to restricted or reserved portions of land. The act passed in 1858 authorized the sale of public domain and regulated the sale of alternative sections of land surveyed by railroads and corporations, and the proceeds of all sales of the public lands were added to the principal of the educational fund. However, receipts from this source were meager, due chiefly to the high price of land. This law not only failed to produce substantial endowment for the public school fund while in effect, but it was repealed during the Civil War.

Many economic and social changes took place in Texas in the decade from 1860 to 1870. These changes had a very pronounced effect upon education as well as other phases of life. The state organization of education ceased to function.

The school fund was very seriously affected by the conditions brought about by the war. This fund was gradually loaned to railway companies to assist in the construction of their roads. Most people believed this to be a wise means of investing the funds on what seemed the very best security. But under the stress of war, the roadbeds declined, the income of the roads decreased, and the companies were compelled to default in their payments. Thus the school fund lost heavily. Payment to the school fund in treasury warrants was
allowed in 1864. These state warrants proved to be a boomerang to the state and worthless to the school fund.

Much of the balance of the school fund was diverted to other purposes. As the financial needs of the government grew more pressing, the governor transferred $1,285,327 to the military board for carrying on the war. Added to these disintegrating events was the general instability of all financial conditions brought about by the demoralization of the monetary system. In this way it happened that a school fund of $2,592,533.14 in 1861 was reduced to practically nothing by the end of the struggle between the states. The total effects of the war upon the endowments for public education were extremely disastrous, requiring practically a new beginning.

The amount of illiteracy and the conditions as to education pointed to the greatest task Texas faced after the Civil War; namely, the education of its citizens. Thirty-three per cent of the population ten years of age and over could not read, and there were only 548 schools in 1870, with 23,076 pupils, 706 teachers, and a total income of $414,800.

In 1866, a new constitution for the state was written which confirmed the grant of the alternate sections surveyed

27 Frederick Eby, The Development of Education in Texas, p. 151.
28 Ibid.
29 Eugene C. Barker, Readings in Texas History, p. 529.
for railroads for the benefit of the school fund, and directed that one-half of the proceeds from the sale of unappropriated public lands should go into the perpetual school fund. This constitution abolished, however, the provision of the constitution of 1845 which added to the fund not less than one-tenth of the annual revenue derived from taxation.

The legislature was empowered to levy a tax for educational purposes provided the amount collected from "Africans" be devoted to their education. Provision was also made for a state superintendent of public instruction. But before any action resulted from these provisions, all these plans for reorganization under the Constitution of 1866 became inoperative because they were nullified by the "carpet bag" rule set up by Congressional reconstruction. The state was plunged into a most deplorable condition of internal strife and disorder.

Under the Constitution of 1869, the control of political affairs was wrested from the old Democratic party of the state, and a group of radical political adventurers, the carpetbaggers, came into power. This group was enabled to gain control by affiliation with the Republican party, which controlled the Federal government at Washington, and by allying with themselves the newly enfranchised colored population.

The political platforms adopted by the Republican state conventions in 1867 and 1868 championed a system of free common schools supported by equal and uniform taxation until

30 Lang, op. cit., p. 129.
an adequate school fund could be made available. The payment in state warrants by the railroads to the school fund was said to be a fraud and in violation of the rights of the children of the state. The Republicans recommended that all money, claims and property belonging to the school fund should be collected without delay and be appropriated to education, and that other means be provided for support of the schools if necessary. The conservative reconstructionist state convention and the convention of democratic editors each stressed the importance of internal improvements for developing the resources of the state and favored the immediate establishment of a system of public schools, but made no mention of possible source of their support; public school lands and school funds were not even considered.

Texas was under the control of the Republicans from 1869 to 1873. A new constitution was written, and a new system of education was projected and forcibly imposed upon the people. The radicals set themselves the task of redeeming the school fund and of organizing a free school system in Texas.

The first step toward this organization was the writing of a new constitution. This document, written in 1869, provided for the most highly centralized system of education

32 Ibid., p. 116.
33 Ibid., p. 123.
Texas has ever had. It required a uniform system of public free schools for the instruction of all the people between the ages of six and eighteen. The office of superintendent of public instruction was authorized, and this officer was to have almost absolute management of the schools. All counties were to be laid off in convenient school districts with local directors. School attendance was made compulsory for four months each year.

The constitution also provided ample support. It reaffirmed the school endowment of all funds, lands and other property theretofore set apart and appropriated for the support and maintenance of public schools. It further provided that:

> All sums of money that may come to this state from the sale of any portion of the public domain of the state shall also constitute a part of the public school fund.\(^{35}\)

The income from this fund together with one-fourth of the general revenue derived from taxation and a poll tax of one dollar on all male persons in the state between twenty-one and sixty years of age, constituted a perpetual fund to be used exclusively for the education of all scholastic inhabitants of the state.

The school lands of the counties were placed under the

\(^{34}\)Constitution of 1869, Art. IX, Sec. 1.

\(^{35}\)Ibid., Art. IX, Sec. 6.
direct control of the legislature, and, unlike the provisions in the constitution of 1866, the lands could be sold by the state without the consent of the respective counties, and if sold, the proceeds were to be added to the public school fund. The principal of the school fund was restricted to investment in bonds of the United States government, and in no other securities.

By statute of August 13, 1870, the division of the school fund into a permanent and an available fund was made. The radical government, as it was called, had been liberal in its efforts to recover and to build up the permanent school fund. It exercised centralized authority relative to public schools and imposed higher taxes, both state and local, to maintain them more effectively.

All of the activities and power of the government were subjected to overwhelming objections and criticisms of conservative democrats. Therefore, the acts of 1870 and 1871 which sought to establish a state system of free education were in many instances completely ignored.

A system more foreign to the sentiments of the people of Texas could not have been devised than the law of 1871, which set up the most imperial system of education known to any American state. It was organized along military lines


and assumed absolute authority over the training of the children. A state board of education was provided, consisting of the superintendent of public instruction, the governor, and the attorney general. This board was empowered to act in place of the legislature in school affairs. The superintendent was the chief member of the board and dominated the conduct of its operations. Governor Davis appointed a military officer, Jacob C. DeGress, to this position instead of an educator. He undertook to organize and run the school system with military rigor and without regard to the wishes or financial ability of the people. Not only was there almost total inaction under these laws, but the opposition to the introduction of any free-school system was still an active force operating against education, which materially impeded its progress to popular favor without the antagonism and stigma of the radical regime.

The old Southern democracy was returned to power in 1873 and a new school law was enacted which began the destruction of the radical system.
CHAPTER III

STATE ENDOWMENT POLICY AFTER 1873

By the time the Constitution of 1869 was adopted, the plan of reserving public lands for the benefit of the school fund had become pretty well established as a fixed policy in Texas. The fact that the public domain was being rapidly taken up to satisfy the demands of settlers and the claims of railway and other corporations was emphatically impressing itself upon the public mind. It was clearly seen that if any large additions were to be made to the reservations already provided, action would have to be taken soon. This brought about the act of 1873.

Even with all the legislation conveying millions of acres of land to the public school fund, very few dollars in actual revenues had been derived. Prior to 1860, the school income from its domain was only about $55,000 annually. Some $80,000 were realized during the War between the States, but between 1870 and 1874 the school income amounted to only $6,903.02. All of the revenue was derived from sales; the legislature had provided no other way to turn the vacant lands into money.

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1McKitrick, op. cit., p. 95.

2Curtis Bishop and Bascom Giles, Lots of Land, p. 291.
Regardless of the fact that the organic law of 1869 had given to the public school fund all money that might come to the state from the sale of any portion of the public domain, the legislature on March 18, 1873, set apart and appropriated only one-half of the public domain of the state, or so much thereof as can be, to the permanent school fund. This act reserved for location, and appropriated to the permanent school fund, the alternate sections of land surveyed theretofore and the alternate sections that might thereafter be surveyed for internal improvement corporations.

The legislative act of 1873 disclosed that the policy of granting portions of the public domain for the benefit of education begun before the Civil War had definitely returned. The modifications in the school laws revealed the gaining strength of conservatives and their resistance to the school system fostered by the radical regime.

The constitutional convention of 1875 produced varied, sharp, and conflicting opinions regarding educational problems. No article before the convention was subject to more critical evaluation than the one concerning education. Adequate support of a system of public free schools was defended by the Republican party, which strongly condemned the legislative acts of 1873 as practically abolishing the system they had put into operation. At the same time, the Democratic party

4Winkler, op. cit., p. 157.
accused the Republicans of plundering the school fund, sacredly set apart for the education of the children of the state, through speculation and by squandering it. The Democrats advocated the gradual sale of alternate sections of land belonging to the permanent school fund, and actual settlers were to be given preference.

Governor Coke told the Fourteenth Legislature that he "could not see the practical wisdom of keeping the almost entire school fund of the state locked up and lying dormant in unproductive lands." The governor was convinced that the legislature had the authority to make provision for selling the state public school lands and should proceed to exercise that right as a public duty.

The legislation of April, 1874, provided for the sale of alternate sections comprising 23,100,000 acres of school land at not less than $1.50 per acre, payable one-tenth cash and the remainder in nine equal installments at an interest rate of ten per cent.

Preference in purchase was supposed to be accorded actual settlers, who were limited to 160 acres each, but the usual speculator appeared to outwit the statute makers. Much of this domain offered for sale was valuable timber country. The

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5 Ibid., p. 162.

6 Cooper, op. cit., p. 32.

7 Bishop and Giles, op. cit., p. 291.
unscrupulous dealer could acquire possession of land by making the first payment, strip off the timber, and then abandon the wasted country.

Governor Coke was not quite satisfied with the laws of 1874 relative to school lands. In his message to the legislature in 1875, he again emphasized:

The great landed endowment of the public schools of Texas has been hoarded long enough; its treasures should be unlocked to the enjoyment of the present generation, and to their relief from taxation. He maintained that if county school lands were placed on the market they could be sold readily at a good price.

Counties which had not received the land grants for educational purposes, and all counties thereafter organized, were given four leagues of land by the legislature on March 13, 1875. Although the counties were slow in selecting their lands, when the Constitution of 1876 was adopted, provision was made for the administration of these lands. The organic law embodied in this document requires that:

All land heretofore or hereafter granted to the several counties of this State for educational purposes are of right the property of said counties respectively to which they are granted, and title thereto is vested in said counties, and no adverse possession or limitation shall ever be available against the title of any county. Each county may sell or dispose of its lands in whole or in part in manner to be provided by the Commissioners Court of the county. Actual settlers residing on said land shall be protected in the prior

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8Ibid.

9Sinclair Moreland, Texas Governors' Messages, Coke to Ross, p. 138.
right of purchasing the same to the extent of their settlement, not to exceed one hundred sixty acres, at the price fixed by said court, which price shall not include the value of existing improvements made thereon by such settlers. Said lands and the proceeds thereof, when sold, shall be held by said counties alone as a trust for the benefit of public schools therein; said proceeds to be invested in bonds of the United States, the State of Texas, or counties in said state, or in such other securities, and under such restrictions as may be prescribed by law; and the counties shall be responsible for all investments, the interest thereon and other revenue, except the principal, shall be available fund.\(^{10}\)

The constitution of 1876 was written by men who were full of hate for everything the Republicans had done. The variety of opinions on every phase of the subject of education was astonishing. At one extreme were many who did not believe in public education in any form. At the other extreme were the strong partisans of the highly elaborate and centralized system of the departing radical regime. About the only things that they all agreed on were: (1) there must be separate schools for the white and colored children, (2) the school fund must never again be diverted to any extraneous purpose.

After much wrangling, the article on education as finally adopted, was a disappointing compromise which fell far short of meeting the real needs of the time. In its intense hatred of the radical school system the convention blindly wrecked

\(^{10}\)Constitution of 1876, Art. VII, Sec. 6.

\(^{11}\)Frederick Eby, *The Development of Education in Texas*, p. 170.
the entire organization, destroying the features which were
good together with those which were bad. Along with the
others, many of the policies favored by democracy in former
days were swept away in the terrible reaction of political
sentiment.

The new constitution abolished the office of state super-
intendent, together with all other supervisory functions. It
eliminated compulsory attendance and all provision for the
districting of counties. The free school age now became the
period from 8 to 14 years of age. Local taxation for build-
ing school houses and maintaining schools by public funds
was rendered impossible under the new conditions. The county
school lands which the constitution of 1869 had placed under
the control of the legislature were, as we have seen, returned
to their respective counties. The proportion of the general
revenue set apart for the support of schools was restricted to
one-fourth or less of the occupational and ad valorem taxes.

It was declared "the duty of the legislature of the state
to establish and make suitable provision for the support and
maintenance of an efficient system of public free schools." But no suggestion was given as to what was to be understood
by the term "efficient system," and in the absence of all
recognized standards of educational merit, this catchword was
not merely meaningless, but deceptive and harmful. Provision

12 Constitution of 1876, Art. VII, Sec. 1.
was made for the school fund which was to include all funds, lands, and other property previously set apart and appropriated for the support of public schools; all the alternate sections of land reserved by the state out of grants heretofore made to the railroads or other corporations, of any nature whatsoever; one-half of all the public domain of the state; and all sums of money which might come to the state from the sale of any portion of the same. In all, this amounted to something like 45,000,000 acres of land available for the endowment of public schools. This was exclusive of the four leagues granted to each county and is slightly more than 26% of the total area of the state. At the same time the permanent fund invested in bonds amounted to $3,256,970.

The lands appropriated to the school fund were to be sold under regulations, at such a time and on terms prescribed by law. The legislature was specifically enjoined not to grant any relief to purchasers of the land. The comptroller was required to invest the proceeds from sale of the lands as directed by the state board of education in bonds of the state, if obtainable, otherwise in United States Bonds.

The principal of all bonds and other funds and the principal arising from the sale of lands granted to the school fund

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13 Frederick Eby, The Development of Education in Texas, p. 171.

14 Land Office Report, 1900, p. 44.
constituted the permanent school fund; and the income from it, "and not more than one-fourth of the general revenue of the state, and a poll tax of $1.00" was defined to be the available fund. The two funds were first known as permanent and available funds in the law of August 13, 1870.

After all, even this reactionary body had dealt more generously with the public schools than had many of the other states of the union.

The educational provisions of the Constitution of 1876 were a victory for the principles of endowed education so cherished by the founders of the Republic, but it resulted in the elimination of the rather progressive school system set up by the so-called radicals. The weak compromises and numerous restrictions became more and more apparent. Finally, popular opinion turned toward free public education, however, and amendments to the constitution have had to be voted from time to time to meet the educational needs of changing conditions. The restricted field of investment securities open to the permanent fund has been expanded by amendments from time to time.

Governor Roberts, a zealous friend of public education, came into office in 1879. He recommended that the legislature provide for more rapid sale of school lands, in order to avoid increasing state taxes to meet the demands of the rapidly growing population.

15 \textit{Constitution of 1876, Art. VII, Sec. 3.}
increasing scholastic population. The lands were then being sold on credit to settlers, payable with interest in ten annual installments. Sales were at a considerable expense at a minimum price of $1.50 per acre. During the same time, corporations were placing land on the market at a lower price and the government was giving land away to railroads, to scrip claimants, and for use as homesteads. Consequently, the increase in the principal of the permanent school fund was very slow and the interest accruing to the available fund remained almost unchanged while the per capita apportionment from that source grew smaller each year. The school revenues from 1875 to 1879 amounted to $202,538.62, a considerable increase over any previous four-year period, but still short of what the schools should have been realizing from such formidable holdings.

An act was passed by both houses of the legislature on March 1, 1879, appropriating the entire school fund annually derived from all sources including the poll tax and one-fourth of the general revenue, and setting it aside for the support of the public free schools. Governor Roberts refused to sanction the bill setting aside one-fourth of the revenue for the schools. He demanded that the amount be cut down to one-sixth, until the state should again be free from debt.

Influenced by the inefficiency of the school system and

16 Bishop and Giles, op. cit., p. 292.
the need for curtailing expenditures, Governor Roberts recom-
mended that the school land be put on the market so as to
increase rapidly the common school fund and thus minimize the
necessity of making enormous appropriations each year for the
benefit of the schools.

The governor's action brought on a bitter political
fight. Some wanted the constitutional limit of one-fourth
of the public revenue retained; others wanted much less.
Many were still opposed to the whole enterprise of public edu-
cation. This group now found new support from men who dis-
credited the system because they hoped to exploit the public
lands for their private gain. They contended that it was a
17 Yankee innovation and a failure. In any case, the state
was financially embarrassed, and the creditors had a prior
claim to the public revenues.

A special session of the legislature was called in June,
1879. Governor Roberts reminded the lawmakers that it was
the duty of the state to support and maintain the public free
common schools to the extent of its ability, and that this
duty was imposed upon the legislature by the organic law. He
recommended and urged the propriety of immediately inaugurat-
ing the policy of expeditiously selling off all the public
school lands.

In a message on June 10, 1879, Governor Roberts said:
The scholastic population is increasing faster

17Frederick Eby, The Development of Education in Texas,
p. 175.
than the public free school fund. That means increased taxation to preserve the present standard of schools. There are now about thirty-five millions of acres of school lands, which ought to increase the present school fund from three to fifteen or twenty million dollars. With such a fund drawing interest we might hope indeed to build up and maintain an efficient system of public free schools with the aid of a light tax that would hardly be felt. Equally as good reasons may be given for the sale of all the other lands. I respectfully recommend one commissioner be appointed to sell all of these lands, under the direction and sanction of a board of executive officers; that an appropriation be made to pay his salary and incidental expenses, and that each class of land shall be made to bear the expense of selling in proportion to the value of its land that may be sold. I have good reason to believe that with the facilities thus furnished, and upon extensive publications being made to let it be known, great quantities of land can be rapidly sold, and that it will be the best and fastest way to settle the country with a good population. I deem this a matter of great importance to the public interest in many respects, but especially as it looks to a more speedy closing up of the interest that the State has in lands, and will relieve the people from taxes in proportion to the lands sold.18

The appropriation for schools passed by the legislature in special session cut the amount from one-fourth to one-sixth of the annual revenues. This legislature also passed the "Fifty Cent Law" which marked the end of the purely developmental policy of administering the unappropriated public lands. 19

The "Fifty Cent Law" of July 14, 1879, provided that unappropriated lands in west Texas counties and scrap lands in older organized counties were reserved from locations and placed on sale at fifty cents per acre. One-half of the proceeds from sales was appropriated to the public school fund

18 Moreland, op. cit., p. 310.
and the other half was to be applied to the payment of the bonded debt of the State. The minimum price of fifty cents per acre was far below the value of scrap lands; however, it may have been about right for some of the poorer land in the western counties. Less than $6,000 was received from the sale of these reserved, unappropriated lands during the first year the law was in effect. The vacant lands in Greer County, later incorporated into Oklahoma, were to be sold; one-half going to the permanent school fund and the other half to the payment of the public debt.

By legislative enactment of March 26, 1881, each county was secured in its constitutional grant of four leagues of land either in the reservation set aside by the fifty cent law of 1879, or in public domain proper. Counties that had not received their lands could satisfy their claims by taking up their four leagues in this reservation.

The act of April 9, 1881, provided that in locating land under a certificate issued to disabled veterans of the Civil War, a like amount of land should be located for the school fund.

The unappropriated public domain rapidly passed from state ownership under the policy of free grants to railroads, war veterans, homesteaders, and to the public school fund. During the four year period from 1879 to 1882, certificates were issued by the General Land Office to a total of 46,493,913 acres. Counties were organizing rapidly, each

20 Cooper, op. cit., p. 36.
receiving four leagues of land for local support of schools. This constituted a sizable disposition of the public domain within itself. From 1879 to 1882, 300 leagues, or 1,328,400 acres, were reserved for the benefit of free public schools of counties organized or yet to be organized.

Between all these demands, the land ran out. In 1882, the Commissioner of the General Land Office informed the legislature that the land grants exceeded the available public domain by 7,814,695 acres. The natural result was the legislature's swift action in withdrawing all lands from sale until an audit and revision could be made. Consequently, an act was passed April 22, 1882, repealing all laws granting lands to persons for the "construction of railroads, canals, and ditches," and the policy of extending public aid to railway construction came to an end.

The fact that the Federal government discontinued the practice of stimulating internal improvement by making donations of land a decade before the state took such action, probably explains the rapid alienation of the public domain of Texas; another factor was the experimental type of loose legislation.

The total number of acres patented by the railroads from 1854 to 1882, was 35,768,718 acres, but a large amount of this

21 Bishop and Giles, op. cit., p. 292.
22 Ibid.
23 Newton and Gambrell, op. cit., p. 270.
was later recovered from the companies because of their failure to build sufficient mileage to entitle them to the land. In most of these grants, the roads were required to survey alternate sections set aside as school land. Although the law required the railroads to dispose of the land, the vested interests, through a system of transfers or the organization of land companies composed of railway stockholders, were successful in evading the restrictions in many instances. The policy of forcing land on the market tended to cheapen it and made the sale of school land at fair prices most difficult.

The sale of public-debt reservation at fifty cents per acre proved to be against the best interest of the state. Half of the proceeds of the sale of these lands went to the school fund which was restricted to investment in national and state bonds. The desire of the state to cancel its bonded indebtedness while the school fund was forced into the open market to purchase the state bonds, which commanded a high premium, resulted in competition between the state and the school fund. In the special session of the legislature in 1882, the governor pled for a change in the price of the reserved lands and in the purpose to which the money derived from the sales was devoted, but the controversy over re-districting the state for congressional representatives caused the legislature to postpone any consideration of needed changes.

The interest of the state and the welfare of the trust
funds were inadequately secured by the statutes. The fifty cent law controlling the sale of the debt-reservation land and the imperfect legislation relative to the public school lands made the public lands the center of the speculative craze during the upward swing of industrial prosperity of the early eighties.

Another reservation of land for county school purposes was made in the Act of April 7, 1883. In this case, 325 leagues, or 1,439,100 acres, of land that had been previously surveyed were set apart for the benefit of unorganized counties and such organized counties as had located school or other land and the title to which was in conflict. This 325 league reservation was in addition to what had already been granted to the counties. It was the intention as indicated by the Constitution of 1876, that every county should receive four leagues of land, but only 239 counties actually received lands in accordance with these provisions. Fifteen counties, having been organized after the complete exhaustion of the public domain, thus lost their constitutional birthright. It is also true that a few counties received a part of, but not the entire four leagues.

The act of April 10, 1883, reserved up to 2,000,000 acres of land remaining in the reservation created in the

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25 Lang, op. cit., p. 126.
"fifty cents law" after the State should pay the amount due the public school fund, the public debt, the county school fund and the University fund. The 2,000,000 acres were appropriated, one-half to the public school fund, and one-half to the University and its branches as a permanent endowment.

Acts subsequent to 1883 dealt more specifically with the administration of the public school lands, which will be taken up in the final chapter.

A considerable length of time was required to adjust the shortage of land disclosed by the Commissioner of the General Land Office in 1882. Under the Constitution of 1876, one-half of the public domain belonged to the schools. An accounting of the public domain revealed that the permanent school fund had not received, by several million acres, its portion of land. A shortage of 5,902,076 acres was disclosed in the accounting made between the state and the school fund in 1899.

In the settlement of the deficiency there was appropriated to the permanent school fund all of the lands which had been or which might be recovered from railway companies and other sources; all unsurveyed and unappropriated lands except river beds, lakes, bays and islands. A special commission appointed to adjust the bankrupt land system reported in 1899, the recovery of 1,440,701 acres from the internal improvement agencies which had failed to meet their contracts. The

27 Cooper, op. cit., p. 38.
commission also reported that there were available over 4,000,000 acres in unsurveyed and unappropriated domain. No more impressive testimonial of the size of the Texas public lands is available. So big was the total that an error in calculation of 4,444,195 acres passed unnoticed for years.  

In the adjustment made in the General Land Office, it was found that after adding to the school fund all forfeited and recovered lands, there was a deficiency of only 17,180 acres. This was made good in an act of February 23, 1900, by the appropriation to the school fund of $17,180, the value at one dollar per acre of the deficiency. Thus was settled satisfactorily and without disturbing a single title an indebtedness that when first announced to be due created great uneasiness, especially among pre-emptors and persons who had filed on land under the homestead donation law. This settlement brought to a close the developmental phase of the appropriated public domain. Since 1900, the school fund has received all scrap lands and forfeited lands. Since 1939, the mineral estate in river beds and channels, in all areas within tidewater limits, including islands, lakes, bays and the bed of the sea, has been a part of the school fund. The school fund has received slightly more than one-half of the unappropriated lands as of April 18, 1876, the date of the

28 Bishop and Giles, op. cit., p. 292.
29 Lang, op. cit., p. 130.
adoption of the present Constitution. The public school lands are by far the largest portion of the appropriated public domain of the state.
CHAPTER IV

ADMINISTRATION OF THE PUBLIC LANDS

General Land Office

The constitutional authority for a General Land Office is found in the Constitution of the Republic of Texas, adopted March 17, 1836. On December 1, 1836, the Texas Congress passed an act defining the territory embraced by the Republic. This included all the land within our present boundaries, reached out three marine leagues into the Gulf of Mexico, spread out over more than half of the present State of New Mexico, and included portions of Kansas, Colorado, and Wyoming. With the acquisition of such a vast domain, estimated at 251,579,800 acres, Texas was faced with the necessity of installing a General Land Office and organizing a system of land management.

The government of the Republic exercised its constitutional powers on December 22, 1836, when it passed a measure providing for the establishment of a General Land Office to be located at the seat of government for the

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2Bascom Giles, History and Disposition of Texas Public Domain, p. 4.

purpose of administering the land affairs of the Republic. Besides creating the General Land Office, where all titles and archives pertaining to land were to repose, the act also provided for the establishment of eleven regional land offices. These district offices were never put into operation, but in lieu thereof, county boards of land commissioners were instituted to perform the same work. A temporary Land Office was opened at Washington in May, 1842, but the opening of the permanent office in Austin was postponed until 1844.

The vast area of public domain has been disposed of in various ways. The Constitution of 1836 recognized and honored all valid grants which had been issued by the Spanish and Mexican governments.

Many Spanish and Mexican grants were specially confirmed by the legislature at various times, but many stand on the original titles from these governments. The titles to some of the largest South Texas ranches come down from old Spanish grants. After Mexico won her independence from Spain, the Supreme Government of Mexico had power and authority to make grants of land in Texas. Our courts now hold that the Mexican laws prevailing when the Mexican grants were made control the rights of title holders.

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6Ibid., p. 6.  
Texas has given away outright considerably more than half of all the public lands that were at the disposal of the government when it became independent. The state has used its public lands with which to attract immigrants, pay soldiers, endow private educational institutions, subsidize internal improvements, provide pensions, pay public debts, construct the State Capitol, and endow public trust funds for public education and eleemosynary institutions.

The problem of administering the Texas land system has consisted chiefly in that of keeping an account of grants and claims for land, of making the proper surveys, of issuing patents to legal claimants, of keeping an accurate record of the surveys that have been made and patents that have been issued, and of guarding the state against fraud and misrepresentation in the disposition of its public lands. All of this work has been conducted under the direction of the Commissioner of the General Land Office. The Commissioner is one of the elective state officials, being elected for the usual two-year term. He is a member of the Executive Department of the State. The laws give to the Commissioner full charge and discretion in all matters pertaining to the sale and lease of the public lands of the state set apart for the

8Lang, op. cit., p. 247.  
9McKitrick, op. cit., p. 138  
10Texas Legislative Manual, 1947, p. 36.
benefit of the public schools and the four asylums, subject
to the laws and the Constitution of the state.

Since 1882, the Commissioner's duties have become chiefly
cconcerned with school lands, for after that time, all state
lands belonged to the public school system or to the Univer-
sity. Aside from his administration of the University lands,
it is the function of the Commissioner, through the services
of the employees of the General Land Office, to maintain files
of the transfers of public lands, sent in to the Land Office
for filing, and to maintain records of all accounts for money
due the state upon public land obligations. While the Com-
missioner has many and varied rights and powers, they are re-
stricted to such powers as are expressly conferred upon him
by statute.

It is the duty of the Commissioner from time to time to
classify or reclassify, or revalue the public free school
land subject to sale, designating the land as agricultural,
grazing, timber, or mineral land, or a combination of such
classifications, according to the facts in each particular
case. This classification and appraisement is made on the
records of the Land Office and no further action is necessary
to complete such classification.

When land sales have been forfeited and the former sale
has been canceled, it is then the duty of the Commissioner

11 Hazel, op. cit., p. 12.
to classify and value these lands. The classification which
the Commissioner gives the lands cannot be changed by him,
and his valuation thereof controls in the sale of it. 12

The Commissioner is required to maintain an efficient
staff in the General Land Office:

The Commissioner shall superintend, control and
direct the official conduct of all subordinate officers
of the General Land Office, and execute and perform all
acts and things touching or respecting the public land
of this State or rights of individuals in relation
thereto, as may be required by law and make and enforce
suitable rules consistent therewith. He shall give
information to the Governor and legislature concerning
the public lands, or the General Land Office, when
required. 13

In handling the public land matters of the State of
Texas, the Commissioner of the General Land Office is aided
by several statutory boards, each exercising certain specific,
respective and limited functions. With reference to public
school lands, the School Land Board and the Board for Lease
of University Lands are most notable.

The Board for Lease of University Lands was created by
an act of March 29, 1929. It consists of the Commissioner
of the General Land Office and two members of the University
Board of Regents, neither of whom should be employed directly
or indirectly by any oil or gas company. The Board has charge
of the sale of oil and gas in University lands, as well as
the leasing of University lands.

12 Ibid.
One of the most important changes in the administration of public lands was the creation of the School Land Board in 1939. This Board is composed of the Governor, the Attorney General, and the Commissioner of the General Land Office, who is Chairman. The functions of the Board are to set all dates for the leasing and the sale of surveyed lands, and to determine the price at which any lands, whether surveyed or unsurveyed, shall be leased or sold and to provide for the advertisement of sales of land and leases. This necessarily requires that the Board determine the highest and best bids when competitive bids are received. The functions of the old Board of Mineral Development have been combined with this Board so that the leasing of river beds can be handled the same as other state lands. The School Land Board is also authorized to fix the price at which excess acreage in patented surveys or titled grants may be paid for by those owning an interest in such surveys or grants.

Sale and Classification of the Appropriated Public Domain

County School Lands.--It was the common purpose of founding a system of public free education that prompted the appropriation of lands both to the state and the county school funds. While the state lands are centrally controlled by the Commissioner of the General Land Office, the county

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school lands are under the control of the county commissioners' court of the various counties and are not within the province of the General Land Office. Title to these lands is also vested in the counties until they are sold; and now that nearly all of them have been sold, the counties, with a few exceptions, have the funds realized from the sale of their lands. These funds are in the custody of the county commissioners and the proceeds realized from their investment constitute a part of the available county school fund.

The fact that the county school lands are administered locally makes it impossible to give a full account of either their administration or the proceeds arising from them. Under the various acts through the years, 239 counties have received a total of 4,229,166 acres for local school purposes.

The procedure that a county followed to secure its land was about as follows:

1. A certificate for the land was issued to the county.
2. The commissioners' court of the county proceeded to have the land surveyed.
3. When the land was surveyed, the field notes were returned to the General Land Office of Texas, where files were set up under the county's name.
4. The commissioners' court then applied for the patents on the land, and the General Land Office issued patents signed by the Land Commissioner and the Governor.

\[15\text{Giles, op. cit., p. 11.}\]
\[16\text{Ibid.}\]
Following is the order of the commissioners' court of Bell County, Texas, issued September 11, 1876:

Ordered by the Court that R.P. Bigham be and he is hereby appointed surveyor to survey the Four Leagues of Bell County School Lands, said Leagues to be divided into one hundred and sixty acre lots as near as may be, the lines of each lot or subdivision to be marked on each side and the corners of the same to be fixed and numbered and each quarter section or subdivision to be classed as 1st, 2nd & 3rd according to the value irrespective of any improvements thereon. The Commissioners Court to be furnished with a correct plat of said surveys as well as field notes of said quarter section or subdivision and a general topographical description of said school lands to be done and reported by the first day of December next. The said R.P. Bigham to enter into bond payable to the County Judge and his successor in office with good and sufficient sureties in the sum of One Thousand Dollars conditioned for the faithful performance of said Survey, to be done as above set forth. In consideration of making said survey the said R.P. Bigham is to be paid the sum of Four Hundred Dollars out of the first money realized from the sale of said lands.¹⁷

The Bell County school lands were located in Wise and Montague Counties, and were patented as two separate tracts. When the land had been secured, the county's next problem was to dispose of it so that the proceeds therefrom could be used for the schools. The land was divided and placed on the market for sale. Often land would change hands a number of times before it was finally paid for in full and the deed could be issued. As the land was sold, the money received from sales was invested for the schools by the commissioners' court.

¹⁷Minutes of the Commissioners' Court of Bell County, Texas, Vol. III, p. 76.

¹⁸Land Office File, Fannin 1-634.
State School Lands.--Prior to 1883 there were two sets of acts governing the sale of state school land. Various statutes dating as far back as 1856 were enacted to govern the sale of alternate sections of land set aside for the school fund and surveyed by agencies promoting internal improvements. An entirely different land act passed during the late seventies referred to the administration of all remaining grants of state school land.

These laws were defective in many ways and revealed a lack of protection of the permanent school fund. The statutes made no provision for the time of final payment of principal under penalty of forfeiture. Forfeiture on account of non-payment of interest was not effected until the county or district attorney instituted proceedings. Even these officers were not required to institute proceedings, and since no compensation was provided, the officers did nothing.

The fact that the county surveyor virtually had the power to classify, evaluate, and sell the school lands, constituted another defect of the laws. The only central control over his activities and decisions was the rather negative power of the Commissioner of the General Land Office who had the authority to remove the land from the market. The county surveyor was not required either to inspect or to know the location of the land. He was in a position to favor

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any person or friend without violation of the law. These defects caused both abuse and loss to the school fund.

The law of 1861 gave the Commissioner the power to correct valuations made by the district and county surveyors and to make any necessary correction in the valuations submitted. Lands in unorganized counties were to be appraised by the district surveyor and he was required to make an affidavit that he had personally inspected the land appraised by him. Liberalized terms of credit were designed to bring about an increase in land sales and to develop the principal of the permanent fund as a source of revenue, the interest on which accrued to the available school fund.

Legislation governing the sale of school lands was unduly complicated because an entirely different set of laws governed the sale of school land other than that which applied to alternate sections. Such a distinction was largely artificial and led to confusion. The revised statutes of 1879 provided for the sale of school lands other than alternate sections. The law provided for the sale of the school lands as soon as surveyed. The governor was authorized to appoint three disinterested commissioners in each county to appraise the land and determine its value. After valuation, sale of the land took place under the supervision of the county surveyor. The interests of the school

fund were partially sacrificed to the interests of the settler, for actual and prospective settlers were given preference right to purchase, provided they promised to move upon the land and make certain improvements within a year after making application. If the land was not purchased by actual or prospective settlers within two years after notice of sale, anyone was allowed to buy it. The land was sold in amounts of not more than 160 acres and not less than eighty acres at not less than $1.50 per acre, with one-tenth of the purchase price as a down payment.

These laws, together with the building of railroads and the general condition of prosperity that prevailed, brought an orgy of speculation in land. The object of establishing home-owning settlers upon the land while it was being sold to fill the coffers of the permanent school fund was only partially realized. Large holdings of land were accumulated by wealthy individuals who evaded the law by many and devious means. Through the use of the names of children, of employees, and borrowed names, certain persons acquired large quantities of land while the number of actual settlers increased slowly.

An act was passed on April 12, 1883, which was far more comprehensive than its predecessors for the classification, sale, and lease of all school lands. Thus, for the first

21Rupert N. Richardson, Texas: the Lone Star State, p. 387.
22Miller, op. cit., p. 330.
time, legislation for the administration of school lands was resolved into one law. School lands were placed under the control of the State Land Board, which was created by the act and which was composed of the Governor, the Attorney General and the Commissioner of the General Land Office. The new law established a system of classification whereby agricultural and pasture land were each given two classifications, watered and unwatered. A minimum price of three dollars per acre was placed on watered lands and two dollars per acre on unwatered lands. Watered or agricultural land could be purchased by individuals in lots of not more than 640 acres, and unwatered or grazing land was purchasable in quantities up to 4,480 acres.

The minimum amount of land that could be purchased by an individual was fixed at eighty acres for timbered land, and 160 acres for all other classes of land. Corporations were limited in land purchases to 640 acres in any one county. Only individuals were permitted to purchase agricultural land, and then only after swearing that within sixty days they would settle upon the land purchased. Patents to such land were not issued until the land was occupied and improved for three consecutive years. In case the original purchaser sold the land before complying with the conditions of settlement and improvement, the second

23Lang, op. cit., p. 173.
purchaser was not required to observe these conditions. This created a defect in the law.

The newly created Land Board, acting under its own authority, drew up a contract which required the settler to occupy the land within ninety days after the award had been made and to continue to occupy it for three consecutive years. If the purchaser abandoned the land or sold it to any person other than to an actual settler during the three-year residence requirement, the land and all payments were to be forfeited to the state. The Board was not fully sustained in its policy, for the Legislature in 1889 validated the titles of purchasers who had not observed all the requirements of the law and the rulings of the Board.

The law required that sale should be made in each county or land district; awards being made as the result of competitive bidding. At first, bids were received only in writing, but bidding by public outcry was later substituted for the written bids. The credit provisions of the law were quite liberal. Purchasers, after making an initial payment of one-thirtieth of the purchase price, could pay the balance in twenty-nine annual installments with interest at five per cent. Under the terms of the law, forfeiture took place in case the purchaser failed to make settlement upon the land within six months, or in case the interest was not paid by

24 Cooper, op. cit., p. 47.
March 1, but the payment of installments on the principal might be deferred until the last fell due.

Because of the inadequacy of the law to insure settlement on the part of the purchaser, the Land Board, beginning in 1883, withheld the watered lands from sale. Also, it limited to 1,280 acres the amount of grazing land that one person could purchase, although the law placed the limit at 4,480 acres.

The Land Board Act of 1883 also provided for the classification of timbered lands. Persons who had settled on timbered land by January 1, 1883, were allowed to purchase for cash not less than eighty nor more than 320 acres at a minimum price of five dollars per acre for land having timber suitable for lumber, and two dollars per acre for lands having timber not suitable for lumber. Individuals other than settlers were permitted to purchase, on the regular credit terms, not less than 160 acres nor more than 640 acres at a minimum price of five dollars per acre. Or the timber could be purchased off the land at five dollars per acre cash. This blanket classification thus failed to make any distinction between the various grades of timbered lands that were suitable for lumbering purposes. The measure's attempt at the classification of timbered lands was not to the best interest of the school fund.

Leasing of school land was first provided for in 1883. Since that time, it has been a regular feature of the public land policy. The legislature in 1883 provided for the leasing of school lands for grazing purposes for a maximum of ten years and at a minimum rental of four cents per acre. Leasing as well as sales was placed in the hands of the State Land Board. Leased lands were made subject to purchase at any time for the purpose of settlement, in small amounts suited to the needs of the settler.

The first leasing contracts were let by the Land Board in January 1884, at the minimum price of four cents per acre. The cattlemen, who were already using the land, followed the law of the range and refused to bid against one another; each ranchman put in a minimum bid for the acreage he had been using. Immediately, the Land Board raised the minimum rental to eight cents per acre for unwatered land and twenty cents per acre for watered lands. The Board's refusal to lease the school land for less than eight cents an acre, and their rejection of the cattlemen's offer of four cents an acre precipitated a struggle which is notable in Texas history. Defying the law and the Land Board, some of the cattlemen refused to pay any rental at all and escaped conviction because they were tried before packed sympathetic juries. Illegal enclosures of school land fenced in many

26 Richardson, op. cit., p. 388.
farmers with the result that fence-cutting was practiced on a large scale during the year 1883. The offenses became so violent that special session of the legislature was convened in January, 1884, to enact laws and to establish peace between the cattlemen and the fence cutters. The statute enacted required roads to be opened through pastures; it made fence-cutting a penitentiary offense, and declared the unlawful fencing and grazing of public lands to be a misdemeanor.

With reference to the policy of leasing the school lands, Governor Ireland said:

I would remind the Legislature that it is no easy matter to change the ideas and habits of a people when those ideas and habits have been indulged in without restraint. And as no former administration even attempted to utilize the people's grass, or derive a rental from the unoccupied lands of the State government, it is not to be wondered at that the laws passed during my term of office on this most important question should excite some little opposition from interested parties, and cause them to seek a means to avoid and defeat these laws, if possible. People who have been accustomed to graze their cattle free of charge on the State lands may be slow to approve the order of things which aims to make them pay for benefits conferred; but I have no doubt that in a very short period the principle of dealing with the State as one would with an individual will be universally recognized, and that stockmen and others will willingly--aye, gladly--render to the Commonwealth a fair equivalent for those privileges which they have so long enjoyed gratis.

The policies of the Land Board incurred the wrath of the

27 Miller, op. cit., p. 332.


29 Moreland, op. cit., p. 531.
large ranchmen in West Texas who pastured on the public school lands, and failed to meet with popular approval because of its constant changes in the mode of selling and leasing. This led to its abolition in the general revision of the school land laws in 1887.

The traditional free grass policy continued to be a common practice regardless of the legislative enactments against it. In 1887, it was revealed that more than three and one half million acres of school lands were illegally fenced and in private use. The unlawful free use of school lands resulted in a loss estimated at a total of more than $567,000. As late as 1899, two state agents were appointed to investigate the illicit free use of school lands, a practice which had continued down to the close of the century, but after this the practice seems to have been given up.

All public lands sold or otherwise parted with by the state prior to the adoption of the Constitution of 1876 were disposed of without the reservation of minerals. There was no legislation designed to reserve any part of the minerals until 1883. The first land sales act to make any sort of provision for reservation of minerals was the act of April 14, 1883. It reserved to the fund to which the land belonged all minerals found therein. The law applied only to such

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30 Miller, op. cit., p. 336.
land as the state should hereafter dispose of and not to public lands in general. It had been the policy of the state prior to 1883 to withhold from sale public lands that were known to contain minerals, and under the law of 1883, such lands were not to be sold, but were to be retained by the state and operated by individuals on a royalty basis. The act provided that all minerals in public school lands known to contain minerals were reserved from the operation of the law for the sale of such land and shall be used and disposed of for the benefit of the respective funds for which said lands are now set apart.

Statutes of 1883 provided only for the sale of minerals and did not authorize the sale of mineral lands. The permanent school fund was to receive a royalty of five per cent of the gross receipts from the operation of any mine or mines on public school land. But the law was defective and virtually inoperative, only $12.25 being received in royalties up to the year 1887. The whole situation with respect to the mineral lands was badly in need of change.

In the revision of the land laws that took place in 1887 the Land Board was abolished. An act passed April 1, 1887, placed the entire responsibility of administering the public lands in the hands of the Commissioner of the General Land Office whose acts were subject to the approval of the

33 Ibid.
34 Land Office Report, 1944, p. 33.
The law also provided that school lands were to be classified by state agents rather than by local surveyors. The interest of the settler seemed to be uppermost in the minds of the lawmakers, as evidenced by the prohibition of land sales to corporations, and by the limitation of the amount that an individual could purchase to 2,560 acres of unwatered pasture land and 640 acres of agricultural land. A person buying agricultural land was required to swear that the lands being purchased were desired for a home and that he was purchasing it for his own use with no collusion with anyone. As in previous laws, three years residence was required before the state would give title to the purchaser. The purchaser was not to be absent from the land more than six months each year. Buyers of farm land were given forty years to pay for the land. The interest rate was five percent. Forfeiture took place in case the interest was not paid annually by August 1.

Provision for the classification of timberlands by state agents was made in the law of 1887. The law retained the minimum price of five dollars per acre for the better timberlands and two dollars per acre for poorer land. The sacrifice and waste of timber on the school lands continued, however. Finally, in 1889, state agents were authorized to investigate the theft of timber on school land and the practice was subsequently stopped.

35 Richardson, op. cit., p. 338.
The lease system was changed in 1887 so that the maximum term of a lease was five years and the rental was fixed at four cents per acre. It was further provided that lands classified as grazing could not be sold during the period of the lease.

Changes in the laws governing lands other than timbered land were made every few years. The law of 1887 was modified two years later. The chief features of the legislation of 1889 relative to the terms of sale of land were the lowering of the minimum amount of agricultural land one person could buy from 160 acres to eighty acres. The old principle of preemption was repealed showing a recognition of the growing scarcity of public lands. The purchasers of school land were allowed until January 1, following August 1, at which time interest fell due, to pay the interest due on unpaid installments of principal; but there was a penalty of fifty per cent on such delay. This extension did, however, save many purchasers in the drought-stricken portion of West Texas from forfeiture of their land; with the same thing in mind, it was necessary for the legislature to make similar extensions from time to time.

The first legislation to authorize the sale of mineral land as such came in 1889. This law provided for the sale of mining claims on lands containing gold, silver, cinnabar, lead, tin, copper, or other valuable minerals in lots of

not more than twenty-one acres at the price of twenty-five dollars per acre. Lands containing coal, iron ore, oil, gas, fine clay and other less valuable minerals, could be purchased in lots of not more than 160 acres to the person; an association which had spent as much as $5,000 in developing a claim could purchase up to 640 acres. The price on lands containing these coarser minerals was fixed at twenty dollars per acre if situated within ten miles of a railroad, and ten dollars per acre if more than ten miles from a railroad. Persons buying mineral lands were given five years to make payment in full. Due largely to incomplete classification, valuable mineral lands continued to be sold as grazing land at $1.00 and $1.50 per acre. This largely defeated the purpose of the mineral reservation act. Fifty dollars was collected from each mining claim annually, regardless of the amount of mineral produced. This money was credited to the permanent school fund.

Due to the unfavorable climate and situation of some of the school lands, the legislature in 1889 adopted the so-called "lease line" and applied different terms of lease to the lands differently situated. School lands lying north of the Texas & Pacific Railroad and east of the Pecos River were to be leased for not more than six years, but the lands lying south of the railroad and west of the Pecos could be

38Land Office Report, 1900, p. 28.
leased for ten years. Rentals on all school lands, however, were to be four cents per acre, and leased grazing land was not subject to sale. The acreage under lease on school land increased from the end of the fiscal period 1888 to the end of the fiscal biennium 1890 from 6,327,966 acres to 7,130,434 acres.

The early nineties brought considerable hardship and suffering to every section of the state. The years 1891 and 1892 brought severe drouths to Texas. Out of the west came demands for relief through a general revision of the school land laws, and in 1895, the general revision was made.

The act of 1895 provided for a reduction in both the minimum and maximum amount of land that an individual could purchase. The maximum was one section of agricultural land and three sections of grazing land. Forty acres was the minimum of agricultural land a person could buy. The minimum price was set at two dollars per acre for agricultural land and one dollar per acre for grazing land. Interest rates were reduced to three per cent and deferred for forty years.

The regulations governing mineral land were altered in 1895. The annual tax of fifty dollars was eliminated. Any individual or corporation was permitted to secure a claim to mineral lands varying in size from twenty-one to six hundred and forty acres, according to the kind of mineral produced.

39 Lang, op. cit., 194.
The claimant was given five years in which to work his claim with the assurance of being molested by no one, and the product was to be disposed of wholly for his own benefit. At the end of the five year period a patent to the land could be secured by paying twenty dollars per acre for the land containing the more valuable minerals. The lands containing the less valuable minerals could be obtained for ten dollars per acre if situated more than ten miles from a railroad, or fifteen dollars per acre if within ten miles of a railroad. Buyers were given credit for a period of ten years with interest at four per cent. The purpose that motivated the enactment of such a measure as this may have been "to promote the development of the mining resources of the state," as was stated in the caption of the bill, but certainly it was not designed to realize revenue to the school fund. This law was characterized as "an act to authorize persons to rob our public free school fund at their own pleasure."  

The problem of leasing public land was again dealt with in 1895. The law did not stipulate the absolute lease prices, but prescribed a minimum rental of three cents per acre for agricultural and watered lands, and two cents per acre for grazing land. Leases were to be awarded by a system of competitive bidding, the highest bidders receiving the award.  

40 Land Office Report, 1904, p. 9.  
41 Cooper, op. cit., p. 62.
Certain changes were made in the land laws in 1897. The minimum price on agricultural lands was reduced from two dollars to one dollar and fifty cents per acre. The minimum amount of agricultural land that could be purchased was increased from forty to eighty acres, but the maximum amount of agricultural and grazing land that could be purchased remained at four sections, two sections of which might be agricultural land. In case the land was forfeited, the original purchaser had ninety days in which to repurchase the land, during which time it was possible by merely presenting a certificate of erroneous classification from the commissioners court to secure a reclassification of the land.

The laws of 1895 and 1897 were not for the best interest of the school fund. The interest rate was reduced and interest past due was lost. The provision permitting reclassification of land and the reduction in price encouraged forfeiture and fraudulent reclassification. School land which had been classified and sold at two and three dollars per acre was forfeited, reclassified as grazing land, and purchased by the forfeiting purchaser for one dollar per acre. The permanent school fund lost heavily as a result of these practices.

O. Henry, writing of the Land Office, said:

Volumes could be filled with accounts of the knavery, the double-dealing, the cross purposes, the perjury, the lies, the bribery, the alterations and erasing, the suppressing and destroying of papers, the various schemes and plots that for the sake of
the almighty dollar have left their stain upon the records of the General Land Office.42

Provisions of 1897 affecting leasing were that lands under lease should be subject to sale at any time, except where substantial improvements had been made upon the land.43

The lessee, however, had a prior right to purchase, for the purpose of settlement, the land he had leased. This privilege was sometimes abused by speculating lessees and others who had information concerning the time for leases to expire. Homeseekers were frequently forced to pay a bonus in order to purchase valuable land. Sometimes people who did not know the exact date their own leases expired were compelled to pay bonuses to members of courthouse rings or other agencies, or speculators who were always on the alert to file on land coming on the market when leases expired. Competition in this respect was keen and resulted in violence and bloodshed in some cases.

The lands received by the public school fund in the accounting that took place in 1900 were placed on the market without delay. These lands, situated in the western portion of the state, except scrap lands, and generally poor in quality, were offered for sale at a minimum price of one dollar per acre, in lots of 640 acres or less. Sales were to be made for cash only, and without the usual condition of

42 Alfred W. Chandler, Land Title Origins, p. 453.
settlement. A prior right of purchasing the lands was given to actual settlers first, and then to leaseholders, but if they were purchased by neither, the lands were offered for sale to anyone.

Some modifications in the laws governing the sale of school lands were made in 1901. The new law required that the application for purchase or lease should be filed with the county clerk instead of with the Commissioner of the General Land Office. A person was given the privilege of buying four sections regardless of whether it was agricultural or grazing land. Lessees were given a prior right to purchase leased land.

As leases expired and land was placed on the market there were rushes by persons eager to purchase it. Rushes not directly to the land, but to the various courthouses; for the first application that was legally filed would secure for the applicant the particular land he wanted. Rival lines were formed, one of cowmen and another of farmers, and clashes resulted. Many a courthouse square in West Texas was the scene of a general melee. In Howard County ingenious cowboys built a chute to the window of the County Clerk's Office, defended it, lived in it for sixty days, and entered by it when the time for filing arrived.

In 1901, it was provided that timber on land could be

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44 Richardson, op. cit., p. 390.
sold in full tracts for cash at its fair market value. The regulations for the sale of timber were to be administered by the Land Commissioner.

The land act of 1905 embodied a new principle of selling public lands by providing for widely advertising the lands before placing them on sale. Land was to be sold by bids. Bids for the purchase of school land were to be submitted to the Commissioner of the General Land Office in writing, and the sale was made to the person who made the highest bid, as disclosed by opening the sealed bids. The bid had to equal or be greater than the price fixed by the Commissioner. The amount of land that could be purchased was limited to four sections, including former purchases, except in the extreme western counties where eight sections was the maximum. The conditions of purchase were forty years credit with interest at five per cent. There was no condition as to residence or improvements on unsurveyed vacant tracts of school lands that were not recorded on the official maps of the Land Office, and on unsurveyed swamp land. Tracts of unsurveyed scrap land of eighty acres or less were sold only for cash.

This law was proposed by J.T. Robison, Commissioner of the General Land Office, and it greatly increased the permanent school fund. The gain to the school fund during the first year after its enactment was more than $3,500,000.

The total increase or net gain to the permanent school fund resulting from this act was $26,519,339.52 up to the close of the fiscal year 1920.

An important amendment was made to the mineral laws in 1905. The Commissioner was authorized to set the price on mineral lands at a minimum of twenty-five dollars an acre; and the claimant was required to pay annually for five years one-fifth of the purchase price, as well as the interest on the unpaid portion of the principal. This act also provided that anyone who had been interested in a forfeited claim should not be eligible to acquire an interest in another location.

By 1905, practically all the timberland had passed from ownership of the school fund to private property. The competitive bidding act of 1905 provided that either timberland or timber could be sold to the highest bidder. The Commissioner was authorized to fix the minimum valuations and administer the sales. The competitive bids were to be sealed and filed with the Commissioner.

As to leasing, the law of 1905 provided that land not demanded for settlement would be subject to lease. The original lessee or assignee was given preference when the land was leased again, provided he made the highest bid.

46Land Office Report, 1920, p. 16.
Three cents per acre was the minimum rental for which land could be leased.

The highest-bidder act was amended in 1907. Anyone who had not purchased any land during the preceding six years could purchase as much as four sections in certain designated counties containing the more valuable lands, or not more than eight sections in certain specified counties in the southern portion of the state. The condition of settlement was imposed on whole tracts only; and the purchaser was given forty years credit at an interest rate of five per cent.

A significant change was made in the mineral laws in 1907. Double classification was provided so that mineral land could be sold for agricultural, lumbering, or grazing purposes, and the mineral rights specifically reserved to the fund to which the land belonged. This law favored the principle of separating the property rights in minerals from property rights in the surface of the land. This was perhaps the most important single step in adjusting the land laws of Texas to meet the changing conditions brought on by the discovery of oil. Another mineral survey of school lands was authorized in 1907, but it failed to eliminate the evils of improper classification and undervaluation of mineral lands.


49 Bishop and Giles, op. cit., p. 298.
In 1912, the Commissioner of the General Land Office wrote:

The valuation of mineral lands was simply guess work and purely arbitrary. A precious mineral location might be rich in ore and the owner extract large quantities in a short while, exhaust the deposit and abandon it in a year or so without liability in excess of the nominally appraised value. As yet few have found mining in school land profitable. In the case of the baser minerals, such as oil, coal, etc., the average prospector does not prospect, but waits for his neighbor to develop. He is likewise slow to do much real prospecting before buying the land, lest something should be found and the price fixed proportionately. 50

According to the statutes of 1907, timbered land was not to be sold until after the timber thereon was sold for cash and fully paid for. Timber was to be appraised by the Commissioner at its reasonable market value and it was not to be sold for less.

An act that became effective September 1, 1909, regulated and prescribed the manner of making payment when purchasing school lands. The law required that all remittances for first payments should accompany the application to purchase. Remittances were to be made collectible at par in Austin, and made payable to the State Treasurer, or if made to the Commissioner, they were to be endorsed by him to the Treasurer.

This revision of school land laws provided for the sale and lease of public school lands without changing materially

the general laws already in effect at that time. The classification and valuation of lands were to be handled by the Commissioner, and the provisions of the highest bidder act of 1905 were retained. The privilege of forty years credit with interest at five per cent was extended to purchasers, except for the purchases that had been made during the time that three per cent interest rates were prescribed. School lands could be sold in tracts of not more than five acres as sites for cemeteries, churches and school houses.

The revised statutes of 1911 required timber to be sold competitively the same as land, and the timber was to be removed within five years from the date of sale. The timber was to be appraised by the Commissioner.

All public lands held under a lease of three years or more were made subject to taxation by the revised statutes of 1911. The Commissioner was required to classify or reclassify incorrectly classified lands belonging to the public school fund. Leases were to be advertised and sold through competitive bidding. The period of lease was not to exceed five years and rentals were to be paid annually in advance. Absolute lease districts were created, taking in a large number of counties in the grazing section of West Texas, which meant that the land could not be sold during the term of lease. Unwatered lands were to be leased for ninety days to give the lessee an opportunity to secure permanent water. If after ninety days, he should fail to get water, the years'
lease payment was to be refunded. If water was secured at
the expense of the lessee, he was to have an option of renewal
for another period of five years, at the price provided by
law. Improvements were declared to be personal property and
subject to removal upon the ending of the lease.

The legislature enacted a law in 1913 that elaborated
more fully the mineral policy. Under this act, oil and gas
were separated from the other minerals and special provisions
were set up for acquiring rights to these two minerals.

With the payment of a filing fee of one dollar, a prospector
was to be issued a permit giving him the exclusive right, for
a certain period of time, to prospect for oil and gas. In
case oil or gas should be discovered in paying quantities,
the prospector could lease the land covered by his permit at
two dollars per acre per year, payable in advance, and a
royalty of one-eighth the value of the gross production of
the oil or ten per cent of the meter output of the gas sold.
Owners of lands that were purchased with the minerals reserved
received as their compensation the prospector’s fee of twenty
cents per acre.

Minerals other than oil and gas were subject to a royalty
of five per cent of the value of the gross output, except
coal and lignite, which were subject to specific royalties

51 Lang, op. cit., p. 196.
52 Land Office Report, 1944, p. 36.
of six cents and four cents a ton respectively. For minerals other than oil and gas, there was no prospector's fee and no rental charge except royalty.

The statutes affecting school land received some slight modifications in the laws of 1915. The law provided for sales on the first of January, May and September, the sales to be made on the competitive bidding principle for school lands. Persons could buy in multiples of eighty acres up to two sections in certain specified counties containing the better land. A person buying land in these counties was required to satisfy the three years residence requirement. One-tenth of the purchase price was to be paid in cash and interest rates were set at five per cent. In poorer western counties, the maximum amount of land one person could buy was eight sections. The conditions of the sale were the same except that residence was not required. School lands not located in either of the two specified groups of counties were to be sold under conditions of settlement and in amounts of not less than eighty acres or multiples of eighty acres, not exceeding 160 acres except in the case of scrap land containing less than 240 acres.

By acts passed in 1917, the State was held to have an express lien upon public school land in addition to any expressed rights in order to enforce payment of any principal.

or interest due and unpaid. Any person, firm, or bank, with
the consent of the owner of the land, was permitted to
arrange to have an instrument of transfer of indebtedness
executed.

The mineral laws were amended in several important
respects in 1917. The act of March 16, 1917, gave the mineral
laws a broader scope by extending the privilege of prospecting
for and developing minerals on public school lands and other
public land, fresh water lakes, river beds and channels, is-
lands, bays, marshes, reefs and salt water lakes belonging to
the state, and all lands previously sold with a reservation
of minerals.

Only citizens of the United States, or those who had
made a declaration of their intention of becoming citizens
of the United States, were given the privilege of prospect-
ing. A permit to prospect could be secured by an individual
or by an association on as much as four sections of land.
The same person or persons could secure another similar per-
mit provided it was a distance of two or more miles from the
first. If the first permit covered less than four sections,
another permit would be granted within two miles of the first
to bring the total area up to four sections. No one was per-
mitted to obtain more than one thousand acres within one mile

54 H.P.N. Gammel, Supplement Vol. XVII, General Laws of
Texas, Thirty-fifth Legislature, Regular Session, 1917,
p. 158.
of an oil well. A permit gave the holder the right to prospect for oil and gas for a period of two years. If minerals were discovered in commercial quantities, the prospector could lease the land covered by his permit.

Lands previously sold with the minerals reserved were subject to the same provisions as other land, except that the owner of a permit to lease was required to pay to the owner of the surface annually in advance, during the life of the permit or lease, ten cents per acre for all damages to the surface.

Any person or association desiring to prospect for coal, lignite, or sulphur was required to give notice that the applicant had located a mine on an area not larger than four sections. Thirty days later, the applicant could apply for a survey of the claim, the application to be accompanied by a filing fee of one dollar. The applicant was required to make the survey within ninety days after the application. He was then permitted to lease the area for a period of five years at ten cents per acre plus royalties of ten cents per ton on coal, seven cents per ton on lignite, and twenty-five cents per ton on sulphur, payable monthly to the Commissioner of the General Land Office.

Permits to prospect for other minerals were to cover not more than eighty acres and the procedure in securing a permit

55Ibid., p. 162.
was the same as for coal, lignite and sulphur. The proceeds arising from mineral royalties, as provided in this law, belonged to the public school fund, the permanent University fund, or the funds of the State Asylums, depending upon which lands yielded minerals.

This was the first mineral statute to contain a fairly comprehensive plan for the administration of the minerals on public lands in the interest of the state. It came as a result of the tremendous mineral development on the public lands that was just getting under way. However, it was in effect only two years. The discovery that some of the school land on which the minerals had been reserved contained enormous pools of oil and reservoirs of gas, together with difficulties of administration of the provision of the law, brought the repeal of this law in 1919.

The act of April 3, 1919, authorized the sale on the first of January, May and September each year of all the unsold lands belonging to the public school fund. Land leased before the passage of this act was not subject to sale until the first sale date after the termination of the lease. The Commissioner was to classify or reclassify the school lands into three classes according to whether they were chiefly agricultural, grazing or timber lands, or a combination. The minimum price for agricultural land was $1.50 per acre, and the minimum price for grazing land was $1.00. The timber was to be sold for cash at its fair market value. Land or timber
was not to be sold until widely advertised and the competitive bids accepted. Only individuals could purchase these lands and they were required to make affidavit that the land was being purchased for their own personal use. Adequate laws for the administration of timberlands were evolved only after practically all the timberland had been transferred to private ownership.

Terms for purchasing these lands called for a down payment of one-fortieth, with the balance due in thirty-nine annual installments payable November 1, each year. Scrap lands containing eighty acres or less were sold for cash only. Surveyed land was to be sold to individuals in quantities not exceeding eight sections without the condition of settlement and residence. Unsurveyed land was to be surveyed and sold upon application without condition of settlement and on the same credit terms applied to surveyed lands.

It was provided in this act that any unsold portion of school lands might be leased at any time at not less than five cents per acre per annum, payable in advance each year, for a term not to exceed five years.

The act of July 23, 1919, repealed the mineral law of 1917. This act provided for the leasing of salt water lakes, bays, inlets, marshes and reefs owned by the state within

tidewater limits and that portion of the Gulf of Mexico within the jurisdiction of Texas, and all unsurveyed public school land. These lands were to be leased by the Commissioner for the production of oil and natural gas. The royalty provided was one-eighth of the gross production of oil, or its value, and one-eighth of the yearly production of natural gas or its value with ten cents per acre in advance for the first year, and thereafter an additional sum in advance of twenty-five cents per acre for the second year, fifty cents per acre for the third year and $1.00 per acre for each year thereafter not exceeding ten years, until production should be secured in commercial quantities. These annual payments were to be made until the payment of royalties was begun. If royalties ceased, the payments were to be resumed. Leases were to be advertised for thirty days before they were let. Lease contracts were awarded to the highest bidder, for a term of not more than twenty-five years. Royalties from school land and two-thirds of the royalties from other areas were to be paid into the permanent school fund. The other one-third from areas other than school land, and the filing fees of one dollar for each application went to the general revenue fund.

The Relinquishment Act, passed July 31, 1919, was


58 Ibid., p. 52.
designed to bring about a more satisfactory plan for administering reserved minerals underlying lands that had previously been sold to individuals. This law relinquished to the owners of the soil fifteen-sixteenths of the oil and gas under the surface. The purpose of the act was to promote the active cooperation of the owner of the soil and to facilitate the development of its oil and gas resources. The state constituted the owner of the soil its agent and vested in him an undivided fifteen-sixteenths of all oil and gas within the surveyed free school land which had been sold with a mineral classification or that might thereafter be sold with a mineral classification or mineral reservation.

The other one-sixteenth of the oil and gas was reserved to the public school and asylum funds. The owner of surface land was given the right to sell or lease to any person, firm or corporation the oil and gas contained in his land on terms deemed best to him. The owner was to receive a minimum of ten cents per acre from any lease plus any royalty agreed on between him and the producer. The state was to receive ten cents per acre for each of the first three years of the lease, while the owner received only one payment of ten cents per acre. The state also received one-sixteenth of the annual gross production, or its value. Forfeited mineral claims reverted to the general revenue fund of the state, and in

59 Ibid., p. 250.
case of such a reversion, the Commissioner was required to advertise the land for sale. The one-eighth royalty to be collected in this case was to go to the school fund, while any sum that might be obtained as a bonus over and above the one-eighth after deducting expenses incident to the advertisement and sale was to be divided equally between the general revenue fund and the owner of the soil. Not more than sixteen sections were to be covered in any one permit, and drilling was to begin within eighteen months after the permit was issued.

The legislature has always been lenient with purchasers of public lands. Legislation, either implied or expressly designed to give relief to purchasers, has been prolific in the history of school land legislation in Texas. The act of March 25, 1925, provided that purchasers of public school land that had been forfeited and remained unsold, or land which might be forfeited for non-payment of interest accrued before November 1, 1925, should have the right of repurchasing it at a revaluation price fixed by the Commissioner. Such purchasers had to pay a fee of one cent per acre to cover the cost of revaluation. One-sixteenth of the minerals were reserved in case the minerals were severed from the land at the time of the first purchase. The act of October 27, 1926, relating to the forfeiture and resale of public school land because of non-payment of interest prior to November 1, 1925, gave the owner ninety days in which to make application
for repurchase. If the owner failed to act within the ninety-day limit, the land became subject to sale as other school land.

The statutes relating to prospecting for minerals in public school lands were modified slightly by the act of 1925. This act provided for the issuance of a permit to lease for a term of ten years or less, with renewal privileges, a portion of the land indicated, upon the payment of $2.00 per acre. A royalty of one-eighth of the gross production of oil and one-tenth of the meter output of natural gas sold or removed from the lease by the lessee was stipulated. As a means of stimulating the development of mineral bearing deposits other than oil, gas, coal and lignite, the legislature, in 1927, required the owners of such mineral leases to drill a well, or dig a shaft or tunnel, as a condition to the lease. The law permitted all the assessment work for a contiguous group of claims to be done on one claim if so desired. The owner was to make affidavit the first of each year stating that the required annual assessment work had been performed for the succeeding year. Failure of the locator or owner of any claim to comply with the act worked a forfeiture of all his rights in the claim in the acts of 1929, and the claim was opened to others for location the same as before. The owner was allowed six months after the forfeiture of the claim in which to have it
reinstated. The provision for forfeiture of claim was amended and revised in 1934, but no important changes were made.

Acts passed in 1933 regulating the lease and sale of all school land, including scrap lands, provided that they could be placed on the market by the Commissioner on the first day of any month to be sold to the person offering the highest price for them after they had been advertised for sale as required in former acts. All lands within five miles of a producing oil or gas well could be leased only, and the surface rights were not to be sold. All land could be sold without condition of settlement. Minerals were to be reserved and a minimum price of not less than $1.00 per acre was to be fixed by the Land Commissioner.

Upon the recommendations of Land Commissioner Bascom Giles, several changes were brought about in the legislative act of June, 1939. Perhaps the most outstanding feature of this act was the creation of the School Land Board, which supervises the sale and leasing of surveyed lands, determines the price at which any lands, surveyed or unsurveyed, may be sold or leased, provides for the advertisement of sales and leases, supervises the leasing of the newly-created mineral estate of the permanent school fund, and determines the price of excess acreage. The Board, composed of the Governor, the Attorney General, and the Commissioner of the General Land

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Office, has worked well together concerning all issues. The activities of the Board during its first eleven months are summarized in the following table:

**TABLE 3**

**ACTIVITIES OF THE SCHOOL LAND BOARD**

**FROM SEPTEMBER 20, 1939 TO AUGUST 31, 1940**

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Mineral Leases</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bids for Mineral Leases accepted</td>
<td>244</td>
<td></td>
</tr>
<tr>
<td>Acres leased</td>
<td>100,441.24</td>
<td></td>
</tr>
<tr>
<td>Cash Bonus Received</td>
<td>$1,788,635.35</td>
<td></td>
</tr>
</tbody>
</table>

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Surveyed School Land</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bids to Purchase accepted</td>
<td>265</td>
<td></td>
</tr>
<tr>
<td>Acres sold</td>
<td>93,834.43</td>
<td></td>
</tr>
<tr>
<td>Total Consideration</td>
<td>$394,724.91</td>
<td></td>
</tr>
</tbody>
</table>

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Unsurveyed School Land</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Applications to Purchase valued</td>
<td>35</td>
<td></td>
</tr>
<tr>
<td>Acres valued</td>
<td>6,562.92</td>
<td></td>
</tr>
<tr>
<td>Total Consideration</td>
<td>$13,464.08</td>
<td></td>
</tr>
</tbody>
</table>

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Excess Sold</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Applications to Purchase valued</td>
<td>850</td>
<td></td>
</tr>
<tr>
<td>Acres valued</td>
<td>17,953.46</td>
<td></td>
</tr>
<tr>
<td>Total Consideration</td>
<td>$69,197.46</td>
<td></td>
</tr>
</tbody>
</table>

The best indication that the work of the Board has been a success is the fact that during its first year in operation, there were no dissenting votes cast on any issue before it.

The act of June, 1939, dedicated the mineral estate in river beds and channels and in all areas within tidewater limits, including islands, lakes, bays, and the bed of the

sea, to the permanent school fund. Prior to this time, the
school fund had been receiving the revenue from oil and gas
leases on these areas. These areas are leased directly by
the state for oil and gas purposes for a minimum royalty of
one-eighth plus a cash bonus and an annual delay rental. On
several tracts that have been leased recently, the state is
receiving as high as 51\% royalty from producing oil wells.

One of the most fruitful sources to the permanent school fund
comes from royalties on oil and gas production from river
beds. The school fund receives approximately $66,000.00 per
month from this source.

The vacancy question was also dealt with in the act of
1939. There remains an estimated 200,000 acres of vacant
unsurveyed land which belongs to the permanent school fund
and which is being discovered and placed on the School Land
Register of the General Land Office almost daily. This
vacant land exists for the most part in narrow strips between
old original surveys and is usually occupied by people who
believe in good faith that they own the land. The provisions
of the act of 1939 were designed to protect such people in
their ownership of the land and at the same time secure for
the permanent school fund its rightful share of the value
thereof. "Good faith claimants" have a preference right to

\[62\text{ Giles, op. cit., p. 15.}\]
purchase the vacant land. Up to September, 1945, some
19,192.86 acres were sold under this act.

Another problem taken up in the legislative act of 1939
was that of excess acreage. Excess acreage exists in Texas
surveys for various reasons, the principle one being inac-
curate methods of surveying used in early days when land was
cheap. The act of 1939 allows owners of surveys having
excess acreage to pay for this excess at a price fixed by the
School Land Board, and receive in return a deed of acquittance
to all the survey from the state. This is purely voluntary
on the part of the land owner and the money received therefrom
goes into the permanent school fund. A total of 150,341.19
acres of excess valued at $867,229.52 have been paid for as
of June 27, 1949. This reveals an average price per acre
of $5.77.

Still another change brought about by the public land
law of 1939 concerns mineral leases. The law provides that
certified copies of all mineral leases executed by owners of
the soil under the Relinquishment Act, must be filed in the
General Land Office if the lease is to be effective, and that
no such lease executed after the effective date of the act
would be binding upon the state unless it recited the actual
and true consideration which passed. Prior to this enactment,

63Ibid., p. 16.

64Statement by C.R. Leggott, Supervisor of School Land
Division, General Land Office of Texas, personal interview.
it had been impossible for the General Land Office adequately
to supervise these leases and ascertain whether the state was
receiving its share of the consideration. Each lease offered
for filing is now investigated and the price recited is com-
pared with the average lease price in the area for similar
leases. This provision is of benefit to the school fund in
administering its mineral estate.

A few changes were made in the law regulating the sale
and management of surveyed school lands and in the law regu-
lating the coastal lands by the Forty-seventh Legislature.
In 1941, the first payment on purchases of surveyed public
school land was fixed at one-fifth of the aggregate price
offered instead of one-fortieth as provided under former acts.
Also, the legislature set apart and granted to the permanent
school fund of the state all lands covered by the Gulf of
Mexico and the arms of said Gulf within the boundaries of
Texas.

Since 1941, there has been no legislation enacted which
materially changed the existing laws for the sale and dis-
position of the public lands.

At the present time, the most important and interesting
matter in regard to the public school lands is the controversy
between the State of Texas and the Federal government concern-
ing the ownership and control of the tidelands. It has been
seen that the income from these lands is a valuable asset to
the permanent school fund.
The approximate total appropriations of school lands in Texas is shown as follows:

**TABLE 4**

<table>
<thead>
<tr>
<th>Grants</th>
<th>Acres</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public school lands granted to the State fund</td>
<td>45,000,000</td>
</tr>
<tr>
<td>Public school lands granted to Counties</td>
<td>4,229,166</td>
</tr>
<tr>
<td>Lands granted to the University</td>
<td>2,289,225</td>
</tr>
<tr>
<td>Lands granted to Asylums</td>
<td>400,000</td>
</tr>
</tbody>
</table>

The system of free public education in Texas has come a long way since its meager beginning in the early days. Under the various acts, the permanent school fund has been granted approximately 45,000,000 acres of land. The first sale of school land was a 160-acre tract in Bowie County in 1874. Since 1905, the method of sale has been that of sealed competitive bidding. Most of the land making up this great endowment has been sold. The total unsold as of June 27, 1949, was 1,018,020.87 acres. The greater portion of these lands lies west of the Pecos River, and most of it is under lease for agricultural and grazing purposes.

The permanent school fund, more than doubling itself during the last ten years, is now $145,000,000. The wisest

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65McKitrick, op. cit., p. 119.
66Giles, op. cit., p. 15.
67Statement by C.R. Leggott, personal interview.
68The same.
and fairest of all appropriations of the vast public domain of Texas have been for the endowment of education. Through the years the legislature has supervised this great landed endowment to the best interests of education. The laws are not perfect, but the ever-increasing permanent school fund, as well as the University permanent fund, stand as a monument to those friends of education who, in their wisdom and statesmanship, have sought to establish a system of education whereby all children of Texas may have the opportunity to secure an education which will prepare them to meet their duties and obligations with proper understanding.

University Lands.--The Republic of Texas made a beginning toward endowing higher education with lands. The act of January 26, 1839, appropriated fifty leagues (221,400 acres) of public lands to the endowment of two state colleges or universities, one for the eastern and the other for the western section of the Republic. This was never carried out.

The act of February 11, 1858, establishing the University of Texas, accepted and set apart the fifty-league grant of the Republic, which was originally intended for two colleges or universities. The act also granted a bonus of sixteen sections to the railroad companies for each mile of track completed, provided the companies should survey at the same time sixteen alternate sections which should become a landed endowment for

the support of the public school system of Texas, each tenth section to be the property of the unborn University of Texas. The Constitution of 1866 confirmed the land grants previously made to the University, but the Constitution of 1869 was silent on the subject.

By the Constitution of 1876, the previous land grants to the University were confirmed, with the exception of the tenth alternate sections reserved for the University by the act of February 11, 1858. In lieu of the tenth alternate section grant, 1,000,000 acres of the unappropriated lands were substituted. The unappropriated lands at that time were in the western portion of the state, and the substitution of these lands for the tenth alternate sections meant taking from the University the more valuable and giving instead far less valuable lands. The Seventh Legislature, in 1883, in response to arguments demanding restitution for the University, made an additional appropriation of 1,000,000 acres to the University.

In 1881, a general election was held to locate the University. Austin was selected, and on College Hill, the corner stone of the University of Texas was laid November 7, 1882. Its doors were opened to students September 15, 1883.

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70 Benedict and Lomax, op. cit., p. 362.
71 Lane, op. cit., p. 133.
72 Constitution of 1876, Art. VII, Sec. 15.
73 H.Y. Benedict, History of the University of Texas, Source Materials, p. 264.
It has since attained high standing among the state universities of the country.

Of the three appropriations of land to the University, the first appropriation (fifty leagues) has been sold, and the remaining two million acres are unsold.

Legislation providing for the sale of University lands is not nearly so extensive, nor has it been changed so frequently as have the laws regulating the sale of public school lands. This fact is explained by the policy that has prevailed of withholding from sale the University lands, except the original fifty-league grant.

In 1895, the control of the University lands was transferred from the General Land Office to the University Board of Regents, but the Regents were prohibited from selling University lands at a price less than that fixed on the same class of lands belonging to the school and asylum funds.

According to the state constitution, the Agricultural and Mechanical College is a branch of the University of Texas. In reality, however, it is wholly independent in its management. It is governed by its own board of directors and enjoys its own land and endowments granted by the Federal government. Beginning September 1, 1935, one-third of the income from the permanent university fund was set aside for

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75 Land Office Report, 1932, p. 9.
A. & M., but the University retains all proceeds from grazing leases. This is in keeping with the legal fiction that the Agricultural and Mechanical College is a branch of the University of Texas.

The Board of Regents has not seen fit to offer the remaining University lands for sale because leases have proved more profitable than sales.

The Board for Lease of University Lands supervises sales of University leases. The leases are still sold by the old-fashioned method, with an auctioneer and oral bidding. The statutes provide that the sales shall be made in Austin, and the oil and gas in each tract shall be offered for sale for a bonus in addition to the stipulated royalty. When the Board determines that a satisfactory bid has been offered, it makes an award to the bidder offering the highest price. A lease is then executed by the Commissioner of the General Land Office. Royalty as stipulated in the sale is paid to the General Land Office for the benefit of the University permanent fund. All records pertaining to the sales and leases are permanently on file in the General Land Office.

The following table shows receipts from sales of University leases covering a period of six years. The grand total represents the income from bonuses alone to the University fund.

76Lang, op. cit., p. 189.
### TABLE 5

**SALES OF UNIVERSITY LEASES FROM OCTOBER 27, 1939 TO AUGUST 18, 1944**

<table>
<thead>
<tr>
<th>Date of Sale</th>
<th>Total Sum Realized</th>
</tr>
</thead>
<tbody>
<tr>
<td>October 27, 1939</td>
<td>$289,950.00</td>
</tr>
<tr>
<td>December 3, 1943</td>
<td>3,643,600.00</td>
</tr>
<tr>
<td>March 31, 1944</td>
<td>3,665,900.00</td>
</tr>
<tr>
<td>August 18, 1944</td>
<td>3,187,000.00</td>
</tr>
<tr>
<td><strong>Grand Total</strong></td>
<td><strong>$10,786,450.00</strong></td>
</tr>
</tbody>
</table>

The average price per acre at the sale of October 27, 1939, was $42.07. At the sale of August 18, 1944, the average price per acre was $119.94.

The discovery and development of valuable minerals on its lands has made the University of Texas one of the wealthiest institutions of higher learning in the world. The University fund has now reached such proportions as to be a much coveted possession, and the University is fortunate in being the possessor. Instead of merely spending the income from the permanent fund, as was originally intended, the University must carry on an extensive business in the administration of its estates. This places a heavy burden upon the

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77Statement by C.S. Arnold, General Land Office of Texas, personal interview.

78The same.

President and the Board of Regents, for they must constantly safeguard the legal rights of the University, whatever they are, in the University lands.

The University fund was larger in September, 1948, than the entire wealth of the State of Texas before the Civil War. It exceeds $100,000,000. A plodding University with commonplace buildings and equipment has been transformed into one in the very forefront of educational institutions in the world. It bids fair to become the richest University in the Western Hemisphere.

It may be said that the dreams of Lamar and his associates in a fair way have come true.

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80 Bishop and Giles, op. cit., p. 239.
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