

IN MEMORIAM

John Gance gave most generously of his time and energy in helping to organize and direct this study. The University has lost an outstanding scholar and students have lost a great humanitarian. This study, in which he had a lively interest, is dedicated to John Gance, scholar, teacher, humanitarian and friend.

A HISTORY OF THE IRREDUCIBLE SCHOOL FUND IN OREGON

by

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PREFACE

Efforts have been made in this study to trace the developments of the Irreducible School Fund and the factors responsible for depriving the schools of the legacy bequeathed by far-seeing statesmen during the formative period of American development. An attempt has been made to analyze the errors of the past and to estimate the resultant losses to the public schools of Oregon. It is now apparent that what was once intended as substantial school aid actually has been a paltry "drop-in-the-bucket" relative to needs.

A survey of existing literature indicated the justification for research in this area. There have been several theses written at the University of Oregon during the past forty years relative to this topic but in no instance is there a case of duplicate material. In 1907, Louis A. Henderson completed his thesis entitled, "History of the Public Domain in Oregon;" in 1908, Floyd C. Ramp finished his "History of the Public Lands of Oregon;" in 1909, Charles M. Snow contributed "A History of Oregon Land Grants;" and more recently, in 1926, R. E. Lewis added "The Common School Fund of Oregon;" and in 1940, Ray O. Wolf finished "A History

of Oregon School Lands;" and in 1942, Murche A. Thompson added "A Survey of Federal Aid fo Elementary and Secondary Schools of Oregon, 1859-1939." These theses complete the list of all the original research done at the University of Oregon since the turn of the century.

In preparing this study every effort was made to work in original source materials. The Introduction and Chapter One, of necessity, contain much secondary source material; however, the body of the content, relating to the Oregon situation, was built upon primary sources.

These materials were located in a number of depositories of State records. The first source was the literature available at the University of Oregon library and especially those materials contained in the Oregon Collection. Salem, as the seat of government, was a valuable resource center in which to work. The greatest resource was the State Archives at the Oregon State Library where much valuable material was unearthed. The Willamette University Library proved very helpful in supplying the early issues of the Oregon Statesman which were a contribution to the research of the territorial period. The State Land Office made all records available for scrutiny and in addition, Walter Pierce, Clerk of the State Land Board, permitted interviews with

members of his staff concerning management of the Irreducible School Fund in the modern period. In Portland, the Oregon Historical Society Archives provided a wealth of primary sources in their manuscript collection. Also in Portland, the United States District Court permitted study of the Judgment Rolls and Transcripts of Evidence of the fraud trials.

Acknowledgements are extended to Martin Schmidt, Archivist for the University of Oregon Library; David Duniway, Archivist for the Oregon State Library, Paul B. Jacobson, Dean of the School of Education; John Gance, Professor of History; Carl Huffaker, Professor of Education, and to the many others whose patience and assistance have made possible this study.

CHAPTER I

INTRODUCTION

Practically all of the funds for school support in Oregon have been raised by local taxation until the passage of the Basic School Support Bill by the Oregon voters in the general election of 1946. The few exceptions to this were in the cases of the Irreducible School Fund, the Elementary School Fund and the State School Support Fund all of which amounted to a negligible portion of the total school expense.¹

Many studies have been made of school revenues derived from taxation but little attention has been paid to that which might have acted as a permanent endowment for education. The Irreducible School Fund was of such nature and constituted the only school revenue raised

¹The amount apportioned from the proceeds of the Irreducible School Fund amounted to \$235,659.21 or less than 1% of all school expenses in 1948.

The funds listed below existed prior to the passage of the Basic School Support Bill in 1946. They are shown only to give an idea of their relative importance in the school support picture at that time. The Elementary School Fund was distributed on the basis of the number of elementary teachers in each system. This distribution amounted to approximately \$355.00 per teacher. The State School Support Fund was used as a property tax offset. It was distributable upon day's attendance which netted about 17 to 18 cents per pupil daily and also upon the number of teachers which netted about \$258.00 per teacher.

through means other than taxation. This fund originated from monies derived from the sale of school lands bequeathed to the State by the Federal government. Inasmuch as school fund administrators, particularly the Superintendent of Public Instruction and the State Land Board have been interested in understanding the early background of the Irreducible School Fund, this study has been undertaken.

The idea of a permanent endowment for schools is not new. Although the first official mention of an Irreducible School Fund in Oregon occurred during the 1849 Assembly of the Territorial government, the idea of a free school fund had European origins. Actual subscription of public funds for the support of the common schools is usually traced to sixteenth century England, during the reign of Henry VIII.

Education prior to Henry's reign was largely controlled by the church or the guilds through their apprenticeship training. The first great change in control of education occurred after England split away from the Catholic church. The ensuing struggle saw the destruction of church property and confiscation of the church lands. The church had little choice, they had to close their schools. The English people were not satisfied with the limited opportunity for educating

their children, so it remained for the successors of Henry VIII to establish a policy whereby the sequestered church lands could be used to endow schools.¹ As Howard Cromwell Taylor of Columbia University wrote, "The principle of land grants for the support of schools was a part of America's heritage from England. . . ."²

It remained for Henry's daughter, Queen Elizabeth, to lay the second cornerstone of modern public school support with the passage of the Poor Laws, in 1601. One of the tenets of these laws distributed the burden of support of underprivileged children among all property owners on a proportionate basis.³ This was a first step toward equalization. Under this plan property owners distributed the burden of support according to their holdings. Later the principles set forth in these laws became the foundation for the schools in

¹Matthias N. Orfield, "Federal Land Grants to the States with Special Reference to Minnesota," Bulletin of the University of Minnesota, 1915, p. 7. Quoting Henry D. Traill's, Social England, Vol. III, pp. 176, 229.

²Howard Cromwell Taylor; The Educational Significance of the Early Federal Land Ordinances, (New York: Teachers College, Columbia University Press, 1922), p. 117.

³Orfield, op. cit.

Scotland and by the colonists in America.¹

The use of land to endow the public schools came as a natural step in the development of colonial education. Recognition of this came with the passage of the Ordinance of 1785, which reserved one section in each township for the benefit of the schools.² While the mechanical features of the Ordinance of 1785 were important, it remained for the Ordinance of 1787 to provide the mandate to encourage schools and the means to education.³ The Federal government thus established the precedent of Federal support to schools which became a definite part of the national policy of encouraging education.

Connecticut, in 1750, was the first colony to

¹"The parish schools of Scotland, dating from the first part of the seventeenth century, were public in their import, and seldom has there been in history a better illustration of the possibilities of the public school in rapid and profound modification of the whole structure of society." Henry C. Morrison, School Revenue, (Chicago: University of Chicago Press, 1930), p. 12.

²Laws of the United States, 1789-1815, Vol. I, Chapter XXXII, p. 565.

³The Ordinance of 1787 was not a land law, but rather a governmental ordinance. It was essentially related to the national land policy in that it contained certain principles of government the establishment of which was deemed necessary to the successful sale of public lands.

establish a permanent school fund. Other than pioneering school legislation, Connecticut accomplished very little by this act. Later, in 1795, when it added the funds derived from the sale of the "western reserve," the permanent school fund became a potent aid to school finance. The Connecticut policy was to reserve sections for schools in the newly surveyed townships. Here, then, was a far-reaching step that established basis wherein all schools of the State benefitted rather than one of its subdivisions. This proved a major step toward establishment of a common school fund.¹ Other New England states rapidly followed the pattern established by Connecticut. Unfortunately the Middle and Southern colonies failed to maintain pace with their northern neighbors, primarily because the geographic arrangement of the area did not lend itself to the New Englander's technique of "township planting," which had been so helpful in organizing the towns and countryside

¹Fletcher Harper Swift, A History of Public Permanent Common School Funds in the United States, 1795-1905, (New York: Henry Holt and Company, 1911), pp. 45-8. See also Orfield, op. cit., p. 11; and Newton Edwards and Herman Richey, The School in the American Social Order, (Cambridge: The Riverside Press, Houghton Mifflin Company, 1947), p. 323.

of the North.¹

As long as the colonies operated as individual political units, each managed its land policies as desired.² Land policy remained a State problem until after the revolution when the new national government found itself confronted with veterans clamoring for western land but even with the pressure of the veterans it was doubtful if the new government would have acted by passing the Ordinance of 1785³ had it not been for

¹Taylor, op. cit., p. 117; Orfield, op. cit., pp. 11-2; and Benjamin H. Hibbard, A History of the Public Land Policies, (New York: The Macmillan Company 1924), pp. 306-9.

²Roy M. Robbins, Our Landed Heritage, (London: Princeton University Press, 1942), p. 7.

³The Ordinance of 1785 was a land law. Its purpose was to establish a policy for the survey and sale of the public domain that would be acceptable to all sections of the country.

The most important provision in this ordinance was that which reserved section number sixteen in every township for the maintenance of public schools within the township.

The Ordinance of 1785, although a compromise, proved to be a triumph for the New England policy of "township planting" as this form of settlement proved more popular in practice than the "indiscriminate location." The reservations of the section sixteen for education was also a New England idea and it was written into the ordinance as a concession to the New Englanders. At the time this provision was looked upon as of minor importance. Its value was thought to lie in the fact that it would attract settlers in the new country and promote land sales rather than in the fact that it was the beginning of a far reaching national policy for the encouragement of public education by land grant. Taylor, op. cit., p. 115.

the threats of Indian encroachment, the need to consolidate their positions because of a fear of foreign powers, the mass migration into the new areas and the need for disposing of these lands for public benefit.¹

After formation of the Union, pressure was directed at Congress to approve land grants to the States for educational purposes. Fletcher Harper Swift cited the need of selling western lands as well as a desire to make westward migration attractive as factors in determining national land policy. In addition, he felt the interest manifested by the States in the cause of education extremely important.² Connecticut had established the policy of reserving land for schools. In the South, Georgia followed this example by reserving land in the newly surveyed territory.³

The years following the formation of the Federal government and prior to admission of Oregon as a State, saw a continuous struggle in Congress where attempts were made to establish a satisfactory land policy. The western land movement soon became unmanageable making it necessary for the government to grant

¹Hibbard, op. cit., p. 35.

²Swift, op. cit., p. 13.

³Ibid.

concessions to the squatters and trespasser who stood ready to defy the law.¹ The Land Act of 1796 was too favorable to speculating interests. As a result the Acts of 1800, 1804 and 1820 were all designed to meet the demands of the settlers.² Newton Edwards and Herman Richey have adequately summarized western attitudes in their statement.

Above all else, perhaps, the West wanted legislation which would dispose of the public domain on easier terms for the settler. The price of land must be lowered, or, better still, homesteads be given to those who would come and take them. Laws were required, too, to confirm the rights of the squatter to the land he had taken and improved without legal title.³

As Robbins indicated, Congress was interested in satisfying western demands by making the land policy more attractive to settlers, but in the last analysis it was the deplorable condition of the Treasury which influenced policy. In one sense the Land Acts served a dual purpose. The western settlers were encouraged by liberal credit policies and small purchases and the Treasury was gaining through the volume of sales.

An additional inducement to settlers was provided

¹Robbins, op. cit., p. 10.

²For a detailed account of the Federal Land Acts see Chapter Three.

³Edward and Richey, op. cit., p. 317.

by Congress in the land grants to common schools. Congress tried three methods of granting land before a final policy was evolved. These three types can be typified by what transpired in Ohio, Illinois and Michigan. By the Ohio Enabling Act, section sixteen was granted to the township--not to the State; by the Illinois Enabling Act, section sixteen was given to the State for support of education in the township where located and by the Michigan Enabling Act, section sixteen was given to the State to be used where needed.¹ It was this latter policy that led to the establishment of the common school fund.

Oregon was the thirty-third state to establish a common school fund.² When Oregon was admitted to the Union in 1859, Congress awarded the thirty-sixth section in each township, in addition to section sixteen, for the support of common schools. The original grant had been made to Oregon as a Territory in 1848.³ Later three Southwestern states containing much arid

¹Elwood P. Cubberley, State School Administration, (New York: Houghton Mifflin Company, 1927), p. 22. See also Taylor, op. cit., pp. 119-20.

²Swift, op. cit., p. 93.

³Congressional Globe, 1835-73, 29th Congress, 1st Session, p. 172.

and semi-arid land received four sections per township.¹

By the Oregon Enabling Act of August 14, 1848, two sections of land were set aside for the benefit of the schools.² Shortly thereafter, on September 5, 1849, the Territorial Legislature passed an act creating the Irreducible School Fund and providing for district organization.³ This was restated in the Oregon Constitution where it was provided that proceeds from the sale of all land would be set apart as a separate and irreducible fund.

. . . all the moneys and clear proceeds of all property which may accrue to the state by Escheat or forfeiture; all money which may be paid as exemption from military duty; the proceeds of all gifts, devises and bequests, made by any person to the State for common school purposes; the proceeds of all property granted to the State when the purpose of such grant shall not be stated; all the proceeds of the five hundred thousand acres of land to which the state is entitled. . . ; and also

¹Edwards and Richey, op. cit., p. 239. The actual investiture of land to the State Legislatures with "no strings attached" had taken place upon the admission of Florida to the Union in 1845, so the lands received by the States could be controlled as they saw fit. Hibbard, op. cit., pp. 171-97.

²United States Statutes at Large, Vol. IX, p. 330.

³Laws of Oregon, 1850, p. 66.

the five per centum of the net proceeds of the sales of the public lands, to which this State shall become entitled on her admission into the Union.¹

Carrying out the mandate of the Legislature the State Land Board apportions the income of the Irreducible School Fund annually on August 1, among the several counties of the State in proportion to the

¹Constitution of Oregon, Article VIII, Section 2. The exact amount of land received by Oregon has been highly controversial. Murche A. Thompson, in his University of Oregon master's thesis, stated that the total area of the State, 95,607 square miles, when reduced to townships equalled 2,655.5. These townships multiplied by two created 5,311 sections which, in turn, multiplied by 640 gave 3,390,360 acres. Cubberley in his State School Administration used the figure given Thompson, yet, in a book with Edward C. Elliott, State and County School Administration, they listed 3,329,706 the figure given by Donaldson on page 228 of his Public Domain. Fletcher H. Swift also cited this figure in his History of Public and Permanent School Funds in the United States and Louis A. Henderson in his University of Oregon master's thesis cited the same. The Oregon Historical Quarterly, Vol. X, p. 38, listed 3,404,302 acres while Hibbard, op. cit., p. 323, listed the figure offered by the State Superintendent of Public Instruction in his 29th Biennial Report, 3,399,360 acres.

The laws of Oregon set aside no less than thirteen sources, the moneys derived constituting the principal of the common or Irreducible School Fund. Eight sources are specified in the Oregon School Laws, 1927, Section 293, p. 93. Five additional sources are listed in the Biennial Report of the Oregon State Treasurer, 1924-6, p. 24.

school census (ages 4-19).¹ On the same basis the quota received by each county is apportioned annually on the first Monday in October by the County School Superintendent among the districts within the county.²

As of June 30, 1948, Oregon had accumulated \$10,560,000.53 as the principal of the Irreducible School Fund.³ This clearly represents only a fraction of what might have been available had the State utilized wise management and sound business practices in the handling of this heritage.⁴

¹Actual title of the school fund has been misleading because of references made to the fund by State agencies using various titles. The "Common School Fund" is the title provided by Article VIII of the State Constitution. This same title has been used in the State Treasurer's Report of 1927, pp. 24-5. "Irreducible School Fund" and "State School Fund" are employed in the Oregon School Laws, 1927, p. 27, Section 57. "State School Fund" is used in the index to the Oregon School Laws, 1927, and elsewhere. However, by now the term "Irreducible School Fund" has been pretty well established through common usage of the State agencies.

²Fletcher H. Swift and Bruce L. Zimmerman, State School Taxes and School Funds and Their Apportionment, Department of Interior, Bureau of Education, (Washington: Government Printing Office, Bulletin #29, 1928, p. 330. See also Oregon School Laws, 1927, Section 57, p. 27.

³This figure taken from a balance sheet provided by the Clerk of the State Land Board, June 30, 1948.

⁴Lewis in his Oregon master's thesis figured that the State netted an average of \$2.16 per acre. Thompson's thesis listed the realization to the State as slightly less than \$2.00 per acre.

There still exists approximately 750,000 acres of school land, most of which is semi-arid land in Eastern Oregon, the value of which is low.¹ Since the bulk of the school lands have been sold, any additions that accrue to the principal of the Irreducible School Fund are apt to be small. The increase in the principal of the fund for the fiscal year, 1947, amounted to \$133,716.36.² The major source of this increase was through escheats and royalties from sand and gravel leases. Sale of school lands for this year added only \$17,498.35 to the principal of the fund.³

The yearly earnings of the Irreducible School Fund become the reducible fund and it is this portion that is distributed annually to the counties. Last year \$235,659.21 was distributed, amounting to less than one percent of school costs.⁴

¹Reports of the Oregon State Engineer on the State Lands in Oregon, Document Collection, Oregon Collection, Oregon Historical Society, Portland, Oregon.

²This figure submitted by the Clerk of the State Land Board, June 30, 1948.

³Ibid.

⁴Ibid.

CHAPTER II

THE DEVELOPMENT OF THE PUBLIC SCHOOL SUPPORT CONCEPT

"The Colonists who established homes along the shores of Virginia and New England. . . transplanted to the new environment the old institutions with which they were familiar in the homeland."¹ Educational policies differed considerably in the various colonies; but everywhere--in New England, the Middle colonies and the South--they reflected the structure of the social classes of Europe. America's heritage was a two-class educational system marked in similarity to that of England.

The greatest single influence upon education was made by the church, which had been responsible for keeping the spark of classical learning alive through the darkest periods of history. The formal, classical training of the church served as a replacement program, filling community needs with more ministers and serving education with more teachers. Though important, the church was not the only educational institution. The rise of

¹Newton Edwards and Herman Richey, The School in the American Social Order, (Cambridge, The Riverside Press, Houghton Mifflin Company, 1947), p. 3.

the guild system and the need for trained craftsmen produced the apprenticeship program, which provided vocational educational.

The thirteenth, fourteenth and fifteenth centuries, usually referred to as the Renaissance, saw this group of craftsmen and traders create a new social group that challenged the church control of educational planning. This commercial group rapidly gained economic control of state affairs.

Increased independence of church control during the sixteenth century led to the Protestant revolt. This revolt held a twofold significance for the American colonies. First, the split within the church and the increasing pressure of the commercial group eventually caused the downfall of parochially controlled education and secondly, America was vitally affected as many of the protestant reformers sought a new life and from these groups the colonies received a great influx of settlers.¹ The American educational policy and practices was understandably influenced by protestant ideas.

The struggle between the church and secular groups for control of education had not been decided at the time the colonies were established in America, so that

¹Ibid., p. 15.

despite these set-backs, the church remained dominantly in control of education and continued to maintain the same position in the early colonial establishments.

Accompanying the religious element in the colonies was the importance of the economic conditions of the new culture. The relations of the new economic environment to education has been realistically summarized by Edwards and Richey.

From the outset, American civilization was profoundly influenced by economic interests and motives. Whatever may have been their purposes in coming to America, the colonists soon turned their attention to the exciting task of accumulating worldly goods. In the process of building up landed estates or of accumulating fortunes in the markets of the world, men lost much of their religious zeal and of their enthusiasm for literature of classical antiquity. And slowly but surely American education began to emancipate itself from the dominance of religion and classicism; in purpose and content it began to reflect the demands of a new society built upon a broad foundation of business enterprise.¹

The life of the colonist was a busy one, but he soon felt the need of establishing the means to educate his children. In the struggle to find a way of supporting the schools, it was decided that the vast land areas would serve as a permanent endowment for education.

The first record of land grants for the purpose of supporting the public schools occurred in Dorchester,

¹Ibid., p. 23.

Massachusetts in 1635.¹ In 1641, Boston, Massachusetts, reserved Deer Island for the maintenance of a free school in the town, with the income derived from the property in form of a yearly rent.²

In 1647, the General Court of Massachusetts passed an act which became the basis of the public school systems of New England.³ Under this system compulsory attendance was instituted but the cost of education remained the responsibility of parents and in some cases masters of apprentices. Each town or political subdivision was free to decide how their schools were financed but despite these forward steps the parents usually paid the bill.

¹Benjamin H. Hibbard, A History of the Public Land Policies, (New York: The Macmillan Company, 1924), p. 306. Quoted from the Records of the Colony of Massachusetts Bay in New England, Vol. I, p. 134. Orfield also listed Dorchester as the first to receive land dedicated to the public schools from the General Court of Massachusetts but gave the date as 1639, when "rents from a tract of land known as 'Tomson's Island,' amounting to twenty pounds per year were set apart to support the town schools." Orfield, op. cit., pp. 7-8.

²John A. H. Keith and William C. Bagley, The Nation and the Schools, (New York: The Macmillan Company, 1920), p. 17. See also Hibbard, op. cit., p. 306.

³Maine, New Hampshire and Vermont were a part of Massachusetts at this time and Connecticut adopted the Massachusetts law in 1650.

Financing by the family unit proved unsatisfactory since too few profited by the educational program. The colonists were searching for public means of financing the school burden. They were deeply impressed with the publicly endowed schools of the "Old World" and were eager to use a portion of the free land for such a purpose.¹

After the passage of the General Act of 1647, and it became apparent that compulsory education financed by the family unit was unsound, the General Court of Massachusetts granted, in 1659, 1,000 acres of land to the towns of Cambridge and Charleston on the condition that it be forever appropriated to maintain a grammar school.²

Soon the policy of making public land grants in the cause of education became widespread. The Provisional Government of New Netherlands made a grant, in 1658, for the support of both the school and the church at Midwout.³ New Hampshire followed the pattern

¹Hibbard, op. cit., pp. 306-9.

²Fletcher H. Swift, Federal and State Policies in Public School Finance in the United States, (New York: Ginn and Company, 1931), p. 8.

³Hibbard, op. cit., p. 307.

established by Massachusetts.¹ On June 17, 1732, the General Court of Massachusetts granted six miles square for a new township laid off by a surveyor and chairman for school purposes. This was the first instance of a grant by a colony to an unsettled community. Thus the General Court of Massachusetts established the principle of the system later adopted by the Federal government whereby subdivisions of a state received land grants for educational purposes.² Connecticut did likewise and added a new feature. The General Assembly, in 1733, sold seven townships, the proceeds of which were to be distributed equally among all the organized towns of the commonwealth. The fund was permanent and only the interest to be used for the schools.³ Later Connecticut became the first state to establish a permanent school fund.⁴

Meanwhile the Southern colonies were progressing in the development of public school support. In many respects

¹Matthias N. Orfield, "Federal Land Grants to the States with Special Reference to Minnesota," Bulletin of the University of Minnesota, 1915, p. 10. In 1679, New Hampshire established a separate province independent of the Massachusetts Bay Colony.

²Hibbard, op. cit., p. 36.

³Orfield, op. cit., p. 11.

⁴Supra, p. 4.

the Southern colonies were unable to proceed as their northern neighbors because of geographic and economic limitations. Early efforts to supply free education in the South were supported by individuals and companies rather than by the government.

The Virginia Company, as early as 1621, granted 1,000 acres of land and five apprentices to cultivate it for the schools.¹ A few years later Benjamin Simms, of Virginia, gave 200 acres of land "with the milk and increase of eight cows for the maintenance of an earnest people and honest man to keep a free school for the education of the children of the parishes of Elizabeth city and Kiquotan."² Apparently it did not matter what agency supported the early school development for Virginia, in 1810, was among the early states to adopt a permanent school fund.³

During the preliminary negotiations among the

¹Orfield, op. cit., p. 36.

²Keith and Bagley, op. cit., p. 17. For discussion of free schools in Virginia see, Philip A. Bruce, Institutional History of Virginia, (New York: G. P. Putnam's Sons, 1910), pp. 343-62.

³Among the older states to establish such funds were Maryland (1812), New York (1805), Delaware (1796), New Jersey (1816), Georgia (1817), New Hampshire (1821), Kentucky (1821), Vermont (1825) and North Carolina (1825). Edwards and Richey, op. cit., pp. 364-5.

several colonies interested in forming some type of Federal government, it became apparent that the major conflict was the sovereign rights of the proposed individual states. To most of these colonial states one of the most difficult problems concerned the conflict of ownership of land. In many cases boundaries were inaccurate. The western borders had not been determined until the Treaty of Paris fixed the Mississippi as the Western boundary of the thirteen states.¹ To reach a mutual understanding many of the larger states were forced to cede land to the Federal government.² For awhile it appeared that the larger colonies would not accede to the demands of the smaller colonies to relinquish portions of their lands; however, in 1780, New York eased the tension by releasing her western lands to Congress without reservation. The others

¹Orfield, op. cit., p. 33. The Virginia charter, of 1609, gave territory extending "from Sea to Sea, West and Northwest." The Massachusetts Bay grant extended "throughout the Mayne Landes there, from Atlantik and Western Sea and Ocean on the East Parte, to the South Sea on the West Parte." In the Connecticut charter of 1662, the form of the grant was "to the South Sea on the West Part." North Carolina and South Carolina, in 1663, proclaimed "to the west as far as the south seas." Georgia, in 1732, claimed "westerly. . . .in direct line to the south seas." Benjamin P. Poore, United States Charters and Constitutions, Vol. II, p. 1897, 1383; Vol., I, pp. 933, 257, and 373.

²Robbins, op. cit., p. 4

followed this lead shortly thereafter and Maryland signed the Articles of Confederation, "thus paving the way for legal union of the thirteen states and the creation of a body of land to become known as the public domain."¹

The seven colonies concerned ceded 404,956 square miles or an area equalling the combined size of the States of California and Texas.² Connecticut reserved large areas of land for the support of schools.³ It was this action, which at a later date, served as one

¹Ibid., p. 5. The public domain included all lands that were at any time owned by the United States and subject to sale or other transfer of ownership under the laws of the Federal government. The national domain, on the other hand, consists of the total area, both land and water, under the jurisdiction of the United States. Hence, the difference between the public domain and the national domain is one of property rights in the land itself and not one of sovereignty. The Federal government has, or has had, both ownership in and jurisdiction over the former while it exercises only jurisdiction over the latter. Hibbard, op. cit., p. 7.

²Murche A. Thompson, "A Survey of Federal Aid to Elementary and Secondary Schools of Oregon (1859-1939)," unpublished master's thesis, School of Education, University of Oregon, 1942, p. 7.

³Connecticut, in 1795, sold its "Western Reserve" in Ohio for \$1,200,000, and added this to its school fund. Eliwood P. Cubberley, The History of Education, (New York: Houghton Mifflin Company, 1920), p. 677.

precedent for Congress in granting land for the support of educational institutions.¹

After confederation, the new government was faced with two major problems; namely, balancing the budget and formulation of a land policy. The attempts to reconcile these problems proved more than could be handled during the period of the confederated government. Hibbard wrote that the five years preceding the Ordinance of 1785 were years of constant bickering and that the Ordinance was a compromise solution adopted because of the necessity to strengthen the respective states of the Confederation.² It was hoped that the terms of the Ordinance would serve as an inducement for settlers to establish homes in the newly surveyed territory. The major features of the Ordinance of 1785 were the provisions for survey of townships six miles square and reservation of section sixteen for the maintenance of the public schools within the township.³ In addition, the Ordinance provided for land offices to be established at convenient points in the trans-Appalachian territory and that the sale price be not

¹Thompson, op. cit., p. 7.

²Hibbard, op. cit., p. 35.

³Laws of the United States, 1789-1815, Vol. I, Chapter XXXII, p. 565. Supra, p. 6.

less than one dollar an acre. Since the settler was required to purchase a full section, most of the purchasing of these western lands was done by the land companies and speculating groups. The supposed liberal terms in the Ordinance actually were not as generous as appeared. In order to strengthen their frontier areas, the confederated states made the settlers more attractive offers than provided by the Federal government in the Ordinance of 1785. New York was selling land for as little as twenty cents an acre. Massachusetts reduced the price of the "Maine" lands to fifty cents per acre. Pennsylvania, Virginia, Carolina, and Georgia all followed this policy. Actually the confederated states were trying to outbid the Federal government for settlers.¹

After the Ordinance of 1785, the new territory was open to settlement but no provisions had been made for governing this territory. The efforts of speculative groups were creating an intolerable situation so far as Congress was concerned. Something had to be done. The first step to meet the crisis was the passing of the Ordinance of 1787.² Some people have referred to

¹Roy M. Robbins, Our Landed Heritage, (London: Princeton University Press, 1942), p. 9.

²Supra, p. 4.

this Ordinance as the most notable law ever enacted by the representatives of the American people. It marked the beginning of one of the most unusual growths in territorial expansion, and it furnished the basis for the establishment of an empire system. In the establishment of government three notable provisions were made:

. . . its guaranty of entire freedom of worship, its perpetual prohibition of human slavery and the great prominence given to the words 'religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.'¹

The transition from the Confederation to the Federal Union in 1789, saw no immediate change in land grant policies for the cause of education.² To most western settlers the cause of education was secondary to the problem of survival. It was settler versus speculator and the settler wanted something done about it. The veterans wanted land as a bonus, those already on the land wanted legal title to give them protection, others wanted preemption rights and all westerners wanted cheap land with a generous credit program. What

¹Journals of Congress, Vol. XII, p. 61.

²Hibbard, op. cit., p. 306.

westerners thought was well expressed by one of their number when he inquired,

. . . what will these men think who have placed themselves on a vacant spot, anxiously waiting its disposition by the government, when they find their preemption right engrossed by the purchaser of a million acres? They will do one of two things: either move into Spanish territory, or . . . move on United States territory, and take possession without leave. . . They will not pay you money. Will you then raise a force to drive them off? They are willing to pay an equitable price for those lands; and, if they may be indulged with a preemption to the purchase, no man will be better friends to the government. . . The emigrants who reach the western country will not stop till they find a place where they can securely seat themselves.¹

Arriving at an agreement on a land policy, that would appeal to the interests of all parties concerned, was practically impossible. The question was debated pro and con for weeks with Albert Gallatin, representing the frontier interest, receiving a majority of the support in the House. Gallatin, like Hamilton, favored selling the land in small lots to farmers, who were more likely to be settlers and not engage in speculation. The frontier interests were unable to put this bill through the Senate and in the final draft the vested interests of the East were victorious. The provisions

¹Annals of Congress, 1st Congress, 1st Session, Vol. I, p. 411.

of the Act of 1796,¹ raised the price of land from \$1.00 to \$2.00 per acre and permitted land to be sold in 640 and 5,760 acre plots. By 1800, only 50,000 acres had been sold under the Act of 1796, making it obvious that a more attractive system would have to be developed.²

The sparsely settled West rapidly developed a swashbuckling, aggressive group not at all inclined to dodge a fight and certainly not one as dear to their hearts as the problem of the public lands. Samuel E. Morrison wrote that township planting and controlled development might suit New Englanders but was too "deliberate, restrained and social for eighteenth century pioneers of the Kentucky breed."³

The renewed fight for land legislation more suitable to western appetites was again led by Albert Gallatin, only this time he had the help of William Henry Harrison, young delegate from the Northwest

¹United States Statutes at Large, Vol. I, p. 464. See also Thomas Donaldson, The Public Domain, (Washington: United States Government Printing Office, 1884), pp. 200-1.

²Robbins, op. cit., p. 15.

³Samuel E. Morrison, The Oxford History of the United States, 1783-1917, (Oxford: The University Press, 1927), Vol. I, p. 191.

Territory. Their efforts resulted in the Act of May 10, 1800,¹ which was one of the more important measures in the history of the public domain. The essential features provided for: (1) land offices established throughout the West at strategic points; (2) reduction in the size of land tracts for purchase from one section (640 acres) to a half section; and (3) the extension of liberal credit to the purchaser. This credit extension now provided the settler with four years in which to pay for his claim.²

In the ensuing years, the land problem continued to be a constant source of difficulty to Congress. The credit system established in the Act of 1800 failed, causing necessary revision. The credit system was retained but the price was lowered to \$1.64 per acre and the size of tract was reduced from a half to a quarter section (160 acres), in 1804.³ An act in 1820, further reduced the price to \$1.25 per acre.⁴ Even with these

¹United States Statutes at Large, Vol. II, p. 74. See also Payson Jackson Treat, The National Land System, 1785-1820, (New York: E. B. Treat Publishers, 1910), p. 101.

²Robbins, op. cit., p. 18.

³United States Statutes at Large, Vol. II, p. 281.

⁴Donaldson, op. cit., p. 205.

reduced requirements, Congress passed numerous relief acts to aid the settlers in retaining their land even though they could not meet their payments.

A report of the Secretary of Treasury, in 1819, revealed the startling truth that, since 1789, the government had sold land to the value of \$44,000,000, but had received but half of this sum. Fredrick Jackson Turner estimated that a pioneer,

who obtained title from the government of a 160 acre tract, built a log cabin, improved half of his tract, bought stock and tools, and sustained his family until the first crop was harvested, would need about one thousand dollars. The farmer could grow plenty of food, his log cabin and home spun clothes would keep him warm, but to get his hands on cash was another matter.¹

Economic conditions were important in the development of a liberal land policy. Turner has intimated this and the succession of land laws more or less confirms this conclusion. Whether equally liberal Federal land grants to education was a part of the program to attract settlers is hard to state definitely; however, legislation enacted during these early years of the nineteenth century would indicate that education profited from Federal land policies.

Ohio served as an excellent example of what happened

¹Fredrick Jackson Turner, The United States, 1830-50, (New York: Henry Holt and Company, 1935), p. 298.

to new states admitted to the Union. When Ohio was admitted to the Union, in 1803, the Federal government retained title to all lands within the State boundaries, excepting one section in each township which was set aside for a state fund for common schools.¹ Every public land state admitted to the Union after this date was guided by the conditions under which Ohio entered.² After acceptance into the Union, Ohio continued as a guinea pig of land and school legislation. Ohio had hardly become a State before the question arose regarding the leasing of lands within her border that had been provided for education. While Congress had awarded section sixteen to the schools, it failed to establish a policy on how the school lands could be utilized. Authority was soon granted Ohio, on April 15, 1803, permitting the

¹United States Statutes at Large, Vol. II, p. 225.

²This momentous step was a result of the efforts of Colonel Thomas Pickering who had originally proposed that--"These rights being secured, all of the surplus lands shall be common property of the State, and to be disposed of for the common good; as for laying out roads, building bridges, creating public buildings, establishing schools and academies, defraying the expense of government, and other public uses. Elwood P. Cubberley and E. C. Elliott, State and County School Administration, (New York: The Macmillan Company, 1915), p. 18.

State to lease the school lands.¹ Various methods were attempted in managing the leases of the land. Some were administered by the county, others by the State. Mississippi tried the county court for its appointed agents.² The system of leasing school lands was tried in each of the five states of the old Northwest and despite all efforts, in every case it was discarded as a failure.³

The next problem arising was the right to sell school lands. Caleb Atwater, chairman of the committee on schools and school lands for Ohio, brought the problem of the sale of school lands to the foreground in 1821, when he reported the misuse to which the lands had been subjected. The committee recommended that the Governor appoint seven commissioners who were to report to the next General Assembly of Ohio a plan for an educational system for common schools and also report upon the condition of the fund set apart by Congress for the support of these schools.

¹Howard C. Taylor, The Educational Significance of the Early Federal Land Ordinances, (New York: Columbia University Press, 1922), p. 86. Quoting Chase, Statutes of Ohio, Vol. I, pp. 361-2.

²Laws of the United States, Vol. IV, p. 740.

³Taylor, op. cit., p. 91.

This commission reported in December, 1823, recommending the establishment of a common school system and the sale of school lands. Both of these recommendations became issues in the state elections of 1824, and the voters supported the committee. The committee recommendations laid the foundation for the Ohio system of public schools and soon afterward Ohio petitioned Congress for the right to sell her lands.¹ On December 28, 1824, Congress granted Ohio authorization to sell her salt lands with the provision that "the proceeds be applied to such literary purposes as the legislature might hereafter direct."² Finally, in 1826, Congress granted Ohio the right to sell her school lands with the consent of the township possessing them, provided the proceeds be invested in behalf of the schools.³ This, again, established a precedent which was followed as new states came into the Union.

In addition to Federal policy and legislation outlined there were two other policies, both of which had great bearing upon the development of the Irreducible School Fund. The policy of lieu land selection was

¹Ibid., p. 94.

²United States Statutes at Large, Vol. IV, p. 79.

³Ibid., p. 138.

substituted in cases where there was no section sixteen in a given township because of rivers, lakes, inaccurate surveys, etc. To equalize the distribution of land and make it possible for all townships to share alike, Congress, on May 20, 1826, passed the Lieu Land Act to remedy the existing situation.¹

The other major policy that affected school lands was that of preemption, a policy westerners had been working toward as early as 1785, when North Carolina, Virginia and Pennsylvania found it necessary to grant preemption rights. The first preemption act was passed in 1801. From 1801, until 1841, when the first general preemption act was passed,² there had been approximately eighteen different preemption acts passed, all of a more or less specific nature.³ The Act of 1841, withdrew public lands from sale to the general public, reserving them for sale to actual settlers. The settler,

¹Ibid., p. 179. Hibbard cited the date as 1836, but he is in error.

²United States Statutes at Large, Vol. V, p. 455.

³Robbins calls preemption an illusory term. He writes, "Preemption was at best an expedient by which established law and order were made to conform to the lawless and uncontrollable spirit of the American Frontier." Roy M. Robbins, "Preemption: A Frontier Triumph," Mississippi Valley Historical Review, XVIII, (December, 1931), p. 332.

if a citizen, was allowed to preempt a maximum of 160 acres at the uniform price of \$1.25 per acre.

One of the major moves had been made--preemption became an established policy. In many respects the act encouraged illegal settlement seen later in connection with the school land entries in Oregon. On the other hand, the schools lost thousands of acres of their best lands because the settlers preceded the surveys, thus laying claim to some of the best lands available, leaving the schools to select lieu land from unselected lands. The act served one great purpose--it made the settlers happy.

Robbins has noted that historians might well conclude the Preemption Act of 1841 marked the end of the old conservative land policy which had been in affect since 1785. He wrote,

The new policy in general recognized four important principles: first, it was evident that Congress at least regarded the settlement of the public domain as more desirable than the revenue that might be obtained from it; second, that Congress intended that the domain should not fall into the hands of those who already had enough land; third, that the domain should be settled in small farms so as to extend the blessing of cheap land to the largest; and fourth, that settlers should be protected from all intrusion and allowed a reasonable

time to earn or gather together a sum sufficient to buy the land. It was at last intended that the actual settler be placed on an equal basis with the speculator in competition for land.¹

The settlers in the Oregon country profited from the many school funds and school land policies developed elsewhere from which they might draw ideas. Land grants for support of free public schools was an established institution by the time Oregon was ready to form a government. Generally speaking, the pattern for the operation and maintenance of public schools had been established. All that remained for Oregon was the formation of school laws and to get the schools underway.

In analyzing public interest in schools many interesting conclusions can be drawn. As early as 1787, it appeared doubtful if the people had any appreciation for the Northwest Ordinance of that year. According to H. C. Taylor, who checked the leading newspapers of the day, the Ordinance received scant attention from the New York Packet, the New York Daily Advertiser and the Pennsylvania Gazette.² Almost all delegates were too concerned with the proceedings of the Constitutional Convention at Philadelphia to bother

¹Robbins, op. cit., p. 91.

²Taylor, op. cit., pp. 52-3.

with governmental ordinances. The record indicated that few men who voted for this ordinance realized the importance it would play in the public school system of the United States.

A study of the conditions surrounding the early land ordinances can only lead to the conclusion that most of them were spontaneous rather than a part of a well-defined policy. The land ordinances were secondary to a more important job of balancing the budget, achieving political unity and developing an economically self-sufficient Federal government.

From the standpoint of conditions in a frontier situation, schools were a poor risk. Listed are seven major reasons why schools found it next to impossible to succeed. (1) The physical hardship of the frontier. (2) Indian hostility. (3) General poverty of the people with everything except land. (4) Scarcity of money. (5) Scattered population made attendance irregular. (6) Lack of good teachers. (7) Lack of social unity typical of a frontier society.

With education considered a relatively unimportant undertaking, it is easily understood why management of school lands and funds was often corrupt or hopelessly

incompetent. The people were not primarily interested in developing these grants for education. This, then, was the educational heritage of all the new western states.

CHAPTER III

OREGON: THE FORMATIVE YEARS, 1843-59

The Provisional Period, 1843-49

The earliest form of government in the Oregon country was "a court of justice organized by the popular voice and, by the settlers themselves, as self-constituted tribunals, originated and sustained by the power of public opinion."¹ The settlers of the Willamette valley, not satisfied with this informal governmental organization, early began petitioning the Congress of the United States to take them under its jurisdiction and to provide the use of the territorial form of government. Clark has listed petitions of 1836, 1838, 1840 and others all requesting the United States to grant territorial status to Oregon.²

The settlers had many reasons for wanting to organize some form of government. The Indian problem was so acute in some areas of Oregon that governmental organization was necessary for existence. Crime and disorder became more prevalent as the population increased,

¹Robert Carlton Clark, History of the Willamette Valley, Oregon, (Chicago: The S. J. Clarke Publishing Company, 1927), p. 270.

²Ibid., pp. 271-5.

creating a need for a criminal law code. Disputes over estates, land claims and business transactions accentuated the need for a civil law code. In addition, to attract settlers some form of government had to be adopted in the Oregon country. The type of settler desired was not likely to endanger either his family or himself to the lawlessness that existed on the frontier of Oregon. Others felt the need to thwart the ambitions of the Hudson Bay Company and, as Clark noted, others were interested in governmental organization for the fulfillment of personal ambitions by election to public office.¹

Undoubtedly all of these reasons played an important part in the desire of the settlers to organize a Provisional government; however, it was the death of Ewing Young in February, 1841, that emphasized the need of more efficient legal machinery. Young, a comparatively wealthy man, died without known heirs creating a probate problem without laws to solve the situation.

After Young's death a series of meetings were held for the purpose of organizing a Provisional government that would suffice until territorial status was granted

¹Ibid., pp. 271-5. See also Marie M. Bradley, "Political Beginnings in Oregon," Oregon Historical Quarterly, IX (March, 1908), p. 54.

to Oregon by the United States. Champoeg became a popular meeting place and it was here, on July 5, 1843, that Oregon adopted the first written constitution.¹

From this meeting developed the government that existed until 1849, when Territorial status was extended to Oregon. Under the first organization the executive power was vested in a committee of three persons; the legislative power detailed to a committee of nine persons, selected by qualified electors. In 1845, the plural executive was changed to the unitary type with George Abernethy serving as the only governor.

When drafting the Organic Act the settlers utilized the Ordinance of 1787, as a basis from which to work on school problems. The Act contained the celebrated, "religion, morality and knowledge, etc," but essentially education remained a private matter. Although the Organic Act indicated a moral responsibility of the government to the schools, no provisions were made for school support, that function remaining the responsibility of parents and church.

In the early agitation for free schools, a prominent part was taken by the Reverend George H. Atkinson, often

¹Laws and Journals of the Oregon Territory, 1843-49,
p. 29.

referred to as "the father of public education in Oregon."¹ But this agitation produced little in the way of concrete results until the Territory of Oregon was officially organized in 1849.²

There was a committee on education in the Legislature of the Provisional government as early as 1845, when two measures intended to facilitate the organization of public schools were considered.³ On November 26,

¹Margaret Ambler, "Congregationalism on the Oregon Frontier," unpublished master's thesis, Department of History, University of Oregon, 1948, pp. 29-45.

²Works Projects Administration, "Oregon: End of the Trail," American Guide Series, (Portland: Binford and Mort, 1940), pp. 102-3.

³It has not yet been finally established where the first public school in Oregon was taught. R. H. Down in his History of Marion County wrote, "The first public school was probably located near the Daniel Waldo home in 1845. The school was a log type and the first teacher was a man named Vernon." Rose Fenzle in her History of Education in Oregon pointed out that, "the first public school was opened in 1845, in Champoeg county and taught by Cyrus Shepherd, Oregon's first real teacher."

These schools were not the first schools in Oregon. The various Missions had sponsored schools at a much earlier date. Clark wrote that John Ball, who came West with the Wyeth expedition, started a school in Vancouver in 1832. F. H. Grubb in his Early Oregon Schools wrote, "the fall of 1834 witnessed the first attempt to teach in Oregon, when Solomon H. Smith opened a school in the house of Joseph Gervais, of Wheatland, in Marion county. . . . The pupils were Indian children and the offspring of

1846, the Oregon Spectator published at Oregon City, ran an editorial entitled, "The Necessity of Public Schools."¹ Governor Abernethy, on December 10, 1846, made the following statement concerning education:

I would call your attention to the subject of education. Without education no country can be prosperous. It therefore becomes the duty of the legislature to provide liberally for the education of the rising generations.²

A year later, the Governor clarified his stand for education to an even greater extent in his message to the Legislative Assembly:

The cause of education demands your attention. School districts should be formed in the different counties, and school houses built--teachers would be employed by the people. I have no doubt, and thus pave the way for more advanced institutions.³

returned French trappers and their native wives." Read Bain in his Early Oregon Schools added, "The precise date when the first school in Oregon for white children was established, aside from the distinctly mission schools, is difficult to determine; but it is believed to have been in the winter of 1843-44, at Oregon City at the suggestion of Sidney W. Moss. John P. Brooks was the teacher."

¹Oregon Spectator, November 26, 1846, 2:2.

²Ibid., December 10, 1846, 1:4.

³Ibid., December 23, 1847, 2:3.

Although nothing came of these suggestions, apparently the people were searching for a means of financing education without resorting to subscription or rates. At a public meeting held during October, 1846, in Clackamas county, the participants petitioned Congress "to make liberal appropriations in land or otherwise, for public schools."¹

Under the Organic Act of July 5, 1843, the first land law was enacted.² In some respects the settlers patterned the law after the Preemption Act of 1841. The most significant comparison found each law restricting land claims to settlers only. The Oregon law was more generous, permitting the settler a maximum of 640 acres whereas the Preemption Act restricted the settler to 160 acres. The Oregon law withheld the privilege of extensive water rights and other situations necessary for the transaction of mercantile or manufacturing operations.³ The emphasis of the law was to restrict

¹Ibid., October 29, 1846, 2:4.

²Clark, op. cit., pp. 286-7.

³Provisional Government Land Laws, Manuscript #51, Oregon Historical Society, Portland, Oregon; The Reed Papers; see also Hubert Howe Bancroft, The Works of History of Oregon, 1834-48, Vol. I, (San Francisco: The History Company, 1886), pp. 433-5.

settlement to actual settlers and, in turn, restrict the amount of land each settler might claim. Fundamentally these were the principles established by the Preemption Act of 1841.

By providing for registration of land claims with the recorder of the territory, many of the settlers were satisfied. This had been a major reason for the great desire to organize a government. The registration of claims furnished a means of avoiding conflict in land claims and laying the basis for a more secure title after the sovereign ownership of the land had been determined.

Despite registration of claims, the State lost heavily in potential school lands. From 1844, until 1849, the records show that forty-three of 215 land claims were made on, or included in whole or part, sections sixteen and thirty-six.¹ Unfortunately there was no method whereby these school lands could have been saved. In each instance these claims were years ahead of surveys and the granting of school sections, sixteen and thirty-six, was not yet a fixed policy,

¹From a photostatic copy of early records entitled "Donation Land Claims, 1843-49;" Portland Public Library, Portland, Oregon.

The settlers were confident that section sixteen would be set aside for schools because of precedent already established in other territories. The settlers also recognized the possibilities of the Government reserving section thirty-six as an additional aid to the schools. In October, 1846, at a public meeting in the Clackamas community, a delegation was appointed to attend the general public meeting at Oregon City, in November. The Clackamas delegation had instructions to request that "one section out of every sixteen sections of land be reserved for school purposes and all persons having claims on the above specified lands be granted floating claims."¹

The settlers of Clackamas county were not the only persons thinking in terms of the additional section of land for school support. John A. Rockwell, of Connecticut, introduced a bill to Congress in 1846, "to appropriate an additional section in each township of the public lands of the United States, in support of common schools."² This bill was lost in committee but was re-introduced when Wisconsin came into the Union,

¹Oregon Spectator, October 15, 1846, 2:4.

²Congressional Globe, 29th Congress, 1st Session, p. 172.

in 1848, and again was not adopted. Meanwhile Hon. J. Quinn Thornton, of Oregon, had gone with letters of credit to Washington to present "the urgent claims of Oregon to recognition by the United States Government."¹ Atkinson claimed that Thornton succeeded in having a bill passed August 14, 1848, with the much sought proviso that when the public lands shall be surveyed, the sixteenth and thirty-sixth sections in every township shall be set apart for public schools.² While Thornton received most of the credit so far as Oregon historians are concerned in securing the desired legislation setting aside the second section of land for schools, most writers refer to Stephen A. Douglas as father of this legislation.³ This would seem more reasonable since Douglas served as chairman of the Committee on Territories and as such received credit for the act.

¹Rev. G. H. Atkinson, "Early History of the Public School System, with a General Outline of its Legal Aspects," unpublished pamphlet, Oregon Collection, University of Oregon Library, The Sheldon Papers, pp. 2-3. See also T. H. Crawford, "Historical Sketch of the Public Schools in Portland, Oregon, 1847-88, Ibid., p. 4.

²For all the provisions of this law see the United States Statutes at Large, Vol. IX, p. 330.

³Roy M. Robbins, Our Landed Heritage, (London: Princeton University Press, 1942), p. 158. See also Thomas Donaldson, The Public Domain, (Washington: Government Printing Office, 1884), p. 226.

During the period of the Provisional Government in Oregon practically nothing in the way of schools had been provided. According to the Federal census of 1850, there were only three public schools in all the Territory. The Oregon Territory at that time included what is now all of Oregon, Washington and Idaho, with parts of Montana and Wyoming included. It was likely these three schools were established in the previous year, 1849.¹

The settlers were interested in schools only in a secondary sense. They were much more concerned with securing land and gaining clear title by the principles established in the Preemption Act of 1841. George M. Stephenson summarized the settlers viewpoint when he wrote:

The pioneer felt that in tearing himself away from the comforts and advantages of a more settled community and in striking out into the wilderness to make a home for himself and his children in the midst of hardship and privation, he was rendering a distinct service to society. Therefore his spokesmen in Congress demanded that he be rewarded with a land system which would enable him to settle on a tract of land of reasonable

¹Works Project Administration, "Oregon: End of the Trail," op. cit., p. 103. Quoting Federal Census for 1850.

size to build a log cabin on it, and to cultivate and improve it without risk of having his property bought from under him.¹

Land, then, was the basic problem confronting the organizers of the Territorial government. Land also was to play an increasingly important part in the support of free public schools. Inasmuch as land was the basis of the common school funds in all the new states the land problems paralleled the development of the Irreducible School Fund.

The Territorial Period, 1849-59

After settlement, in 1846, of the Oregon question with England, the way was cleared to bring Oregon under Federal jurisdiction. The Provisional Government of Oregon had served somewhat successfully in uniting the people; however, this government was unable to grant security to the settlers and this, above all else, was what they wanted. During the late forties, the settlers agitated for territorial status hoping that this would be the means of solving their land problems. As previously mentioned, J. Quinn Thornton was delegated to Congress to secure passage of the Territorial Act

¹George M. Stephenson, The Political History of the Public Lands from 1840 to 1862, (Boston: Richard G. Badger, 1917), pp. 20-1.

and from literature available he appeared to have received credit for this accomplishment.

The admission of Oregon as a Territory was held in abeyance much longer than the settlers desired. The arbitration of the conflict with England appeared to have cleared the way but shortly thereafter a series of incidents resulted in an additional two year delay. These delaying incidents were the Whitman massacre in the fall of 1847, the argument between sections in Congress concerning whether Oregon should have slavery and finally, the Mexican war. On August 14, 1848, the Act to establish territorial government in Oregon was passed:

Be it enacted by the Senate and the House of Representatives of the United States in Congress assembled, that from and after the passage of this act, all that part of the Territory of the United States which lies west of the summit of the Rocky Mountains, north of the forty-second degree of north latitude, known as the Territory of Oregon, shall be organized into and shall constitute a temporary government, by the name of the Territory of Oregon. . . .

Section twenty further provided,

And be it further enacted, that when the lands of said Territory shall be surveyed under the direction of the Government of the United States, preparatory to bringing the same into the market, sections numbered sixteen and thirty-six in each township in said Territory shall be, and

the same is hereby, reserved for the purpose of being applied to schools in said Territory, and in the States and Territories hereafter to be erected out of the same.¹

With authorization of a Territorial status the new Territorial Government drafted basic laws. As is often the case, the surest and easiest way of meeting a new problem was by copying that which had been done before and in this instance the settlers followed that practice. The laws which appeared most applicable were those of Iowa Territory and it was these laws that were adopted intact.²

The law authorizing the establishment of public schools in Oregon was passed by the Legislative Assembly on September 5, 1849, thirty-seven members voting for, and six against. The primary features of this law were

¹Elwood P. Cubberley and Edward C. Elliott, State and County School Administration, (New York: The Macmillan Company, 1922), Vol. II, pp. 31-2. Quoting B. P. Poore, Federal and State Constitutions, Vol. II, p. 1491.

²"The laws of Iowa territory shall be the law of this territory, in civil, military and criminal cases, where not otherwise provided for, and where no statute of Iowa territory applies, the principles of common law and equity shall govern." See Article twelve of the report of the Territorial laws, Oregon Archives, Oregon State Library, Salem, Oregon. Manuscript Collection. See also The Oregon Archives, compiled by Lafayette Grover in 1853, a pamphlet, Oregon Archives, Oregon State Library, Salem, Oregon, Document Collection.

prepared by the Reverend George H. Atkinson, who, by request also prepared the passages concerning education in the inaugural message of Governor Joseph Lane, delivered before the Legislature on July 17, 1849.¹

This law provided for a school fund, a superintendent for the schools of the territory; three directors for each district, the certification and duties of teachers, formation of school districts and duties of district meetings.² A noteworthy feature of this new law was the creation of the Irreducible School Fund:

That the principal of all moneys, falling or accruing to the Territory of Oregon, for school purposes, whether by donation or bequest, or which may hereafter be given by the Congress of the United States to this Territory for school purposes, or accruing from licenses, fines, forfeitures, or penalties appropriated by law to common schools, or in any other manner whatever, shall constitute an irreducible fund; the proceeds, or interest, accruing from which, shall be annually divided among all the school districts in the Territory, proportionally to the number of children or youth in each, between the ages of four and twenty-one years; for the support of common schools in said districts; and for no other purpose or use whatever.³

¹ Oregon Statutes, 1st and 2nd Sessions, 1849, p. 68. See Read Bain, "Early Oregon Schools," unpublished pamphlet, University of Oregon Library, The Sheldon Papers.

² Laws of Oregon, 1850-51, pp. 66, 72. For comment see Oregon Spectator, October 18, 1849, 2:1.

³ Ibid., p. 66. For comment see the Oregon Statesman, March 7, 1854.

The new laws solved many of the settlers problems but the fundamental issue of land titles remained. The act making Oregon a Territory declared the existing land laws null and void.¹ Memorialists petitioned Congress repeatedly to pass laws which would make their titles sound and provide a basis whereby sections sixteen and thirty-six could be surveyed and saved for the schools.² The entire land title question was summarized by Thurston's speech in Congress:

It is too well known, I am sure, for me to remind the committee, that the people of Oregon have been living and waiting in that Territory for the last Twelve Years without being able to get a legal title to land enough on which to bury themselves.³

Finally, on September 27, 1850, Congress passed an act known as the Donation Land Act.⁴ The Donation

¹Territorial Government Land Laws, Oregon Historical Society, Portland, Oregon, The Reed Papers.

²A petition with seventy-seven signatures, Provisional Government Papers and Miscellaneous Documents, Manuscript #353, Ibid. See also Memorial of the Legislature of the Territory of Oregon for confirmation of land titles, Oregon (Provisional Government) Legislative Assembly, a pamphlet, Oregon Collection, Oregon State Library, Salem, Oregon, Document Collection.

³Oregon Spectator, October 10, 1850, 2:2.

⁴Oregon Digest, Annotated, 1853 to date, Vol. VIII, p. 136. See also Donaldson, op. cit., p. 296.

Land Act granted to persons who were actual settlers prior to December 1, 1850, a donation of land--320 acres to each single man and 640 acres to each married man. Such persons as should become settlers between December 1, 1850, and December 1, 1853, were given grants--160 acres if single and 320 acres if married. Residence and cultivation was demanded for four years to secure a patent.¹

Generally speaking the law was the answer to the frontiersmen's wishes; however, General Lane was besieged by personal correspondence pertaining to the pros and cons of the law.² On February 14, 1853, Congress

¹The Supreme Court of Oregon, in 1861, held that before the enactment of the law of September 27, 1850, a settler on lands in Oregon held a "mere naked possession" under the laws of the Provisional Government. See Oregon Digest, Annotated, 1853 to date, Vol. VIII, p. 136.

²In the Lane Collection of correspondence at the Oregon Historical Society in Portland, four letters were found that dealt directly with matters concerning the Donation Land Act. A. C. Gibbs wrote, on December 10, 1851, from Gardiner, Oregon. From "what little I have been able to observe most of those who come to Oregon to settle, not to make a 'pile' and 'go home' as quick as possible are satisfied with the law and wish no change, . . ." Holman, on January 1, 1852, sent a petition containing seventy-eight signatures requesting an alteration in the land law. O. C. Pratt, on January 28, 1854, wrote that the law has a very pernicious defect. He suggested that the first day of December, 1853, be deleted and that the first day of April, 1855, be added. Elisha Yulee, on October 17, 1854, remarked that the law is a bar to the progress of our Territory. He complained about the clause demanding residence in order to acquire title.

further complicated the Oregon land situation by passing an act making lawful the common law practices of pre-emption on the unsurveyed portions of the public domain. This was followed by the Act of July 17, 1854, which provided that "the preemption privilege granted by the act of September 4, 1841, shall be . . . extended to the lands in Oregon. . . whether surveyed or unsurveyed."¹

The weaknesses of the land system as it existed in 1854, has been well expressed by O. C. Pratt, Judge of the Supreme Court, in his letter to General Joseph Lane on February 15, 1854. He wrote,

. . . .As things now are there is no judicial power vested anywhere by which questions of conflict of right and title between different parties can be determined. The Surveyor-General's power to adjust questions of conflict of boundary does not invest him with judicial authority to determine the right to the land itself,
no appeals to the General Land Office are provided for, it will be seen that a proper tribunal to make final decisions of all important questions arising under the donation law, remains to be established.²

Pratt further requested that a Land Office be established in Oregon with authority to adjudicate disputes.

¹United States Statutes at Large, Vol. X, p. 305.

²O. C. Pratt to Joseph Lane, February 15, 1854, Oregon Historical Society, Portland, Oregon, Joseph Lane Papers.

Pratt's letter was a remarkable coincidence for the first Territorial Office of the General Land Office was established at Oregon City in 1854. A year later an office was established at Winchester in the Umpqua country.¹ Other offices were established at strategic locations about the state at later dates.²

¹Works Project Administration, "L" Notes, Oregon Archives, op. cit.

²Roseburg, January 3, 1860; LaGrande, December 11, 1867; Linkville, January 16, 1873; Lakeview, September 1, 1877; The Dalles, January 11, 1875. See Donaldson, Public Domain, op. cit., p. 176.

The office of the Surveyor General was created by the Act of September 27, 1850. This unfortunately, did not mean that the lands of Oregon were surveyed immediately. The cost of surveying must be accomplished at the price of eight dollars per mile. The rough terrain of Oregon made this absolutely impractical. See United States Statutes at Large, Vol. IX, p. 496.

The first office in Oregon was established at Oregon City in May, 1851. The office was moved to Salem in August, 1854; to Eugene in October, 1859 and finally to Portland in April, 1875, where it remained until abolished March 3, 1925. It then became the Public Survey Office and came under Supervisor of Surveys, Field Surveying Services with headquarters in Denver. See Works Project Administration, "L" Notes, op. cit. See the Sunday Oregonian, October 17, 1948, Magazine Section.

The first survey team to make observations of the conditions in Oregon were the members of the Pacific Coast Survey of 1849-50. William P. McArthur, U.S.N. wrote his father-in-law, John J. Young, Superintendent of the Naval hospital at Norfolk, Virginia, on June 3, 1850. In part, he wrote, "the greatest difficulty. . . is the want of acts of Congress to define the extent of land claims and to regulate all matters attending the surveying and giving titles, etc. Nothing exists in the shape of law." See Lewis A. McArthur, "The Pacific Coast Survey of 1849 and 1850," Oregon Historical Quarterly, XVI (September, 1915), p. 256.

John Preston, the first Surveyor General of Oregon, arrived in Oregon City early in May, 1851. The difficulties he encountered in securing competent men to help the Deputy Surveyors were vividly described in a letter to his friend Butterfield, dated at Oregon City, May 5, 1851. He described the wages for laboring men as from \$75 to \$100 per month and found, Carpenters cost \$8 per day, flour was \$15 per barrel, pork was \$25 per barrel, beef was 18 cents per pound, potatoes \$2 to \$2.50 per bushel, butter 75 cents per pound and wood \$8 per cord with other things in proportion.¹

The task of accomplishing any significant amount of surveying without adequate funds was undoubtedly a perplexing problem to Preston. Whether he was a victim of an impossible situation or actually guilty of malfeasance in office has been hard to determine. In 1856, the Democratic members of the House of Representatives requested the President to remove him. They claimed that Preston had conducted the surveys,

in an indifferent and tardy manner so that the settlements have been in advance of surveys. . . .the lands. . . .reserved for. . . .

¹John Preston to J. Butterfield, May 5, 1851, Oregon Historical Society, Portland, Oregon, John Preston Papers.

schools have been occupied and held by settlers, while in lieu thereof, resort must be had to sections and fractional sections of mountains, swamp and timbered land, in many instances comparatively valueless. . . .¹

These charges were the subject of vituperative blasts periodically in the Oregon Statesman.²

Throughout the Territorial period, preemption rights were exercised frequently so that much of the school land of any value in the counties west of the Cascades had been claimed long before the surveys were made. The surveys were not accomplished until nearly a decade after the admission of the State to the Union.³ Unfortunately the legislature was without authority to select other lands in lieu of those lost. The problem had been so acute that on January 14, 1852, a joint resolution was sent to Congress asking that body to:

allow the county commissioner of each county, respectfully, to locate two sections of land in each township for the use of common schools . . . where sections sixteen and thirty-six are occupied, at the time of survey by actual settlers.⁴

¹Journal of the House, 1855-56, Appendix, p. 95.

²Oregon Statesman, April 11, 1854, 2:6.

³The Sunday Oregonian, October 17, 1948, Magazine Section.

⁴Local Laws and Joint Resolutions of the Territorial Legislature, 1851-52, p. 31.

Since nothing came of this request it was repeated on January 17, 1853, the settlers not realizing that Congress had passed the legislation ten days previously.¹

As far as the schools were concerned the whole problem was complicated also by the legislative changes providing for the administration of the schools. The law of 1849, had provided for both a territorial superintendent and county school commissioners to watch over the school lands.² The office of county school commissioner was abolished on January 15, 1852, and the duties of the commissioners were bestowed upon the county commissioner of each county.³ Two years later the county school offices were reestablished but were called county school superintendents.⁴ In addition to preserving the school lands these officials were given the responsibility of determining how much of sections sixteen and thirty-six remained and to then take advantage of the lieu land law and select compensatory land.

On January 20, 1852, the Legislature created the

¹Ibid., 1852-53, p. 50. See also United States Statutes at Large, Vol. X, p. 150.

²Infra, p. 63.

³General Laws of Oregon, 1851-52, pp. 65-6. See also Laws and Journals of Oregon, Vol. III, p. 64.

⁴Laws and Journals of Oregon, Vol. IV, p. 423.

Office of University Land Commissioner charged with the duties of controlling, protecting and selling the public lands donated by Congress to the Territory of Oregon.¹

The only lands he could sell were the University lands as these were the only ones with a clear title. For the next four years the lands were jointly supervised by the Territorial Land Commissioner and the county officials but neither could sell any part of sections sixteen and thirty-six.

The Legislative Assembly, at its seventh session, 1855-56, was so irritated with its inability to secure legal title which would permit the Territory to sell the school lands that it nevertheless passed the law "providing for the sale of Common school lands of the Territory of Oregon."² By this act the Legislature made it the duty of the county school superintendent to offer for sale to the highest bidder all the school lands of their respective counties. The lands had to be sold for not less than \$2.00 per acre, unless tracts that had been offered for sale twice had not been sold,

¹General Laws of Oregon, 1851-52, p. 55.

²The Territorial Act providing for the sale of common school lands was passed on January 26, 1856. See General Laws of Oregon, 1855-56, p. 69. See also Oregon Statesman, March 18, 1856, 4:1.

then the lands could be sold for \$1.25. The county school superintendent was instructed to receive one-fourth of the purchase money in hand, and the remainder in three equal annual installments at ten percent per annum interest from the date of purchase and to deposit the moneys, notes and securities received with the Territorial Treasurer, who was to loan all money at not less than ten per cent, payable semi-annually in advance.¹

The period to follow was one of the darkest in the history of school fund management. Sales, in the first place, were made upon the assumption that the State had title to sections sixteen and thirty-six. At a later date the courts invalidated the sales of these lands only to be reversed by a Supreme Court decision in 1899. The Supreme Court held that "a contract by the county school superintendent to convey school lands although outside his authority, is ratified by the State's acceptance of the price, so as to bind it to make a deed to the lands."²

During the period of management by the county

¹Oregon Statutes, Seventh Session, 1855-56, pp. 69-71.

²Ambrose vs. Huntington, 34 Oregon 484, Oregon Digest, Annotated, 8:143.

school superintendents, few, and in many cases, no records of transactions were kept. Much of the land sold was sacrificed. The Superintendent of Marion County Schools undertook to "sell all the school lands in Marion County at public sale at the courthouse in Salem."¹ Ray Wolf in his thesis made a study of the Linn County records. He found that,

the county contains approximately sixty townships which would give it, in round numbers, 76,000 acres of school lands, in sections sixteen and thirty-six. The Linn County records show the first selections of lieu lands in that county to have been made October 4, 1854. During 1854 and 1855, about nine thousand acres were so selected. Either no other selections were made, or else the records were not kept, until 1862. Between these years 1862 and 1864 about one thousand additional acres were selected. This is all that the records show the county school superintendents selected. There is no doubt that much more than that was selected, but the entries were evidently not made.²

The last legislative act during the Territorial period concerned school lands and the Irreducible School Fund was passed January 30, 1858, when only slight changes were made. The county school superintendent was placed under a \$5,000 bond and the minimum sale price of the

¹Oregon Statesman, October 12, 1858. For other county reports see the Oregon Statesman, January 6, 1857, 2:4.

²Ray O. Wolf, "A History of Oregon School Lands," unpublished master's thesis, Department of History, University of Oregon, 1940, pp. 65-6.

land was set at \$2.00 per acre.¹

While the fight for land title was being waged there was at the same time a battle over the whole concept of public school law. The idea of "free schools" was bitterly opposed in many quarters, particularly by bachelors, those who had no children and others interested in building up private and denominational schools.² The spirit of competition in the establishment of private schools was prominent through the "fifties."³ How the feeling was manifested can be best expressed in an excerpt from a manuscript of the H. E. Reed collection.

Early attendants of the public schools of Portland were taunted by the pupils of the private schools as 'free school bums' and while on their way to school in the mornings were saluted with 'my father is paying for your education,' meaning that the taxes their father paid helped to support free schools.⁴

Regardless of the invective and ridicule heaped upon the children attending the free public schools, these public schools had been more or less accepted. Portland's first public school was opened in 1851, in the schoolhouse

¹Laws and Journals of the Oregon Territory, 1857-58, Vol. VIII, p. 43.

²Bain, op. cit., p. 13.

³Dorothy Andre, "History of Education in Oregon," unpublished pamphlet, Manuscript #353, Oregon Historical Society, op. cit.

⁴An unclassified document, Manuscript #41, Oregon Historical Society, Portland, Oregon, The Reed Papers.

near First and Oak streets and was taught by John T. Outhouse. A year later Mr. Outhouse added an assistant, Miss Abigail M. Clarke, who became the first woman to teach in the public schools of Oregon.¹

The number of schools in existence can be better understood in light of the existing population of Oregon. The Federal census listed a population of 13,000 people in the territory in 1850, 600 of whom were in Portland. While the citizens were fighting the battle of land titles and public versus private schools, the legislature was attempting to crystalize some form of management of the schools and the Irreducible School Fund.

The office of Territorial school superintendent which had been established by the law of 1849, lasted but one year and a half when the office was abolished.² The Superintendent lodged a claim of \$679.00 against the Territory and this no doubt had considerable to do with the disposition to abolish his services. The office was not reestablished until 1873. The various

¹Bain, op. cit., p. 12. See also Clark, op. cit., pp. 606-8.

²Oregon Statutes, 1st and 2nd Sessions, 1849, p. 68.

governors served as the Superintendents of Public Instruction, from 1849, until 1873.¹ During the remaining years of the Territorial period, school business was generally conducted at the county level with practically no centralized controls. The one major exception was the counties were required to turn over all moneys collected from the sale of school lands to the Territorial Treasurer.

The Legislature, in 1854, made an earnest effort to put the public school movement on a firm foundation. An act was passed which provided that the county commissioner should collect a two-mill tax for school purposes. However, all of the legislation provided by the Territorial legislators failed to put any money in the Territorial Treasury. At least the records would indicate that no fund existed at the end of the first seven years of the period.²

The school law of 1854, in enumerating the sources from which the school fund should accrue, mentioned only the sale of school land and bequests for school purposes. "Donations seem to have been despaired of and other uses found for licenses, fines, forfeitures or penalties."³

¹Clark, op. cit., p. 610.

²Report of the Oregon State Treasurer, 1856.

³F. G. Young, "Financial History of the State of Oregon," Oregon Historical Quarterly, VIII (June, 1907), p. 156.

The primary reason for the total lack of a fund during the early 1850s was because of no law authorizing the sale of the lands. When a fund did commence to accumulate in 1856, it was so small and the income of it so meagre, that the annual distribution plan was not put into effect during the territorial period.¹

By 1858, a small fund had accumulated in the hands of the Territorial Treasurers; however, this was the year of tremendous change in policy.² Instead of the Territorial Treasurer handling the funds they were to be turned over to the various county treasurers.

¹ Ibid., p. 157.

² The following figures are taken from the Treasury Reports for the years shown.

The Irreducible School Fund For year ending Dec. 7, 1856

| Receipts | |
|--------------------------------------|---------------|
| Cash on sales | \$3,662.20 |
| Interest on notes in part payment | 781.26 |
| Note Amount of Principal | 9,755.68 |
| | \$14,198.62 * |
| Disbursements | |
| Treasurer's commission for recording | 283.96 |
| Treasurer's commission for loaning | 35.01 |
| Stationery | 5.00 |
| | \$ 323.97 |

The Irreducible School Fund For year ending Sept. 12, 1859

| Receipts | |
|-------------------|-------------|
| Balance on hand | \$32,303.09 |
| Interest received | 343.10 |
| | \$32,646.19 |

Henceforth the county treasurers received the funds from the sale of land and were responsible for their distribution on a proportionate basis furnished by the Territorial Treasurer. Distribution was based on the number of children in each county between the ages of four and twenty-one. Only the interest was distributable, as the actual cash went into the Irreducible School Fund which was to be held "by the several counties in trust for the Territory."¹ The territorial period thus closed with decided decentralization in the method of administering the fund.

Ten years of carelessness and uncertainty during the Territorial period resulted in a fund of slightly more than \$30,000; all of it accumulated after 1856, the first year that any funds were deposited to the credit of the Irreducible School Fund. The liberal plans for the cause of education, the two-mill tax, the six percent income for the fund that was guaranteed,

| Disbursements | |
|--|--------------------|
| Money and securities distributed among the counties to be held in trust for them | \$21,285.78 |
| Administrative expenses | 222.05 |
| | <u>\$11,138.36</u> |

*Note discrepancy in total.

¹Oregon Statutes, 9th Session, 1857-58, pp. 43-5.

the donations, licenses, fines, forfeitures, and penalties all vanished with the exception of the paltry amounts accumulated during the last three years of the Territory.

Precisely what happened to the Irreducible School Fund during this period cannot now be stated. Speculations have been made concerning possibility of graft and corruption that existed but proof has been lacking. The lack of a fund, however, indicates evidence of gross mismanagement. A letter from a taxpayer to the Oregonian, in May, 1853, pointed out how many people felt about the school fund. "The school funds are scattered without security for their safe keeping, except for the faithfulness of the men entrusted with the money."¹ Generally speaking the people of Oregon were unaware of the need for management of the school lands and funds. This was more surprising when realized that the people had to make up the school assessment.² The real development of the Irreducible School Fund came when Oregon began to inspect the lands and make selections as it became a State and received additional settlers.

¹Oregonian, May 28, 1853, 1:4.

²Down, op. cit., pp. 577-80.

CHAPTER IV

THE IRREDUCIBLE SCHOOL FUND, 1859-78

The Situation Relative to the Federal Land Policies up to 1859

Probably the two greatest sources of trouble to the newly admitted State were the preemption laws and administration of the land surveys. It will be recalled that, in 1854, the right of preemption to all unsurveyed public lands was extended to Oregon. This law remained in force until its repeal March 3, 1891. Whether the Irreducible School Fund suffered unduly can hardly be determined because there was no way of fixing the relative values of the original school lands and of the lieu lands later selected. Preemption, however, served the purpose of the people and as a result was a very popular law. Without preemption it was doubtful the western lands would have been settled as rapidly.

If preemption proved a problem, then surveys, or lack of them, were even more difficult. As previously stated, when John Preston, Surveyor General of Oregon, arrived in the Territory, in 1851, Congress allowed him \$8 per mile to run surveys. This was the same amount as granted in the great plains area where such

a sum was sufficient, but from the very beginning the survey teams could not operate in Oregon on such an allotment. This \$8 per mile allocation for surveys in Oregon remained until the Act of July 15, 1870, gave the Commissioner of the General Land Office the right to authorize surveys in Oregon on areas "densely covered with forests or thick undergrowth 'at rates' not exceeding \$18 per mile for standard parallels, \$15 for townships and \$12 for section lines."¹

By 1857, a national depression had swept the country. With the resulting grave financial situation, the Federal government cut many appropriations and among these was a sizable portion of Oregon's survey allotment. The resultant delay of surveys irritated many Oregon residents whose attitude was expressed appropriately by the Oregon Statesman published in Salem. The Oregon Statesman carried many statements concerning the failure of the Federal government in accomplishing the surveys in Oregon. This newspaper placed a considerable amount of the blame upon General Joseph Lane.

It is notorious that for the two years last past there have been next to no appropriations for survey of public lands in Oregon,

¹Revised Statutes of the United States, 1878, 2nd Edition, p. 441.

and only because it was feared by General Lane that his praises would not be sung over every dollar dispersed.¹

The Oregon Statesman went a step further and accused the Federal Land Office of cancelling contracts for surveying land that had already been granted. "The Surveyor General. . . received instructions. . . to annul contracts made for the last eight or ten months."²

It would be impossible to ascertain how much of the Irreducible School Fund was lost because of the delay in surveys. As with preemption, the assumption has been made that great losses were incurred because choice agricultural land was selected first by the settlers, leaving the schools to select lieu land of their choice. At this date, 1860, the schools selected the second best agricultural land. Timber land was not considered valuable before 1890.

Another loss to the State was incurred by negligent administration of the swamp land grants which had been authorized by Congress in 1850. Many states, Oregon included, turned portions of these lands over for the

¹Oregon Statesman, November 29, 1859, 2:1; January 17, 1860, 2:4; and February 7, 1860, 2:1.

²Ibid., May 31, 1859, 2:2.

purposes of education.¹

Federal Acts Affecting the Irreducible School Fund

Oregon was admitted to statehood by Congress under the following conditions: (1) The State received sections sixteen and thirty-six in each township of land in lieu thereof for use of the schools. (2) Seventy-two sections of land were granted for the support of a State University. (3) Ten sections of land were granted for public buildings. (4) Twelve salt spring selections were permitted with six sections of adjoining land with each providing selections were made within one year of admission to the Union. (5) Five per cent of the sale of public lands disposed of after Oregon's admission to the Union were deducted by the government and awarded to the State for internal improvements.² In return the Federal government demanded that all Federal lands within the boundaries of Oregon remain tax free.³

¹Among the states turning the swamp lands over to the cause of education were Alabama, Mississippi, Indiana, Ohio, Louisiana, Illinois, Michigan, and Missouri gave a part. The fund was given to sixteen states with the primary thought in mind of having the swamps drained. In most cases, the lands were used for other purposes, mainly education. Matthias N. Orfield, Federal Land Grants to the States with Special Reference to Minnesota, Bulletin of the University of Minnesota, 1915, p. 118.

²The Oregon Blue Book, (Salem, 1938), pp. 237-8.

³Ibid.

In addition to these grants, the State also profited from the donation of 500,000 acres of land for the support of internal improvements. These lands were awarded to all new states in accordance with the Internal Improvements Grant of September 4, 1841.¹

Oregon subsequently was one of nineteen states receiving this grant for internal improvements.² Like many of the other states, Oregon did not use the grant for internal improvements. Following the precedent established by Iowa, Oregon, in 1889, turned over to the Irreducible School Fund the cash accumulated from the lands sold from the grant and the remaining unsold lands were pooled with other school lands.³

Those states in the Union, by 1850, profited from the Swamp Land Act of September 28, of that year.⁴ Congress granted to these states all the swamp and overflow lands within their borders, the proceeds to be used in establishing drainage systems. Since Oregon

¹United States Statutes at Large, Vol. V, p. 455.

²Floyd C. Ramp, "A History of the Public Lands of Oregon," unpublished senior's thesis, History Department, University of Oregon, 1908, p. 27.

³House Journal, 1868, p. 331.

⁴United States Statutes at Large, Vol. IV, p. 79.

did not become a State until 1859, the original swamp land grant was not applicable until Congress, on March 12, 1860, amended the original act. This amendment extended the provisions of the Act of 1850 to Oregon and Minnesota.¹ The amendment followed the text of the original act by excluding lands that the government of the United States had reserved, sold or disposed of prior to the receipt of the grant. The amendment also provided that selection had to be made from lands already surveyed and this action had to be

transmitted within two years from the adjournment of the legislature. . . .at its next session after the date of this act; and, to all lands hereafter to be surveyed, within two years from such adjournment, at the next session, after notice by the Secretary of the Interior to the governor of the State, that the surveys have been completed and confirmed.²

The problem of the swamp and overflow lands is a special one and is related to this subject only because the State Legislature passed an act on October 28, 1872, granting ten per cent of the proceeds of the sale of these lands to the Irreducible School Fund.³

¹United States Statutes at Large, Vol. XII, p. 3.
Also School Laws of Oregon, 1897, p. 47.

²Ibid.

³Laws of Oregon, 1872, Vol. XIII, p. 128.

Two other Federal acts deserve attention for each later played a significant part in the development of the Irreducible School Fund. These laws were the Homestead Act passed May 20, 1862¹ and the Timber and Stone Act passed June 3, 1878.² Under the Homestead Act the Irreducible School Fund likely lost large amounts of school land because preemption was still in effect and surveys lagged. The Timber and Stone Act became the "happy hunting ground" of timber speculators. The innocent sounding terms of this act provided that,

surveyed public lands within . . . Oregon . . . chiefly valuable for timber, but unfit for cultivation. . . may be sold. . . in quantities not exceeding one hundred and sixty acres to any one person or association of persons, at the minimum price of two dollars and fifty cents per acre.³

Timber speculators hired entrymen to lay claim to 160 acres of choice timber land. The entrymen would then transfer title of the land to the speculators thus making it possible for one man to gain huge amounts of timber acreage. As Ray Wolf wrote, this law became "inextricably entangled with the school lands through

¹Revised Statutes of the United States, 1878, p. 419. See also Thomas Donaldson, The Public Domain, (Washington: Government Printing Office, 1884), pp. 332-56.

²United States Statutes at Large, Vol. XI, p. 89.

³Ibid.

a series of fraudulent maneuvers on the part of shrewd speculators,¹

The General Land Office

The General Land Office, in 1849, became a bureau of the newly created Department of Interior. This administrative change had no immediate effect upon land office policy and the General Land Commissioner was still expected to perform all executive duties appertaining to the surveying and sale of the public lands of the United States.²

To fully understand the importance of this agency, it is necessary to consider the magnitude of the job. The General Land Office had the responsibility of approximately four-fifths of the nation's land area. The surveys, sales, and legal complications arising from this mass has been an overwhelming administrative task. To further complicate the situation Congress passed approximately 3,000 acts concerning the public lands.³ Such a deluge of laws required numerous decisions, all

¹Ray O. Wolf, "A History of Oregon School Lands," unpublished master's thesis, Department of History, University of Oregon, 1940, p. 24.

²For a concise and authoritative account of General Land Office procedure see Milton Conover, The General Land Office, Institute for Government Research, Service Monograph #13, (Baltimore: The Johns Hopkins Press, 1923).

³Donaldson, op. cit., p. 167.

requiring careful thought and preparation. This, added to the settlement of disputes arising from all phases of the land business, meant the hiring of a tremendous administrative staff.

The General Land Office was sub-divided into the following divisions to facilitate efficient administration: Chief Clerk's Division; Recorder's Division; Public Lands Division; Private Land Claims Division; Surveying Division; Railroad Division; Preemption Division; Swamp Land Division; Draughting Division; Accounts Division; Mineral Division and the Special Service Division concerned with timber depredations and fraud.¹

At the time Donaldson made his report, 1880, there were sixteen surveying districts, each in charge of a Surveyor General, with a competent corps of assistants and deputies, through whom all surveys were made and reported to the central bureau. There were also ninety-six land districts, each with an office conveniently located for the sale or disposal of the public lands. "These offices are in charge of registers, to whom application is made for lands, and receivers of public moneys, who, as the name indicates, receive all moneys

¹Ibid., p. 1230.

in payment for the same. . . ."¹ The duty of classifying, examining and definitely disposing of the work done in the district offices, together with the supervising and directing the same, constituted the principal part of the work of the General Land Office.

Legislative Policy of the New State Toward Lands
Granted by the Federal Government.

The people of Oregon ratified the Constitution agreeing to the terms set forth by Congress. Thus when Oregon was admitted to the family of states, it became a landlord.² The new Constitution provided both for the Irreducible School Fund as well as for the sale of the school lands.³ According to the Constitution the sale of school lands was transferred from the county school superintendents to the Board of Commissioners

¹Ibid., p. 167.

²From the time the first committee on education and school lands was appointed at the Constitutional Convention on August 20, 1857, until the final acceptance of Oregon as a State, a considerable amount of haggling occurred. This two year period was replete with argumentation and debate. For a complete picture of what transpired during these convention years see the Oregon Constitution and Proceedings and Debates of the Constitutional Convention of 1857, edited by Charles Henry Carey, (Salem: State Printing Department, 1926, pp. 106, 178, 231-2, 308-12, 338-40, 477.

³Supra, p. 10.

for the sale of school and university lands.¹ Actually, however, it was not until 1866, that the Board of Commissioners undertook to fulfill the terms of the Constitution and then only after the Legislature passed a law ordering the Board of Commissioners "to take charge of and manage the funds."² The law also provided that hereafter school lands shall be sold only by the board and the county treasurer and school superintendent will be at the disposal of the board if so required.

The period, 1859-68, was marked with confusion. Before being too critical of administrative officials it is necessary to understand the legislation of this period. The first assembly of the Legislature acted in good faith by legislating to protect State lands.

¹The Governor, Secretary of State and State Treasurer shall constitute a board of commissioners for the sale of school and university lands, and for the investment of the funds arising therefrom, and their powers and duties shall be such as may be prescribed by law; providing, that no part of the university funds, or of the interest arising therefrom, shall be expended until the period of ten years from the adoption of this constitution, unless the same shall be otherwise disposed of by the consent of Congress for common school purposes. Constitution of Oregon, Article VIII, Section V.

²General Laws of Oregon, 1843-72, p. 635.

Two acts passed in 1860, were explicit in instructions on how to select, list and administer the lands. Both of these acts were passed October 19, 1860. One provided that the Governor select the lands and the salt springs granted to Oregon upon admission to the union plus selecting the lands provided under the terms of the swamp land grant made by the Federal government on March 12, 1860.¹ The other act provided for the disposing of the 500,000 acre internal improvements grant awarded Oregon upon admission to the Union. Briefly, this law permitted the settlers to pre-empt the public domain prior to the surveys with the stipulation that ten percent of the \$1.25 per acre purchase price be paid as interest in advance until the local surveys and the Federal surveys were adjusted.² This law was repealed October 15, 1862, meanwhile the State sold many parcels of land to individuals other than the locators. This law proved unfortunate as it complicated the matter of land titles, which remained of utmost importance to the land owner. The tendency naturally was for the State to lose prestige. The final untangling of the law took place in 1881, when the courts finally rendered a decision which

¹Ibid., 1862, p. 72.

²The Constitution together with the Session Laws of Oregon, 1860, pp. 55-7.

clarified the titles.¹ The courts held that,

the several acts of the legislature in regard to the preemption of land subject to the selection by the State show unmistakably that the legislature intended that the locator under the act of October 19, 1860, should have the exclusive right to procure the title of the state, under the act of Congress, in the land located and pay for it in conformity with their requirements, and, when lands so located and paid for were afterwards selected by the state in due form, the right of the locator to a state deed therefor became perfect and indefeasible, according to the intention of the lawmakers.²

Unfortunately the intention of the Legislature of 1860 to preserve State lands all came to naught. No funds were appropriated to pay a staff for the task outlined in the law of October 19, 1860. This situation continued until October 15, 1862, when the Legislature started a series of land laws only two of which affected the Irreducible School Fund. The first of these was the delegation of the governor as "land commissioner."³ The second law, passed two days later, on October 17, 1862, definitely conflicted with the former when the county school superintendent was designated as the one who

. . . shall, when the selections of school lands have not been made in his county,

¹Oregon Digest, Annotated, Vol. VIII, p. 140.

²Ibid.

³General Laws of Oregon, 1862, pp. 105-7.

select as such sections sixteen and thirty-six of each township, or if any part or all such sections are claimed through donation, preemption, or purchase, he shall select in lieu thereof, such other suitable lands as he can find nearest thereto. . . .¹

How, within two days, the Legislature could detail the same task to two different parties is difficult to understand, yet, that is what happened. Fortunately the laws had little effect upon the sale of school lands as neither official acted.

The series of land laws passed on October 28, 1864; December 19, 1865; October 24, 1866 and October 28, 1868, have actually been considered as one law.² Wolf, in his thesis declared these laws "as a series of blind stabs in the dark for a solution to a problem that was evidently beyond the power of the legislature to solve at that time."³

Matthew P. Deady and Lafayette Lane, compilers of the above laws, have pointed out that in many instances they were unconstitutional and often conflicting.⁴ As seen in Article VIII, Section V, of the Constitution provisions were made for handling the school lands.

¹Laws and Journals of Oregon, 1862, Vol. XI, p. 38.

²General Laws of Oregon, 1843-72, pp. 631-8.

³Wolf, *op. cit.*, p. 51.

⁴General Laws of Oregon, 1843-72, p. 631; 634-6, footnotes.

Why the legislature chose to ignore the Constitution is unknown, but ignore it they did.

The law of 1864, provided for a "Board of Commissioners for the sale of school and university lands, and for the investment of funds arising therefrom." No change was made in the membership of this board. It remained the Governor, Secretary of State and State Treasurer. The law further provided that purchasers be actual settlers and they were limited to a half section of land at \$1.25 per acre if they preempted the land and \$2.00 otherwise.¹

The law of 1865, detailed management of the common school fund to the various county treasurers and provided that "nothing. . . shall be so construed as to deprive this state of the right to control the common school fund. . . ."²

The law of 1866, provided for the board to take charge of and manage the school funds. It definitely placed the duty of the sale of school lands with the board and placed the county treasurer and school superintendent at the disposal of the board.³

¹Ibid., p. 633.

²Ibid.

³Ibid., p. 635.

The law of 1868, was primarily concerned with University lands. The law, however, provided the county treasurers with authority to act as local agents for the board relative to loans.¹ The county school superintendent was also detailed the responsibility of examining and appraising "any school or university lands belonging to the state" in his county.²

In addition to the laws listed there were two laws of clarification passed on October 28 and October 29, 1868. No other laws providing for sale of school lands were passed until after the legislative investigations of 1878. The laws of October 28 and October 29, 1868, provided that

the board of school land commissioners. . . .
are hereby authorized to sell and dispose of
said lands for not less than two dollars and
fifty cents per acre. . . .in quantities not
exceeding three hundred and twenty acres
. . . .provided no person owning more than
three hundred and twenty acres. . . .shall be
entitled to purchase. . . .³

In addition, the laws provided that the county school superintendent should reassume his old duty of selecting and caring for State school lands.⁴ This duty was

¹Ibid.

²Ibid.

³Laws of Oregon, 1866-72, Vol. XIII, pp. 153-4.

⁴Ibid.

periodically restated until 1899.¹

Before leaving the land legislation for the period, 1859-78, the swamp land acts should be mentioned. The original swamp land grant was made, in 1850, but was extended in March, 1860, to include Minnesota and Oregon.² This grant actually held no importance to the school fund until October 28, 1872, when a provision was made by the State requiring that "ten percent of all moneys hereafter received from the sale of swamp, overflowed and tide land. . . shall be appropriated to the Common School Fund. . . ."³

Wolf has devoted considerable space to this problem. He wrote, "no land grant has proved as difficult to adjust as the swamp land grant."⁴ From 1860, onward the swamp lands constituted a continuous source of litigations and court decisions. Much of the trouble arose from disputes between the Federal government and the State concerning the selection of the land, the surveys and issue of patents and titles. The failure

¹Ibid., 1899, p. 215.

²Supra, pp. 72-3.

³Laws of Oregon, 1872, Vol. XIII, p. 128.

⁴Wolf, op. cit., p. 80.

of the two agencies to agree and abide by existing policies caused the State to lose heavily through fraudulent entry.¹

Oregon's most important swamp land law was passed by the State Legislature October 26, 1870.² This law stipulated the provisions by which the swamp land would be disposed. The law proved to be a tool of the land speculators. Wolf cited that over half of the selections made in the 1870s were fraudulent.³ The Portland Oregonian conducted an outspoken campaign in an effort to expose the irregularities connected with the law. The Oregonian also declared, "it is to be expected that attempts will be made by operators who got the present state law passed, . . . to obtain for purposes of speculation large tracts of land, . . ."⁴ Not only did this newspaper editorialize and campaign against the swamp land law but it printed excerpts from all newspapers in the State that expressed dissatisfaction with the law.⁵

¹Senate Executive Documents, Vol. XI, no. 249. 50th Congress, 1st Session, C. S., 2514, p. 7.

²Laws of Oregon, 1870, Vol. XIII, pp. 54-6.

³Wolf, op. cit., p. 83.

⁴Oregonian, January 9, 1871, 2:1.

⁵Ibid., February 22, 1871, 1:7; January 15, 1872, 2:2; November 29, 1871, 1:6; and January 31, 1872, 1:4.

Unfortunately the public pressure did not effect a change in the law, until after the legislative investigations of 1878. Mismanagement and poor legislation caused a considerable loss to the fund; however, there is no possible way by which an estimate can be made relative to the amount lost.

It must not be assumed that the State legislative measures were enacted without opposition for this would be far from the truth. One of the most outspoken critics was Ashiel Bush, one of the most influential men in Marion county. He condemned the provisions of the laws concerning schools, for he felt the country too sparsely populated for public schools to prosper. He was against any law that provided public funds for the support of schools. He thought the private and voluntary schools could satisfactorily fill the need.¹

Later, in this same period, Harvey W. Scott, editor of the Portland Oregonian, was largely responsible for the retardation of secondary education. His attitude, typical of many persons before 1900, was expressed in an editorial published in 1879.

Give every child a good common school
English education at public expense, and then

¹Robert Horace Down, "History of Marion County," a pamphlet, University of Oregon Library, Oregon Collection.

stop. There have been two presidents of the United States who have received less aid than this in their school education; if any want more, let those who dance pay the fiddler. This is the cure for drones. It is the way, too, to make the public school a blessing instead of allowing them to develop into nurseries of imbecility and idleness.¹

Administrative Problems

Administratively the State had many problems involving the Irreducible School Fund but none were as important to the outcome of the fund as the school lands. As seen throughout the history of the State--the State was handicapped by inadequate legislation, lack of surveys and weak land titles. In retrospect it was practically impossible to ascertain just what happened; though in this respect no change has occurred for the citizens of Oregon's early statehood days were also unable to visualize the possible benefits of the land grants to education. The report of the Committee of Education of the first session of the Oregon Legislature, in 1860, confirmed the lack of knowledge and records of school lands.

The history and conditions of the school lands of this state are to your committee, and we presume to the legislature as such,

¹Robert Carlton Clark, History of the Willamette Valley, Oregon, (Chicago: The S. J. Clarke Publishing Company, 1927), p. 616.

and the public at large, unknown. We are not informed of the amount of lands selected for common school purposes, in pursuance of the act donating the sixteenth and thirty-sixth sections in each township, and where they were occupied previously to being surveyed, other lands to an equal amount in their stead, in the various counties of this state; though it may be a matter of record, perhaps in the office of the Surveyor-General, an office under no obligation to report either to the legislature or the public. Your committee deem it a subject of interest to the State and the public to know whether all the lands donated. . . . have been selected, what portion of them have been sold in the various counties, and for what amount of money they were sold. . . .¹

The first Governor of Oregon, John Whiteaker was particularly persistent in his attempts to get the requisite legislative action for selecting the lands.² The second, Addison C. Gibbs, was faithful but not so persistent;³ the third, George L. Woods, was careless; but the fourth, Lafayette Grover, made it the mission of his administration, which began in 1870, that the State select all the lands properly belonging to it under grants by Congress or by virtue of any other

¹Laws and Journals of Oregon, 1858-60, Vol. X, p. 17.

²House Journal, 1st Session, 1859, p. 27; Senate Journal, 1st Session, 1860, pp. 26-7; House Journal, 2nd Session, 1862, p. 5.

³House Journal, 3rd Session, 1864, p. 5; Report of the Board of Commissioners for the sale of school lands, 1868, Messages and Documents, pp. 3-4; 21-48.

right.¹

Governor Gibbs in his message to the Legislature on September 15, 1864, indicated the apathetic approach being made by the administrative heads:

As will more fully appear hereafter, there is difficulty in finding lands subject to location in this state. I have considered it of paramount importance to first select lands for the benefit of common schools. Enough of that class has not yet been found to make up the amount to which the state is entitled, therefore no lands have yet been selected for the benefit of the agricultural college.²

The school fund became a favorite subject of notice by Oregon governors. They seemed to be content so long as the "inflow at the top was in excess of the leakage at the bottom."³ Governor Gibbs urged both citizens throughout the State as well as David P. Thompson, Superintendent of State Lands to secure valuable lands to the State before they were lost. Daniel Chaplin, a settler in the Grande Ronde Valley wrote,

I was the first settler in the Grande Ronde Valley East of the Blue Mountains and consequently am acquainted with most of its

¹Governor's Message to Legislative Assembly, 7th Session, 1872, Messages and Documents, pp. 10-21. Governor's Message to Legislative Assembly, 8th Session, 1874, Messages and Documents, pp. 10-26.

²House Journal, 3rd Session, 1864, p. 5.

³"Treasury Administration in Oregon," Oregon Historical Quarterly, XII (March, 1911), p. 108.

inhabitants. The Survey of Government lands is now being made here and I have conversed with many of the Settlers and I believe that it is generally (sic) desired on the part of the Settlers that this valley should be located as State lands. . . .¹

In a letter to the Governor discussing the lands in the Grande Ronde Valley, Thompson wrote,

I think it is advisable to secure as much of this as possible because the State will be unable to secure the whole amount due from the General Government unless a very large portion is taken here.²

There was nothing in the records indicating that advantage was taken of this opportunity to gain valuable lands for the State.

Most all the valuable lands of Oregon, particularly those in the valleys west of the Cascade Mountains were taken before the completion of the surveys. This meant that those sections donated by the Federal government for school purposes already had been occupied and under the terms of preemption, the schools had to select lieu land. Records of the lieu land selections are most meagre. A large portion of the administration was

¹Daniel Chaplin to Governor Addison C. Gibbs, September 27, 1863, Manuscript Collection, Oregon Historical Society, Portland, Oregon, A. C. Gibbs Papers.

²David P. Thompson to Governor Addison C. Gibbs, March 3, 1864, Ibid.

conducted at the county level but in most instances records of these transactions are non-existent. The Works Project Administration in their historical records survey found only two counties, Linn and Josephine, had records of land disposition dated prior to 1880. This was not altogether the fault of the county officials for they were not required to turn over their books to their successors in office until 1876.¹

Conditions of the records at the county level were poor but probably no worse than the situation found in the Offices of the Board of Commissioners for the sale of school and university lands. When the Act of 1866 was passed the Board of Commissioners was assigned the task of selling the school lands. While previous laws had listed the sale of school lands as the responsibility of a central agency, the policy had usually been to let the county officials do most of the work. The arrangement provided by the law of 1866, whereby the Board of Commissioners definitely controlled school land sales was in many respects unfortunate. The Board of Commissioners composed of the Governor, Secretary of State and State Treasurer did not have the time to do

¹Laws of Oregon, 1876, Vol. XIV, p. 43.

satisfactory work both at their elective positions and also as land commissioners. The State was growing rapidly, making each elective office a considerable responsibility. The same growth of the State caused land business to expand, requiring a considerable amount of administrative supervision. It logically followed that these three men were unable to satisfactorily do both functions and being politicians, the elective positions received their major attention.¹

If any doubt existed concerning the administrative efficiency of the Board of Commissioners, that question can be dispelled by the Biennial Report prepared by the Clerk of the State Board of Land Commissioners in 1878. He reported that the records of sales made prior to September 1878, are "very defective, incorrect, as well as incomplete."²

As early as 1872, the administrative shortcomings

¹One of the foremost critics of the State Land policies was the Oregon Statesman and Editor Bush. Under the following datelines editorials and articles can be found regarding the over-all school land situation. Oregon Statesman, May 31, 1859, 2:2; September 13, 1859, 2:5; November 29, 1859, 2:1; January 17, 1860, 2:4; February 7, 1860, 2:1; February 27, 1865, 2:3; June 19, 1865, 3:2; October 30, 1865, 3:1; and November 26, 1866, 1:5.

²Biennial Report of the State Board of Land Commissioners, 1878.

of the Board of Land Commissioners had caused sufficient comment to force legislative appointment of an investigating committee to submit a full report upon the procedures of the land transactions. In part, the committee found,

We find, upon investigation, that the late Board of School Land Commissioners almost wholly failed to perform the duties imposed upon them. No proper books were kept, not even those actually required by law. There is no record even of the deeds made by the Board.¹

The investigation further revealed, embezzlement, laxity of management, and loaning without adequate security.

The investigating committee further reported,

. . . on the flimsy pretense that there was no clerical aid in the office sufficient to transact business, the Board, as a Board, generally refused to receive payments upon lands, though it is on record that some of the members were somewhat more yielding and did a little business of that sort on their own individual account.²

There were 1,600 different applications for the purchase of State lands during the years 1868-70. Since the Board generally refused to accept the money, the applicants took possession and had the use of the land free, until later, when the purchase money was demanded

¹Report of the Investigating Committee, 1872,
Oregon State Library, Salem, Oregon, Government Collection.

²Ibid.

then they could and did frequently vacate.¹ As previously indicated all Board members were not always reluctant to accept money. The investigation revealed in four instances money had been sent to the Secretary of State, S. E. May, and he had converted the same to his own use and did not account therefore to the Board. The sums embezzled aggregated \$652.50.²

An equally serious charge was placed against the Board for loaning the school funds on inadequate security. The Clerk's testimony indicated he had learned through inquiries sent to the treasurers of the different counties, "that in some counties, for instance, Benton and Yamhill, large sums had been loaned from the funds mentioned, which the State was likely to lose owing to inadequate security."³

These queries set the stage for the far-reaching investigations by the Legislature during the 1878-79 term, which led to a revised land law. The only direct action taken by the committee was to reprimand the Governor and Secretary of State for laxity and embezzlement. These two men comprised two-thirds of the Board

¹Ibid.

²Ibid.

³Ibid.

of Land Commissioners.

The language of the report of the Investigating Commission of 1878, was scathing in condemnation of proceedings of the management of State school lands and funds.

It is the opinion of the committee that the school fund, as it appears in the report of the board is not worth fifty cents on the dollar. . . . While the members of the board may not be subject to a criminal prosecution, yet, in righteous indignation an outraged people should remember it against them.¹

In explanation of these charges the investigating body related,

The only record of the fiscal operations of the board consist of a blank book kept by Mr. Cann, The entries in this book extend no farther back than September, 1872. It abounds in interlineations, obliterations and erasures, interspersed here and there with pencil marks, the purpose of which neither the committee nor Mr. Cann could explain. No balances are struck in passing from one page to another, nor does it appear that any was ever attempted, except when preparing a report to the legislature. The page containing disbursements is more unintelligible than the receipts, and contains calculations in ink and pencil, and many entries too vague to be intelligible, and the purposes of which Mr. Cann had in many instances forgotten. A

¹ Report of the Committee of Investigation, 1878,
Ibid.

mass of detached papers, containing letters, certificates and what purports to be memoranda of the proceedings of the board, sometimes in pencil, and in many instances partially obliterated, fastened together in bunches of half dozen sheets or more, and the whole in one confused pile, encircled by a rubber band, constitute the only means of determining the action of the board from September, 1874 to September, 1878.¹

The following list represents a few of the findings of the committee. \$36,644.90 were paid for clerical services during this period. Almost all of this sum went to men who were receiving separate salaries as either private secretary to the governor or as assistant state treasurer. The swamp land account, for instance, up to 1878, amounted to \$42,989.34 of which \$20,736.35 had been paid to the Treasurer and \$22,252.99 paid out for expenses or returned to the purchasers. One case cited found a man paid \$1,604.00 as attorney fees for defending the State's claim to a tract not worth the fee. Another was paid \$1,003.20 for expenses to Washington, from the school fund, of which at least one-half was in excess of his reasonable outlay for the trip. On two different occasions shortages of funds were discovered for which no accounting could be made. The sum amounted to nearly \$3,000.²

¹Ibid.

²Ibid.

The investigating committee pointed to the total disregard of duty of the board, when it considered that Cann, who received and disbursed such large sums, had no lawful authority to receive or retain custody of public funds, much less act as a disbursing agent. He was nothing but the clerk. There was no law specifying his appointment nor any bond demanded of him. His relation to the State was the same as that of any other hired employee.

In his testimony, Cann accused Fleischner, also on the clerical staff, of engaging in speculation in school and other State lands.¹ The investigators were highly critical of the size of the clerical staff. They were of the opinion that all the work performed by the clerical staff could have been accomplished by one competent clerk rather than the three used. Besides a considerable saving in salaries would have resulted. Like the investigating committee earlier in the decade this committee found a tremendous number of loans granted upon totally inadequate security:

A large number of loans have been made upon insufficient security, and in many instances the interest from one to four years in arrears. This is notably the case in

¹ Ibid.

Marion and Jackson counties. The losses in these two counties will not fall far short of 40 percent of the principal. Loans made by the board are in equally bad conditions.¹

In conclusion the investigating committee reported,

That this magnificent educational fund has been depleted about one-half by criminal carelessness and willful neglect of duty, within the past eight years, is beyond question.

The precedents established by the board in dealing with these funds, if allowed to go unrebuked, would soon break down all barriers between the treasury and the greed of dishonest officials and their retainers; a fact of which the past eight years furnished a lamentable example.²

Fund Development

Not all the problems of the school fund existed at the State level for many of the local districts were equally as lax concerning school matters. Prior to 1873, when the new school code went into effect, the various counties were independent of each other in school matters. While the Governor was State Superintendent of Public Instruction, it amounted to name only for little was accomplished until Sylvester C. Simpson was appointed first superintendent in 1872.³

¹Ibid.

²Ibid.

³Clark, op. cit., p. 612.

Actually the county superintendents were the highest educational officers of the State.

The schools of this period had developed slowly with 27,426 pupils enrolled in public schools in 1875; correspondingly there were 3,441 pupils in private schools thus, for the first time, marking a distinct trend toward public school establishment.¹ Increasing interest in the public schools was also felt by the public desire for longer school years. In 1856, the average school year was 2.3 months. This figure had gradually increased until, in 1872, the average school year was 6.1 months.² Officials were becoming more conscious of the needs of the poor or underprivileged children.

Despite the increase in school activity, the local districts in many instances acted as if there were no need for administrative reporting. In 1862, there were sixty-two school districts in the State of which nineteen failed to file an annual report; in 1863, of sixty-one districts, eighteen failed to file and in 1864, with the same number of districts as the previous year, twenty-three failed to file their reports to

¹Dorothy Andre, "History of Education in Oregon," unpublished pamphlet, Manuscript #353, Oregon Historical Society, Portland, Oregon.

²Down, *op. cit.*, p. 580.

the county superintendents.¹

It was not necessary. . . .to hold school in order to receive the apportionment of the common school fund, but it was necessary to make a report, in which case the money apportioned to the district was reserved and allowed to accumulate until such time as the district should require it for school expenses.²

In his biennial message to the Legislative Assembly at the seventh regular session in 1872, Governor Lafayette Grover, summarized the status of the school fund.

The irreducible common school fund, arising from sales of the sixteenth and thirty-sixth sections in each township of the public lands in Oregon, and those taken in lieu thereof, has now reached the amount of \$450,000, in round numbers. There was distributed last March, to the several counties, as interest collected on the invested school fund, the sum of \$39,453.71. This is the first assistance which our schools have ever received from the common school grant. A considerably larger sum will be distributed next year, and the work will be followed up by a progressive increase of the distribution from year to year.³

At the conclusion of this period, the school fund was growing but remained primarily dependent upon the State school lands for the increase in principal. In

¹Ibid.

²Ibid.

³Biennial message of his excellency Lafayette F. Grover, to the Legislative Assembly of Oregon, 7th Session, 1872, a public document, Oregon State Library, Salem, Oregon, Government Collection.

addition to a growing school fund, there were several new developments in school land management. Beginning in the early 1870s large eastern corporations secured vast tracts of State school lands for purposes of speculation. This was made possible by swamp land selections and accentuated later with the selections of indemnity school lands. A horde of entrymen were hired to file claims on the land. After receiving the land the entrymen then assigned it to the organized land syndicates. These vested interests took every advantage of the existing laws permitting such practices. Unfortunately the national government was operating upon a distributive theory relative to the public domain. This theory was to remain dominant in national politics until the 1890s when the Forest Reserve Act was passed manifesting for the first time an element of conservation of what remained.

Throughout the period the State and Federal government were in competition in the sale of public lands. The State found competing difficult for the Federal government owned nine-tenths of all the public lands and were much better organized, having administrative agencies with the personnel to do the job in such a manner that the State could not effectively compete.

Wolf has aptly summarized the conditions when he wrote, "the Federal government did nothing to save Oregon from herself as was the case with sister states that were admitted later."¹ No minimum price scale or postponement of the time of sale was stipulated in the grants to Oregon as the government later practiced. Certainly this should not be misconstrued as an excuse for Oregon since other States admitted to the Union at approximately the same time managed their grants wisely. Minnesota, as an example, in 1924, had an educational fund of \$51,692,786.00 through fine management.²

¹Wolf, op. cit., pp. 62-3.

²"States Possess Great Endowments for Education," School Life, XI (September, 1925), p. 10.

CHAPTER V

OREGON'S SHAME: THE LAND FRAUDS, 1878-1905

Federal Land Administration

An attempt to fix a specific year as the starting point of fraudulent practices in public land administration is futile. From the beginning of westward migration, speculating groups and individuals have used every ruse possible to evade the intent of the law; however, the twenty-seven year period, 1878-1905, was probably characterized by more corruption in government and politics affecting Oregon's Irreducible School Fund than any comparable period in the history of the State.

Partial evidence of Federal responsibility in creating a situation where such fraudulent practices could exist, can be seen in a review of administration in the Department of Interior and the General Land Office. Throughout the late '70's and early '80's the volume of business in the General Land Office grew and the work fell further behind schedule. By 1879, Copp's Land Owner reported that the Mineral Lands Division had 3,064 entries pending.¹ It was estimated that it would take two years to complete these cases even if current work were ignored.

¹Henry N. Copp, Land Owner, (March, 1879).

In 1878, the Preemption Division was equally far behind, with 3,628 cases pending.¹ The Agricultural patents at this time amounted to approximately 9,000 which had been approved but not issued for lack of clerks.²

The Public Land Commission reviewed in a report presented in 1880, the results of Congressional neglect of the General Land Office. The report noted that in the past twenty years the number of surveying districts had increased from ten to sixteen; the number of district land offices had increased from fifty-three to ninety-four; the amount of land surveyed had doubled and the amount absorbed had tripled; yet the General Land Office had grown smaller.³

Conditions in the General Land Office were in a deplorable state. There was insufficient housing for the offices and staff, which had already been classified as inadequate. The pay was so poor that rapid turnover in clerical help decreased efficiency. The positions available were used as political plums. Under these circumstances the General Land Office inevitably

¹Ibid.

²Ibid.

³United States Land Office Reports, 1880, p. 12.

suffered from delay, incompetence, inefficiency and neglect. Such loose administration invited unscrupulous land lawyers to Washington and they pursued every loophole with an intent to defraud the government.¹

After President Garfield's death, in 1881, Vice-President Arthur surprised many of his contemporaries by his desire for a reform administration, but he apparently defeated this purpose when he selected Henry M. Teller, of Colorado, as Secretary of Interior.² Teller's contacts provided him with first-hand knowledge of Western needs, but unfortunately he had aligned himself with the predatory interests of "big business." Teller's law practice included services for Jay Gould and the Union Pacific Railroad. This fact caused the Denver Tribune to remark that he was "on somewhat closer terms with Gould than a fine sense of responsibility will justify."³

Noah C. McFarland, of Kansas, was appointed Commissioner of the General Land Office. While apparently an honest man, he was not the strong personality desirable

¹Harold Hathaway Dunham, A Study in the Administration of Public Lands, 1873-91, Government Handout, (Ann Arbor: Edwards Brothers, Inc., 1941), p. 138.

²George F. Howe, Chester A. Arthur, (New York: Dodd, Mead and Company, 1934), p. 212.

³New York Times, March 29, 1882.

as the head of the needed reform movement in the General Land Office.

Both of these men were accused of permitting railroad interests to expand their holdings at the expense of the Federal government.¹ Teller eventually attempted to find a solution to the problem of providing surveys, but other than this, the administration was marking time.²

When President Grover Cleveland took office in 1885, the public land issue was again at fever pitch. Western lands had been settled at an astonishing rate. A General Land Office report for 1884, showed 27,000,000 acres claimed for that one year alone.³ The westward push of population and the growth of business enterprise following the depression of 1873-79, meant that questions of strikes, trusts, cattle companies, immigration, tariffs, railroads, timber, Indians and land could no longer be ignored or subordinated to privileged control.⁴ The West had arrived--many of the nation's leading newspapers and magazines were featuring stories dealing with the

¹Dunham, op. cit., p. 114.

²Report of the Secretary of Interior, 1883, pp. 34-5.

³United States Land Office Reports, 1884, p. 4.

⁴D. R. Dewey, National Problems, (New York: Harpers and Brothers, 1907), p. 3.

great possibilities of the Western area. As the supply of land lessened and the demand became greater, prospective land owners turned to unscrupulous methods to obtain land. Soon capitalistic interest took advantage of the legal loopholes, creating large scale speculation in western lands.

When Cleveland took office in 1885, the democratic regime had an opportunity to "clean house" but unfortunately, Cleveland did not have complete support within the party.¹ The choice of ex-Senator Lucius Lamar, of Mississippi, as Secretary of Interior was unfortunate. Though reputedly an honest man, Lamar was classified by associates as a "dreamer." Fortunately the lack of strong leadership in the Interior Department was more than off-set by the selection of William Sparks as Commissioner of the General Land Office. Sparks quickly began a remarkably vigorous effort to improve the land system. The Commissioner made vigorous attacks on survey, railroad, timberland, private land claims, swamp land and settlement land abuses. He revised regulations, enforced laws strictly, attempted to punish violators and sought Congressional assistance through

¹Dumham, op. cit., p. 168.

exposing the variety and amount of fraud which had deprived the Government of huge areas of land.

Sparks first report, published seven months after he was in office was described in Copp's Land Owner as a "valuable document" which would surprise even land men who were supposed to know what had transpired in the administration of the public lands.¹ In this report Commissioner Sparks stated:

I found that the magnificent estate of the nation in its public lands had been to a wide extent wasted under defective and improvident laws and through a laxity of public administration astonishing in a business sense if not culpable in a recklessness of official responsibility. The widespread belief of the people of this country that the land department has been largely conducted to the advantage of speculation and monopoly, private and corporate, rather than in the public interest I have found supported by developments in every branch of the service. . . . I am satisfied that thousands of claims without foundation in law or equity involving millions of acres of public land, have been annually passed to patent upon the single proposition that nobody but the government had any adverse interest.²

Commissioner Sparks accomplished a magnificent task, but not without difficulties. During his tenure of office he adjusted the differences between the Indian tribes

¹Henry N. Copp, Land Owner, (December, 1885).

²United States Land Office Reports, 1885, p. 3.

and the western cattle interests, sponsored legislation which curbed railroad and timber interests from further deprivations at public expense, and improved the survey system and instituted far-reaching reforms in the General Land Office.¹

Except for those few short years under the Cleveland administration when Commissioner Sparks worked so fervently to clean up a bad situation, the history of the General Land Office formed a sordid chapter in the annals of American government. Conditions reverted to the previous low stage of inefficiency soon after Sparks left the General Land Office. Cleveland must accept responsibility for this digression for he appointed his close friend, Attorney General William F. Vilas, to the Interior Department when Secretary Lamar was promoted to the Supreme Court. It was Vilas, who was instrumental in the dismissal of Sparks. This dismissal caused a reduction of efficiency in the General Land Office and helped undo much of the work that had been accomplished through the past few years. After the accomplishments of Commissioner Sparks, reform in the General Land Office

¹ For an excellent summary of legislation and legal action aimed at curbing the railroad and timber interests see Dunham, op. cit., pp. 261-86.

waited until the term of Secretary of Interior, E. A. Hitchcock, during Theodore Roosevelt's administration.

State Land Administration

After the legislative investigations of 1878, there were many important changes in Oregon laws. Foremost was the revision of the State land laws. The law of October 18, 1878, was an improvement to the extent that responsibility was now fixed upon the Governor, who was also designated State Land Commissioner.¹ As State Land Commissioner the Governor was empowered to locate all the lands to which the State was entitled and prepare accurate lists of the lieu lands selected.² The Governor, Secretary of State, and State Treasurer were constituted a "board of Commissioners for the sale of school and university lands, and for the investment of the funds arising therefrom. . . ."³

Further administrative changes were made when the State Legislature authorized the State Land Board to

¹Laws of Oregon, 1878, p. 41.

²Ibid.

³Ibid., p. 43. It will be noted that this quotation can be found in the Oregon Constitution.

create a separate department which could employ a clerk with an annual salary of \$1,200.¹ This action took the responsibility from the Secretary of State's Office where it had been handled by the Clerk, T. H. Cann, and now placed the duties with the newly hired Clerk of the State Land Board, E. P. McCornack, who assumed office September 1, 1878. McCornack was responsible for the establishment of the first systematic methods of keeping the records of the State Land Office.² Apparently this was true for Sylvester C. Simpson, the first Superintendent of Public Instruction, in 1874, said:

It must be borne in mind that our State School Fund, commonly called, by a kind of pleasant fiction, the Irreducible School Fund, has been so negligently and improvidently managed that, until quite recently, it has contributed very little toward the support of public schools of the state.³

The legislative investigation of 1878, was a motivating factor. Almost immediately after the legislative investigation many improvements could be seen. From outward appearances Oregon had revamped her laws

¹Ibid., p. 53.

²Charles E. Lewis, "The Common School Fund of Oregon," unpublished master's thesis, School of Education, University of Oregon, 1926, p. 14.

³Ibid., pp. 13-14.

and created an administrative staff that was capable of holding future land losses to the minimum. Unfortunately the land law had a loophole which continued State losses through the misuse of Certificates of Sale.¹

From 1878 until 1887, the land law remained unchanged; however, many other changes were noticeable in Oregon. Completion of two transcontinental railroad lines removed Oregon from its long isolation. Railway mileage within the State increased from 300 to 1,200 miles.² The mid-west lumber supply was nearing exhaustion thus enhancing the importance of the richly forested Oregon country as a new source of timber. Extensive favorable publicity encouraged settlers to come West. These factors explain an unprecedented stream of immigrants entering the State, further overworking an already inadequate State Land Office.³

¹Biennial Report of the State Land Commissioners, 1880, pp. 31-2. The lands could be secured from the State on payment of one-third of purchase price, except in cases of timbered lands on which a payment of one-half was required. Certificates of Sale could be freely assigned and the assignee on payment of the amounts due on the purchase price of the lands represented by each certificate would receive a deed and there was no limit whatever to the number of acres the State would thus deed to him.

²F. G. Young, "Financial History of the State of Oregon," Oregon Historical Quarterly, XI (June, 1910), pp. 141-2.

³Prior to 1878, the State Land Board had the

Demand for State Land and the rise of speculating groups appeared to indicate a need for a more rigid land policy. The resultant increase in demand made an increase in land value seem logical. Instead, the Legislature of 1887, passed a law reducing the price of the State lands with the exception of the agricultural college lands.¹ The new price was fixed at \$1.25 per acre and permitted the purchaser if a non-settler, to obtain 320 acres of State land.

F. G. Young, in an article in the Oregon Historical Quarterly, in 1910, wrote that the greatest single legislative blunder concerning the Oregon schools can be attributed to another provision of this law.

Intending purchasers of lieu lands, . . . and these were now the principal remaining lands of the state, must name the base. . . . or lands lost to the state out of some section 16 or 36. . . . in compensation for which the state should select the tract desired. What did this imply but that the individual could do this more expeditiously and skillfully than any agent of the state, though the state alone had secured the data absolutely essential for

responsibility of all the State Land Office administration and in this respect they resembled the Federal Land Office as it was impossible for them to keep up with the volume of work that poured in during the late 1870s. No doubt much of this business developed because of the unlimited amount of land that could be freely assigned, thus opening the way for the speculators.

¹F. G. Young, "Financial History of the State of Oregon," op. cit., pp. 142-43. See also Laws of Oregon, 1887, p. 63.

making such selections, and the possession of which data, with abundant national domain at this time available, made the work of selection easy. This law caused the loss to the people of Oregon from their school fund millions of dollars; it encouraged perjury, forgery and malfeasance in office. Yet not one vote is recorded against it in either house of the legislature.¹

By 1887, the State Land Office was deluged with business. The majority of the land speculators had been thwarted by the Federal government when public lands were raised to \$2.50 per acre and limited to 160 acres. Since the State had large areas of national public lands available as lieu land, speculators turned to the State as a source of unlimited lands. By taking advantage of both the State land laws of 1878 and 1887, speculators could satisfy their greed with State land at \$1.25 per acre. In this manner unlimited amounts of State land could be assigned to those financing the claim. As in the East during the period of early statehood, the State was competing against the Federal government in sale of public land. Young wrote,

Instead of the idea of the state's getting these lands and of making them yield largest returns for all coming generations of youths of the state, these land offices officials did note that it had been more or less the practice of the state to make the intending purchaser of the lieu land furnish the

¹ Ibid., pp. 142-3.

base. And behold, they of the land office. . . or favorites having access to its records . . . alone could supply the base which these eager would-be purchasers must have.¹

Base lands, upon which the selection of lieu lands was justified, were not restricted to the original grants or section sixteen and thirty-six. Base lands were constantly changing. Indian reservations added thousands of new acres of base.² From 1887 to 1895, the State gained 10,000 acres of base land from fractional townships. More than sixty thousand acres of mineral lands were claimed as lieu land basis. The forest reserves furnished additional grants of base which were heavily exploited by speculators. The Act, creating these reserves, known as the Forest Preserve Act, was passed March 3, 1891.³ Oregon felt the first effect of this law when the President created the Cascade and Ashland Forest Reservations.⁴

¹Ibid., p. 143-5.

²The following amounts of acreage was created in base lands for the State with the creation of the Indian reservations.

| | | |
|------|--------------------------|-----------------|
| 1887 | Umatilla Reservation | 16,980.03 acres |
| 1888 | Klamath Reservation | 63,011.94 acres |
| 1889 | Grand Ronde Reservation | 6,014.14 acres |
| 1889 | Siletz Reservation | 10,864.14 acres |
| 1891 | Warm Springs Reservation | 36,643.66 acres |

³United States Statutes at Large, Vol. XXVI, p. 1103.

⁴Louis A. Henderson, "History of the Public Domain in Oregon," unpublished master's thesis, History Department, University of Oregon, 1907, p. 84.

Apparently as a response to this Federal Act, the State on February 21, 1895, passed an act empowering the Governor to appoint an agent "to select all lands donated to the state. . . ."¹ This agent was also assigned the responsibility of

ascertaining all losses sustained by the state, by reason of occupancy of section sixteen and thirty-six or through the United States Government, and (then select) lands in lieu of said sections sixteen and thirty-six.²

Lieu lands were sold on these various sources of base only to have the Federal government cancel many thousand acres because of invalid base lands.³ Usually the State came to the rescue of the purchasers by furnishing them with valid base, but at a cost to the State of thousands of acres of land.⁴

There was only one additional legislative change prior to the land fraud trials of 1903-11. This law was passed on February 18, 1899.⁵ The fundamental

¹ Laws of Oregon, 1895, p. 7.

² Ibid.

³ Biennial Report of the State Land Agent, 1896,
pp. 8-9.

⁴ Ibid.

⁵ Laws of Oregon, 1899, pp. 156-64.

changes consisted of changing the name of the board to "state land board;" the salary and duties of the clerk were increased; and the board was authorized to sell all Federal grant lands at not less than \$2.25 per acre, except swamp lands which could be sold at not less than \$1.00.

Technique of Land Fraud

The most costly losses suffered by the Irreducible School Fund were as a result of land fraud. Fraudulent practices with respect to Federal and State lands reached a peak in the decade, 1880-90. The land transgressors took advantage of every possible loophole in both the Federal and State legislation, but basically the losses to the Irreducible School Fund were directly attributable to the interplay of Federal laws and State practices.

To clearly understand the land frauds, the difference between State school lands, State lands and Federal lands must be clearly kept in mind. Frauds were perpetrated with all of these lands, but only the fraud relative to school lands will be presented in this study.

There are many sources of information relative to the frauds affecting school lands. Local Oregon news-

papers published vivid accounts of what transpired.¹

Periodicals at that time carried feature articles concerning the fraudulent activities in Oregon.²

Probably the most complete review of the various types of frauds has been furnished by S. A. D. Puter in his Looters of the Public Domain published in 1908.³

Puter, self-acknowledged king of the Oregon Land Fraud Ring, wrote this book while serving seventeen months in the Multnomah County Jail for conspiracy to defraud

¹See Oregonian, May 16, 1870; October 6, 1870; October 20, 1870; October 31, 1870; October 7, 1878; November 10, 1881; February 29, 1884; May 29, 1886; September 6, 1903; October 21, 1903; February 14, 1904; December 1, 1904; December 5, 1904; April 3, 1905; July 11, 1905; August 6, 1905; and September 7, 1906; See also Oregon Journal August 7, 1902; May 1, 1904; November 21, 1904; November 28, 1904; February 27, 1905; April 2, 12, 18, 27, 28, 30, 1905; October 9, 1905; December 3, 4, 10, 12, 13, 14, 15, 16, 17, 18, 20, 21, 1905; February 8, 1906; and December 28, 1906.

²Lincoln Steffens, "Honey Grapples the Oregon Land Graft," American Mercury, LXIV (October, 1907), pp. 585, 602. S. D. Hooper, "Skinning the Land Grant Bear," Sunset, XXXVI (February, 1916), pp. 45-6. Lute Pease, "The Way of the Land Transgressor," Pacific Monthly, XVIII (August, 1907), pp. 145-63; (September, 1907), pp. 345-63; (October, 1907), pp. 485-91; (November, 1907), pp. 547-51; and (December, 1907), pp. 727-38. "How Weyerhaeuser Cleaned Up," Cosmopolitan, (January, 1907).

³S. A. D. Puter, Looters of the Public Domain, (Portland: The Portland Printing House Publishers, 1908).

the government. He wrote this book, an exposé of the entire system of land graft in operation, in retaliation against those of his cohorts who had deserted him. Puter, during the course of the investigations, turned State's evidence and was influential in prosecuting many of the State's leading officials. One chapter was of particular interest for it was devoted to "A few pertinent facts connected with Oregon State School Lands, which have a tendency to throw considerable light on the inner workings of one system of plunder slightly out of the ordinary. .

. . . .¹

Most of the fraudulent methods used by the speculators and cited by Puter have been mentioned elsewhere in this study; however, a few elaborations are necessary to clearly understand the total problem. Of the various frauds perpetrated none caused more damage than those related to the lieu lands.² After the act of 1878, it has been noted how speculators could obtain public domain through the State by selecting it as lieu land thus saving one-half the purchase price by taking advantage of Federal and State laws. With such a

¹Ibid., p. 315.

²Homer P. Rainey to Ray Hawk, January 8, 1948, in possession of the author.

demand for timberland, it was only a short time until base lands were nearing extinction making it necessary for the creation of new base lands. There were several means by which this could be accomplished. Two of the most frequently used were the setting aside of large blocks of land for forest reserves and Indian reservations. Each time a new reservation was created new base land was available from sections sixteen and thirty-six.¹

Securing base lands through the media of federally created reservations was so popular that land ring groups often sent attorneys to Washington as lobbyists to aid in pushing through the desired legislation and also inform their clients at home when and where these reservations would be established to enable the speculators to "get the jump" on any others interested in filing on the newly created base.²

¹Biennial Report of the State Land Agent, 1896,
pp. 6-7.

²Biennial Report of the State Land Agent, 1906,
p. 15. See also Puter, op. cit., p. 322.

Another popular way of securing base for the selection of lieu lands was by adjudicating the school sections with a view of determining their mineral content.¹

The government retained rights to all mineral lands, so whenever the mineral content of the school sections could be determined, the State was permitted to select an equivalent amount of lieu land thereof. As in the selection of base, the determination of the mineral content of the land was left to the purchaser, who presented his claims to the State, who, in turn, presented the claim to the Federal government. After government surveyors had determined the validity of the claims, patents on the land would be issued to the State. Meanwhile the State usually permitted the land to be declared as base and the purchaser made his selection of lieu land. Puter claimed to have adjudicated 40,000 acres in this manner.

Of the 40,000 acres of mineral sections that I had adjudicated, 12,000 acres were rejected by the General Land Office, and as my certificates were about to be cancelled by the School Board, I engaged the law firm of Baron and Ward. . . . to represent me at the proceedings, with a view of securing . . . substitute base from the Cascade Forest

¹Biennial Report of the State Land Agent, 1896,
pp. 6-7.

Reserve. My petition was turn down. . . . it was my place to find new base outside of the Cascade Reserve. It was also alleged that all selections in lieu of the Cascade Reserve were fixed at \$2.50 an acre, while the selections in question were under the old law at \$1.25 an acre.

. . . .subsequently the State Land Board recognized the justice of my claim,¹

Such action as outlined by Puter apparently was a common occurrence. In each instance of this nature the State lost heavily.² Each time the Federal government denied State claims on mineral land, the State was in a position where it felt it had to compensate the settler for his inconvenience, and this was usually done by permitting the settler to use other base land, thus creating a direct loss to the State.³

The majority of land frauds occurred through the various means outlined above. There were many other frauds perpetrated against both Federal and State lands, but in the cases concerning school lands the above techniques were the most common.

¹Puter, op. cit., p. 322.

²Ibid. See also Governor's Messages, 22nd Legislative Assembly, 1903.

³Biennial Report of the State Land Agent, 1904, p. 15.

Davenport's Expose.

During the 1895 session of the Oregon State Legislature the Office of State Land Agent was created.¹ Ex-State Senator T. W. Davenport, of Silverton, was named the first agent. Davenport was well known in the State, having come from an old established family. The task before him was indeed a thankless one, for the political corruption that he was to unearth meant "treading on toes" of many influential residents of Oregon. In testimony showing how successfully Davenport accomplished his task, Puter wrote:

During the term in office of T. W. Davenport, there was no dissatisfaction, as Mr. Davenport favored one no more than the other. He was of a different type to those preceding him in the State Land Office, being courteous and obliging to all, and strictly honest and on the square in doing his duty as an officer of the State, notwithstanding the many inducements held out to him by members of the School land ring.²

Davenport's accomplishments during the biennium, 1895-96, have been summarized in his first report to the Governor in 1896, which now stands as a classic in the exposure of graft. Davenport summarized what was

¹Laws of Oregon, 1895, p. 7.

²Puter, op. cit., p. 328.

happening to the State lands as follows:

For several years after the passage of the law, [Law of 1887] land speculation in the west coast states was at its highest and especially there was a strife to obtain possession of the fine timber lands of Oregon.¹

Davenport continued his explanation by summarizing how speculators were taking advantage of the incongruities in the Federal and State legislation. He said the charges made by Land Office officials for furnishing an applicant with base lands were quite heavy, "considering the service rendered, ranging from \$1.00 to \$2.75 per acre, and the lieu land business became, in the language of its beneficiaries, quite lucrative."²

Davenport noted that "it is not his duty now, any more than it was the duty of his predecessors, ever since the office of clerk was organized in 1878; He cannot charge for information concerning State land matters."³ Despite provisions of the law, Davenport concluded that the clerks of the State Land Board have been furnishing such information especially since 1887.⁴

¹Biennial Report of the State Land Agent, 1896,
p. 4.

²Ibid.

³Ibid., pp. 5-6.

⁴Ibid.

Davenport's report confirmed the base land issue much in the same terms as described by Puter.¹ He estimated from information furnished by the General Land Office that approximately 70,000 acres of lieu land selected by the State would be cancelled for the following reasons: (1) Lieu selections in conflict with persons holding title under United States Laws, and in conflict with State lands previously taken. (2) Selections in lieu of false mineral base. (3) Selections on basis calculated in unsurveyed townships. (4) These cancellations actually were the citizen's loss, but as Davenport wrote:

Citizens are inclined to trust the state, and they look upon a parchment bearing its great seal with confidence, as an earnest and reliable pledge, and not the voidable trick of an officer for whose delinquencies the state takes no care and feels no responsibility.²

The State had little choice; it had to take these land losses in order to keep the citizens happy.

In conclusion, Davenport pointed to another great discrepancy in the legal machinery of the State Land laws. The law of 1895, known as the Daly law, intended that the State Land Agent should find out what sections

¹Ibid., pp. 11-12.

²Ibid.

of land had been lost to the State and proceed to select lieu lands thereof. In addition, the law also provided "that all lands in the lieu sections sixteen and thirty-six be and the same are hereby withdrawn from sale for a period of two years.¹ By apparent oversight, the legislature failed to appropriate any money to carry into execution the purpose of the law. The agent was without salary or traveling expenses, and the State Board of Land Commissioners without the means of perfecting title to a single acre of land.² Davenport's analysis of this situation found that

The result of such legislation and lack of legislation, in a strictly legal point of view, was the same as if the legislature had suspended land selections for two years, during which time citizens of the United States could take a part, or all of the vacant lands,³ under the homestead and timber purchase laws.

Although lieu land sales were suspended by the Daly law for two years, there was nothing in the law to prevent citizens from making applications to purchase them when the time had expired.⁴

¹Laws of Oregon, 1895, p. 7.

²Biennial Report of the State Land Agent, 1896,

³Ibid.

⁴Biennial Report of the State Land Agent, 1898,
p. 3.

Prelude to Federal Intervention

The corrupt state of affairs existing in the handling of school lands and the administration of the funds was first brought to public attention during the investigations of 1872 and 1878. The creation of the Office of the State Land Agent in 1895, and the excellent choice of Davenport as the first agent accelerated public thinking regarding the fast disappearing State school lands.

The years after 1896, and prior to the last large scale State investigation of the land and school problem in 1905, were turbulent. Political factions fought back and forth and the general outcome consisted of further losses to an already depleted school fund. The newspapers of the period seized all information available and made political capital of it, but for the most accurate summary of existing conditions the Biennial Reports of the State Land Agent were unsurpassed as a source of information.¹ State Land Agent Davenport and some of his successors, particularly Oswald West, furnished the citizens of Oregon with reports that

¹Other sources of reliable information relative to this period exist in the Governor's messages, various reports of the Joint Committees of Education and Finally, the Report of the Investigating Committee of 1905.

should have ended all doubts as to the existing state of affairs in the State Land Office.

It has been noted previously in this study how Davenport reported on the conditions existing in the State Land Office during his first term of office. He continued with the same denunciation of methods employed by the State in land administration in his second report submitted in 1898:

. . . in the selection and sale of the lieu lands the outcome is not what it should have been. All that the lieu lands brought in the market, before 1895, should have gone into the school fund, but more than half went into private pockets, with hardly the shadow of excuse for services rendered.¹

Competent State officials who were honest appeared the exception rather than the rule. After Davenport left the State Land Office, he was succeeded by State Land Agent T. T. Geer, who later became Governor. Nothing existed in the biennial reports submitted by Land Agent Geer to show cause for alarm.² It was not until the fifth biennium of the State Land Agent's existence that Oswald West, blasted the conduct of his predecessor, Geer. West reported:

Hon T. W. Davenport, in his final report as State Land Agent, in reviewing the

¹Biennial Report of the State Land Agent, 1898, p. 4.

²Biennial Report of the State Land Agent, 1900, p. 3.

lieu land business prior to his incumbency, said, 'past blunders cannot be cured, but it is to be hoped that States, like individuals, may live and learn.' Had the last administration given heed to these words and, looking over the records of the past, profited by the experience of others, lieu land matters would not be again in such a deplorable condition.¹

West elaborated further in his report, giving in complete detail the transactions consummated by State Land Agent Geer in collusion with General Morgan Odell, Attorney for the State. Odell was accused of adjudicating mineral lands to obtain base, when he realized that the Federal government would likely refuse to patent the land selected. Odell and Geer proceeded to use this base as a means of profit, by selling the same to customers interested in purchasing lieu land.² Odell established a lucrative business in the State Land Office; he furnished base land information to prospective land purchasers and charged them for this service. In regard to this action West wrote:

Mr. Odell was also given a desk in the State Land Agent's Office, and those wishing a selection made, and not knowing of a basis for same, were referred to him and were furnished with base upon payment of \$1.50 per acre. (Odell claims to have received less-- usually about \$1.00 to \$1.25). Having paid

¹Biennial Report of the State Land Agent, 1904,
p. 5.

²Ibid., pp. 20-1.

Mr. Odell a large sum for information which took him but a minute to give, and which could have been given him by the State Land Department, the applicant could have his selection made by the State Land Agent, who collected and paid to the Clerk of the State Land Board the money due the State on account of the purchase price of the lieu lands.¹

During the time that Odell was in the base land business in the State Land Office, it is estimated that he sold approximately 70,000 acres of base, netting him a profit of \$100,000. There were still approximately 90,000 acres to sell when the General Land Office started rejecting the selections. Of the 73,500 acres of mineral selections, about 50,000 had been held for cancellation and the remaining acres were likely to be rejected.²

In his sixth biennial report, West exposed a scheme conceived and put into execution by S. A. D. Puter, to defraud the State.³ On December 2, 1905, West directed letters to both Governor Chamberlain and to G. G. Brown, Clerk of the State Land Board, with an expose of this new type fraud. West wrote:

Because of lax methods it has been possible until recently, for one wishing to

¹Ibid.

²Ibid., pp. 22-3.

³Biennial Report of the State Land Agent, 1906, pp. 11-2.

secure title to large tracts of school land to pay irresponsible persons a few dollars to make application to purchase school land and at the time the applications were signed and before the certificates had been issued by the Clerk of the Board, to take assignment of the certificates in blank. Some did not go to the trouble and expense of hiring such persons to make these applications but forged names to both the applications and assignments. They were thus enabled to go East with certificates, and dispose of them at a good profit to timber land speculators. . . .

Having robbed the State of all the lands worth having and sold them in the East, the operators were obliged to resort to other dishonest money-making schemes and adopted the following plan:

They went to the State Land Office and made a complete list from the records, which are accessible to the public, of all those large holdings upon which all but the demand payments had been made; a blank certificate of sale and assignment was secured and taken East, where duplicates were printed, land descriptions and numbers filled in to correspond with the original or genuine certificates, and the signatures of the Clerk of the State Land Board and a fraudulent seal of the State of Oregon attached to the certificates. Assignments were prepared by forging the name of and duplicating the seal of certain notaries, and they were then ready to make disposition of these fraudulently prepared certificates.

They approached a prospective buyer in the East, gave him the description of the land described in the certificates and had him send out his cruiser to examine the lands, which he found to be first class; the prospective buyer would take the matter up with his attorney, who examined the certificates and probably wrote to the Clerk of the State Land Board, giving the numbers of the certificates, and asked for an abstract. The Clerk of the Board being unaware of the existence of these fraudulent certificates and believing that the inquiry came from the holder or someone interested in the original or genuine certificates, reported

them in good standing and exchangeable for deeds upon payment of the balance due. Everything appeared to be in good order, the deal was made.

I have discovered a large number of these forged certificates in the hands of Eastern bankers and the magnitude of the frauds will not be known until the matter is given publicity and the Eastern holders have sent in their certificates for examination. It is possible that for every genuine certificate outstanding there may be from two to a dozen fraudulent ones.¹

Other than the efforts extended by Davenport and West between 1895 and 1905, little gain was made in saving the State from vicious fraudulent practices. These two land agents did arouse enough comment that in February, 1905, the State Legislature appointed a committee to investigate the accounts of the State Land Agent.

The findings of the committee were not sensational. It repeated the charges already made by both Davenport and West. The committee scored Geer for his conduct in office and roundly criticized the State Land Agent for failure to keep adequate records. "We are unable to find a starting point from which to begin to check the accounts between the present time [February, 1905] and April 1, 1899."²

¹ Ibid., pp. 8-10.

² Report of the Committee of the Oregon Legislature appointed to investigate the books and accounts of the State Land Agent, Government Room, State Library, Salem, Oregon.

The one bright spot in this entire picture for the State of Oregon occurred when the land speculators failed to confine their efforts solely to State lands. Federal land losses through similar speculation and the resultant publicity given the State frauds brought about a Federal investigation which ultimately unearthed sensational facts. The Federal investigations commenced about 1902, and trials continued until 1913. As shall be seen in the next chapter, the Federal government saved Oregon from the majority of future deprivations.

CHAPTER VI

THE LAND FRAUD TRIALS

The Interior Department Prosecutes Land Law Violators

Federal intervention in Oregon land frauds did not come as a surprise to most people, since State legislative investigations had awakened the people of Oregon to the existing conditions. Nearly everybody recognized the evils existing in land management though little thought had been devoted to the solution of the problem. The State exhibited reluctance to cope with the problem, or action would have followed State Land Agent Davenport's first biennial report in 1896. Despite periodic exposes many surprising facts were revealed by the initial probing of special investigators of the United States Attorney General's Office. Few realized the significance of the Oregon situation since the magnitude of these investigations came as a complete surprise.

Actual prosecutions were initiated by E. A. Hitchcock, who was Secretary of Interior under both Presidents McKinley and Roosevelt. The investigations of the General Land Office began in the spring of 1902, and as a result, Secretary Hitchcock forced Binger Hermann, an

Oregonian and Commissioner of the General Land Office, out of office for "loose methods" that made fraud possible.¹

Harvey Scott, Editor of the Portland Oregonian, claimed Hitchcock redoubled his efforts to prove Hermann guilty after Hermann returned to Oregon and was successful in his campaign for election to Congress.² This was partially true, but there was more to this problem. Hermann's record was questionable. He had gained his office through the influence of Senator Francis E. Warren of Wyoming, who for years had been linked with land-grabbing interests.³ Hermann's appointment as Commissioner of the General Land Office was made despite his previous removal from the Roseburg Land Office in 1873, for alleged fraudulent practices and misconduct in office.⁴

Later when Hermann left the Federal Land Office, he further aroused suspicion by destroying a large

¹Harvey W. Scott, History of the Oregon Country, compiled by Leslie M. Scott, Vol. I, (Cambridge: The Riverside Press, 1924), pp. 346-48. For an account of relations between Hermann and Hitchcock see the Oregonian, December 3, 4, 5, 6, and 30, 1902.

²Ibid.

³Oregonian, November 28, 1906.

⁴Oregon Journal, May 7, 1903.

number of records.¹ He claimed these were private records, but if this were true, then he was guilty of abusing the franking privilege and was subject to large fines. With this evidence in hand, it was not difficult to understand why Secretary Hitchcock was eager to investigate, especially since hard feelings had resulted from Hermann's dismissal as General Land Commissioner.

The investigations in Oregon began under A. R. Greene, special investigator for the Department of Interior, who first uncovered evidence of fraud in the Office of the Surveyor General of Oregon.² When Attorney General Knox realized there was enough evidence to prosecute in Oregon he began a search for an able man. He became favorably impressed with Francis J. Heney, a young San Francisco lawyer who had ably defended some land grants in Arizona for the Camerons of Pennsylvania. Knox offered Heney the position of Assistant Attorney General, but Heney declined, feeling that he must devote more time to his budding San Francisco law practice. Shortly thereafter Knox telegraphed urging Heney to go to Portland and try the land cases. This time Heney

¹Oregonian, October 27 and 29, 1903.

²Ibid, December 15, 1904.

decided that he could not refuse the case.¹

Heney accepted without realizing the full importance of what was ahead. He later remarked:

I didn't know what I was going against. If I had, if I had foreseen that two year fight, I believe I wouldn't have begun it. I would have thought I couldn't afford it. I understood that I was to try a case, one case, which was all ready to try and I reckoned that would take me about three weeks.²

Heney's background was as picturesque as the Arizona desert country where he achieved his first claim to fame. One of the most colorful stories is told of his first day of law practice in Tucson. Heney accepted the divorce case of the wife of the town political boss, who had threatened to shoot any attorney accepting this case. Heney not only accepted the case but won, only to find the political boss meant his threat. In the ensuing fight Heney shot and killed his adversary.

Lincoln Steffens during his famous "muckraking" days found Heney a most satisfactory topic for his frequent articles in current publications. Concerning

¹ Lincoln Steffens, "The Taming of the West," The American Magazine, LXIV (October, 1907).

² Ibid.

Heney, Steffens wrote:

My interest was in the rise of the man, Heney, through his haphazard fighting all over the State, against every evil he saw, to be secretary of state, and then, on the inside, in what he saw of coming corruption of a new State, and his forced compromise with some of it. He could not fight it all; many of his partisans turned out as bad as their enemies. Heney did not understand, and so he was defeated politically, but never personally, in Arizona.

Whether Heney's reputation as a reformer and fighter had anything to do with the attempt of Oregon politicians to block his appointment is unknown, but strong measures were used to thwart his selection. The Bar Association of Portland met and resolved against Heney's selection. These resolutions were the basis of protests in the Senate, to the President and Adjutant General by both Senators Mitchell and Fulton.² Attorney General Knox apparently was the only official who saw the implications behind the protests. He threatened the President with resignation if Heney were withdrawn from this case.³ Seeing the fight Heney faced in Oregon, Secretary Hitchcock decided to remove many

¹Lincoln Steffens, The Autobiography of, Vol. II, (New York: Harcourt, Brace and Company, 1931), pp. 546-47.

²Steffens, "The Taming of the West," op. cit.

³Ibid.

land officials, whom he did not trust. In February, 1903, George E. Waggoner, chief clerk of the office of the Oregon Surveyor General was dismissed. In April, 1903, four United States Commissioners were dismissed. They were H. W. Reed, J. W. Hamaker, J. O. Hamaker and Marie Ware. On July 9, 1903, Max Whittlesay was removed from the Lakeview Land Office. In September, E. M. Brattain was dismissed from the same office. The register at La Grande, E. W. Bartlett and the receiver, Asa B. Thomson, were suspended the same fall.¹

After such a purge of government officials in Oregon, it was little wonder that Heney received a cool reception upon arrival in Portland, November 11, 1903. He soon discovered that,

the timber thieves, the land and lumber companies, had not only the Department--all that they wanted of it--and the senators and representatives, but Federal judges and U. S. marshals. He had to go to Washington and ask President Roosevelt to transfer judges, remove U. S. district attorneys, and appoint U. S. marshals, before he could summon unfixed jurors, trust the courts, and have an even chance to convict.²

Heney could not have accomplished this task alone. He was extremely fortunate in having William J. Burns,

¹Scott, op. cit., pp. 356-58.

²Steffens, The Autobiography of, op. cit., p. 551.

a Secret Service Agent, who was a fabulous character in his own right, assigned to help him. Earlier, when Secretary Hitchcock wanted to find how true the allegations concerning fraud were, he asked the Treasury Department for one of their best men to serve as a detective, and Burns was assigned the task. Within a few days he had a report for Hitchcock. He said most of the allegations were true and he named the guilty men in the department, some of them very close to the secretary. Hitchcock was indignant. He couldn't believe what Burns had told him, so asked the Treasury Department to recall their man. Burns was too eager for this exciting assignment to get shoved into the discard so easily. Knowing his chance to continue the case depended upon something tangible, Burns promised Hitchcock a confession from one of the important officials in the department in very short order. Burns knew he had nothing but suspicion upon which to build a case, so he decided to bluff. He picked his man and openly accosted him-- calling him a crook and summarizing in what manner he had been crooked. Burns' case was so near the truth and his manner so convincing the man broke down, confessing his complicity in fraudulent activity. This

convinced Hitchcock--Burns was permitted to continue.¹

Burns proved an excellent check for the impetuous Heney. Time and again, it was Burns, who correctly analyzed the people with whom they must work and guided Heney toward the men who would be most helpful.

When Heney and Burns arrived in Portland, a banquet in their honor had been arranged by some of Oregon's leading citizens. Heney, who enjoyed social gatherings, was right at home in such surroundings. Among the guests were W. D. Fenton and Charles H. Carey, respectively chief counsels for the Southern Pacific and the Northern Pacific Railroads. After being wined and dined, the conversation turned to timber and the frauds. The leading citizens of Oregon spoke of the magnitude of the timber and land business; of the legal hindrances to it; and of the custom of the country, which an outsider might have difficulty in understanding, the ancient custom of "getting around" the land laws. "The conversation was an apology for crime and a plea for land criminals."² "So you see, Mr. Heney," said Mr. Fenton, of the Southern Pacific, "it is bad laws that make men--hum, well, let us say, that make such irregu-

¹ Ibid., p. 550.

² Steffens, "The Taming of the West," op. cit.

larities necessary."¹ Heney literally exploded--the fight was on--he informed the group in no uncertain terms that he would prosecute fraud to the fullest extent of the law.

The first indication of foul play and the obstruction of justice occurred during Heney's first days in Oregon. The case which Heney had hurried to Portland to prosecute had been tried and dismissed the day before his arrival by John H. Hall, the United States District Attorney. This appeared rather unusual, particularly in view of the fact that Heney had sent word that he was coming to try the case. Unfamiliar with conditions, Heney did not recognize the implications of this action. He rather welcomed the opportunity to study the situation. After interviews with Hall and Greene, Heney found both non-committal, much to his surprise. Upon discussing the situation with Burns, he had a more suspicious view of the state of affairs. Burns openly suspected the whole "gang" and his analysis of events proved uncannily accurate. Heney, however, unsure of Hall's loyalty suppressed this skepticism and a short time later, in Washington, was instrumental in Hall's re-appointment to office.²

¹Ibid.

²Ibid.

Heney realized he had to increase his knowledge of Oregon politics if he hoped to be successful in his prosecutions. To do this he joined prominent clubs and met as many influential people as possible. Every step had a purpose; namely, securing information. Thus while Heney was at work in the upper social circles, Burns frequented the underworld and its fringes. Getting together each evening these two men compared notes and it was not long before the semblance of a pattern could be seen. They were becoming familiar with how land graft operated in Oregon. They found Portland primarily settled by New Englanders. Upstate the people farmed, but the Yankees, of Portland, traded. Portland was the center of State business. Here was concentrated the majority of the State leadership. It only followed that these enterprising men, to protect their interests, would also turn to politics.¹

It was difficult for Heney to believe that many of the State and Federal officials were grafters. Heney heard, but he would not believe; he saw, but he could not imagine. Burns only smiled. It was but a short time later that Burns trapped Hall and secured the information making it possible to prosecute some land cases that had greater possibilities of conviction.

¹Ibid.

Most famous of these was the "11-7" case.¹

The significance of the "11-7" trial more concerned future developments than the immediate trial. Evidence from this case opened the way for a series of land fraud trials lasting until 1913. Most of these trials were conducted during 1904 and 1905, with Francis J. Heney as the prosecutor. The pattern of the "11-7" trial was similar to that of succeeding cases. The prosecution tried to prove that: (1) the defendants had been working as a group in the business of land fraud for the past several years; (2) the government was defrauded of nineteen sections of land in Township 11 South, Range 7 East; (3) Horace McKinley and Stephen Puter induced R. B. Montague, Deputy Clerk of Linn County to make false findings and false proofs in seven instances where no persons other than McKinley appeared; (4) Emma Watson and Stephen Puter went to Washington, D. C. and, upon false proofs, false affidavits, and false reports of C. E. Loomis and S. B. Ormsby, secured the expediting of patents to these twelve quarter sections of land; (5) McKinley, Marie Ware and Emma Watson are guilty of forgery; and (6) each of the defendants made false affidavits in filing and

¹The figures "11-7" in this instance refer to Township 11 South, Range 7 East.

proving before a special agent.¹

This case was also important, for it was the first case in which the persons concerned were real people and not a group of fictitious "dummy entries." Burns sent his son, George, with a photographer to take affidavits of these persons and pictures of their claims. George Burns found that the claims had never been improved. They couldn't be. Part of township "11-7" was above the snow line of the Cascade mountains. Snow lay until June on the so-called strawberry patches which the defendants had claimed as improvements on the land. All the claims were worthless except for the purposes for which Puter and his gang intended to use the land, as lieu land for claims upon rich timbered areas of public domain.

These lands were the sections sixteen and thirty-six in township "11-7." Much of this township was forest reserve, enhancing its value to the "school land ring" that wished to claim those sections for which they could gain lieu lands elsewhere. The action in township "11-7" was typical of cases existing throughout the State. After prosecution of this case, the primary difference in future trials existed, not in their

¹Oregonian, December 1, 1904, 1:4. See also Judgment Roll No. 3363, United States District Court, Portland, Oregon.

nature, but in the people involved.¹

By November, 1904, Heney was confident that Hall was a crook, so after permitting him to prosecute the Puter trial for two days, Heney assumed the assignment himself. As Steffens wrote:

It made a difference, too. The evidence began to go against Puter and his gang. Leading citizens were alarmed. The papers began to "hit up Heney," the pictures were caricatures, but from this time on he was the man.²

Heney convicted Puter, McKinley, et.al.³ This was indeed a personal triumph, but only the beginning.

¹Source materials on the land fraud trials in Oregon are particularly abundant. The most vivid account exists in the daily newspapers, especially the Oregonian. During the Works Project Administration historical research program, an artist named Natanson copied all the available newspaper accounts of the proceedings of the trials. His information consisted of 520 double-spaced typewritten pages now filed in the Archives of the Oregon State Library. This forms the most complete source of material, though it is rivaled by the clipping collection of William Gladstone Steel, who filled three large volumes with clippings relative to the fraud trials. He also included magazine articles contemporary with the times. His contribution is a part of the Oregon collection at the University library. The third major source of material exists at the United States District Court in Portland in the form of the transcripts of evidence and Judgment Rolls taken from the land fraud trials.

²Steffens, "The Taming of the West," op. cit.

³Oregonian, December 7, 1904, 1:1.

Attorney General Knox was not going to let Heney leave after such an auspicious start. His motto was "strike while the iron is hot," and that was the policy followed in pursuing the remainder of the land fraud participants.

Burns determined the strategy of the next step in securing convictions. Puter was the key to the entire problem. Few persons had as complete a picture of what had happened in the land fraud business. The question was how to get Puter to turn against his former partners in crime. Fortunately this matter was aided by the failure of Puter's friends to post his bail after his conviction. Puter's brother, Clarence, made vain attempts to raise the necessary funds and in every instance he was denied. When Stephen Puter found this to be true, he was eager for revenge.

Meanwhile, both Burns and Heney sensed what was happening and did everything within their power to make the Puters feel they were scapegoats for the real criminals.¹ Stephen Puter was completely convinced he had been deserted after he had talked to Franklin Pierce

¹Works Project Administration, Historical research notes compiled by Natanson, Oregon Archives, Oregon State Library, Salem, Oregon, pp. 91, 114.

Mays, law partner of Charles H. Carey, the counsel for the Northern Pacific Railroad. Mays had been implicated in many transactions with Puter and was deeply involved. He excused his failure to come to Puter's assistance because of fear of being implicated. After turning to several other men who were part of the "school land ring" and meeting with the same lack of success, Puter went to Heney and requested an audience before the Federal Grand Jury. Puter outlined his intentions to Heney to testify against Mays and Senator John H. Mitchell.¹

Heney advised Puter to gather all possible evidence confirming his charges, then assigned him an hour to appear before the Grand Jury. Puter was able to present enough information to the Grand Jury to warrant an indictment of Mays, but Mitchell hurriedly came from Washington to refute Puter's charges. Many of the jurors were Mitchell's personal friends, so it was not surprising that he ably defended himself against the charges. Being an adept politician and able lawyer, Mitchell proceeded to swing public sentiment in his favor, thus placing Puter in a position where even his life was threatened.²

¹Ibid., p. 93.

²Ibid., pp. 97-99.

Puter left no stone unturned in an attempt to find someone who could furnish concrete evidence sufficient to convict Senator Mitchell. Puter finally recalled that a past friend and accomplice, Frederick A. Kribs, Pacific Coast representative and financial agent of G. A. Smith, lumberman from Minneapolis, had transacted business with Mitchell and, more important, he knew that Kribs did all the business by check. His problem was to get enough evidence upon Kribs to coerce his assistance in the fight to prosecute the big politicians.

Kribs was unapproachable until Puter, through the help of Burns and Heney, was able to break down the statements of entrymen, who had perjured themselves by signing false affidavits. When Kribs realized Heney had the evidence necessary to convict him, he acceded to Puter's pleas and furnished Heney with the evidence necessary to convict Mitchell. Heney later remarked of Kribs:

He told me how he corrupted every Federal, State and city official that he ever had had to do business with.¹

Upon introduction of this additional evidence, Senator Mitchell could no longer ignore returning to Portland

¹Steffens, "The Taming of the West," op. cit.

to clearly establish his innocence. Implicated with Mitchell was Binger Hermann, former Commissioner of the General Land Office and now State Representative to Congress. The Oregonian news bureau in Washington reported: "Senator Mitchell is confident that he will establish his innocence and return to Washington immediately after the holidays."¹ The report further stated that Binger Hermann would probably be indicted on twenty-four counts.

On December 19, 1904, the Oregonian reported that,

At the capital great interest is being shown in the case of these two men. "If one or both are indicted, it will be construed as a vindication for Secretary Hitchcock. If both are acquitted by the grand jury, and no indictments brought in, Secretary Hitchcock's deep laid plan will fall through and the door opened for him to pass out of the Cabinet without delay."²

Grand Jury action commenced during the holiday season of 1904. On December 22, Franklin P. Mays was indicted by the Federal Grand Jury for conspiracy to defraud the government of the United States.³ On December 27, indictments were filed against Salmon B. Ormsby, former

¹Oregonian, December 18, 1904, 1:1.

²Ibid., December 19, 1904, 1:2.

³Judgment Roll 3363, op. cit.

forest superintendent of the Interior Department; Clark E. Loomis, special federal land agent; George Sorenson, member of the Puter gang; and W. H. Davis, Mayor of Albany and Chairman of the Republican Central Committee of Linn County.¹

The news of most concern to Oregonians was provided on the first day of the new year. Senator John H. Mitchell, and Congressman Binger Hermann were indicted with the "intent to defraud" clause now so popular. In addition, John H. Hall was removed from the office of United States District Attorney.² There had been many previous indictments and there were more to follow, but none held the significance of Mitchell's indictment. This case represented the backbone of the fraud structure. Mitchell as United States Senator from Oregon for the past twenty-two years represented a powerful force in the State. Citizens of the State avidly followed the day by day progress of the Mitchell trial. Heney recognized the importance of this conviction and prosecuted the case with fervor. For better than six months the battle raged and in several instances reached the floor

¹Judgment Roll 3364, op. cit.

²Ibid., 2769; Also see Oregonian, January 1, 1905, 1:1.

of the United States Senate.

Every possible method was used by the defendants to obstruct the prosecution of the case. John H. Hall was indicted with several others for attempting to cast suspicion upon Heney's character.

. . . John H. Hall, . . . in pursuance of an agreement and understanding between them, and intending and contriving to influence, intimidate and impede the said Francis J. Heney in the discharge of his said duties as an officer of the said court, and to secure his removal from office, unlawfully and corruptly did concoct and circulate throughout the said city of Portland and District of Oregon diverse, false, malicious, and slanderous reports to the effect that the said Francis J. Heney (who was then an unmarried man) was an immoral person, and a person unfit to hold the office which he so aforesaid held during the period aforesaid, . . . and while he was such Assistant to the said John H. Hall, Attorney as aforesaid, to wit, during the third week in the said month of December, in the year nineteen hundred and four, held illicit sexual relations with the said Marie L. Ware. . . and has been guilty of other lewd and lascivious conduct, and crimes involving personal unchastity on his part, . . . and (the defendants) did urge and endeavor to persuade John Manning (District Attorney for the fourth judicial district of Oregon) . . . to begin a criminal action against said Francis J. Heney. . . .¹

Through the expert efforts of Burns, Heney was able to prove the falsity of the charges and ultimately convict the defendants for the crime of endeavoring to intimidate

¹ Judgment Roll 2763, op. cit.

an officer of the court of the United States.

In the Mitchell trial Heney was definitely after "big game" and he could see victory in sight. As the trial unfolded the evidence appeared conclusive, but Heney recognized the prejudice he must override if a conviction were to be attained. The climax for the prosecution came when Judge Albert H. Tanner, Mitchell's law partner, confessed to perjury in an attempt to cover Mitchell's illegal business transactions using the law firm as a cover-up for illicit business. This confession turned the tide of public opinion. The battle had been hard fought, but Heney and his staff of assistants, and Burns, the detective had made a case that had not a loophole. The jury convicted the Oregon Senator and shortly thereafter John Mitchell died.¹

Mitchell's conviction and subsequent death did not stop the land fraud prosecutions. It was true that Mitchell's conviction was the turning point; subsequent

¹Steffens added a significant remark concerning the prosecution of Mitchell and his subsequent death. "There is something terrible about justice--when it is unexpected." He then related that John A. McCall, the President of the New York Life Insurance Company, died; A. J. Cassatt, of the Pennsylvania Railroad, also died; and James W. Alexander, vice-President of the Equitable Assurance Company, lost his mind. Steffens, "The Taming of the West," op. cit.

trials were so similar, the trials hardly warrant space in themselves.¹ A summary of the relationship of politics to land fraud is best emphasized by reading the list of convictions of important Federal and State officials:

John H. Mitchell, United States Senator; J. N. Williamson, United States Representative; John H. Hall, United States District Attorney; Clark E. Loomis, Federal Land Agent; Salmon B. Ormsby, State Forestry Superintendent; Winlock W. Steiwer, ex-State Senator; Edwin Mays, ex-United States District Attorney; Franklin P. Mays, State Senator; Henry Meldrum, ex-Surveyor General; George Waggoner, ex-Chief Clerk in Meldrum's Office; David Kinnaird, ex-Examiner of surveys; Ben Minton, and Gustave Klaetsch, both land surveyors; George Sorenson, Livy Stipp and Frank Diman, notary publics; H. W. Reed, J. W. Hamaker, J. O. Hamaker, and Marie Ware, all United States Land Commissioners; and Walter Matthews, United States Marshall. This list represents the more influential members of the land fraud "round-up." There were many lesser figures convicted to

¹For complete detail on the Federal Grand Jury trials conducted in Portland see the Judgment Rolls filed in the United States Circuit Court, Portland, Oregon. See Judgment Rolls; nos. 3363, 3364, 6173, 5647, 3330, 3331, 2769, 2763, 4849, 4445, 4857, 2945, 2984, 2988, 2991, 3006, 2907, 2908, 2942, 2943, 2944, 2940, 2941, 2899, 2900, 2912, 2915, 2909, 2902, 2911, 2918, 2938, 2891, 2892, 2895, and 2897.

complete one of the largest "house-cleaning" projects undertaken in any state.

The irony of this undertaking was the failure of Secretary Hitchcock and his agents to produce sufficient evidence to convict Binger Hermann. Although Hermann was indicted numerous times, he was never convicted.

Relation to Oregon School Lands

The land fraud trials were of considerable significance to Oregon. These trials exposed the then existing system of graft. As a result the people were more conscious of land values. The schools were brought into public favor for having been the "underdog" which had been abused. The convictions eliminated the majority of the transgressors and those remaining were driven to cover.

Many land violators were tried and convicted during the next few years, but for all practical purposes, 1905, saw an end to land losses through fraud. During the biennium, 1904-05, 377,841.96 acres of State lands were sold; whereas during the following biennium, 1906-07, only 32,022.75 acres were sold.¹ Sales during these

¹Biennial Report of the State Land Board, 1907.

years, 1898-1905, totaled 1,381,327 acres or approximately one-third of all State land sales.¹ Land remaining for sale, in 1905, totaled 1,200,250.03 acres, or slightly less than one-third of the total land acreage granted Oregon.² The lands sold represented the best and most valuable State property. Those remaining were largely located in eastern Oregon and were comprised of semi-arid desert, grazing land. While land administration was well under control by 1905, it was obvious that the action was too late.

Exact losses are impossible to ascertain. There is little doubt that the State was a heavy loser in both school lands and in the resultant benefits to the Irreducible School Fund. To a great extent, the impossibility of determining the exact losses can be attributed to a lack of records. Land management was not the sole reason for loss as much of the loss to the Irreducible School Fund occurred in the management of funds in no way *connected with losses brought about by land transactions.*

¹This figure derived by adding total lands sold for the bienniums 1899, 1901, 1903, and 1905. See reports of the State Land Board for these respective years.

²This figure was derived by using 661,596 acres representing the school lands unsold in 1925 and adding the lands reportedly sold during each biennium from 1907 until 1925 in reports of the State Land Board. The 1925 figure was based upon a county by county breakdown of the unsold school lands remaining the property of the State.

way connected with losses brought about by land transactions.

Condition of the Irreducible School Fund, 1905

The original sources of the Irreducible School Fund were supplemented from time to time. By 1905, the following additional revenues were directed to the fund; (1) All proceeds of the sale of tide lands or sand islands within the state; (2) tax on insurance companies; (3) fines imposed for violation of the food law; (4) fines imposed for the violation of laws regulating the practice of medicine; and (5) fees of itinerant vendors.¹ In addition, in 1887, the proceeds from the sale of the 500,000 acre internal improvement grant were transferred to the Irreducible School Fund. This netted the school fund \$124,432.55.

These new sources were not particularly important for only negligible amounts were added to the fund. The transactions of the biennium, 1905-06 added \$565,161.94 to the principal of the fund from all sources.² This was the largest addition to the principal to date and only the second such period in which the principal exceeded

¹ Report of the State Treasurer, 1901, p. 22.

² Ibid., 1905.

a half-million dollars. In all the history of the fund only one other biennium exceeded this total and that was recorded in 1909, when \$659,193.38 was added to the principal of the Irreducible School Fund.¹

The total of the Irreducible School Fund reached \$4,604,261.27 by 1905. This represents less than half the value of the fund today, yet, over two-thirds of the State lands had been sold, indicating improved administration in the ensuing years. The \$4,604,261.27 principal of the Irreducible School Fund was invested in the following manner. In 1905, \$3,234,229.90 was loaned. Prior to 1903, these loans were on improved farm property only; however, after this date, a portion of the fund was invested in school district bonds.² Administration of the loans was supervised by the Land Board, which had an agent, usually an attorney, in each county, whose duty was to receive applications for loans, to examine the abstracts and appraise the property, and to report upon the general desirability of the loans. Loans were limited to \$2,500 for one year at six percent. Originally, the interest rate had been ten percent, but this was

¹ Ibid., 1909.

² Ibid., 1905.

reduced in 1882, to eight percent and further reduced in 1899, to six percent. Before a loan was granted the agent must determine whether the title was absolutely clear and if the value of the land was at least three times the value of the loan.

Despite the phrasing of the law, many agents were careless in approving loans. The first mention of bad farm loans occurred in the 1901 Report of the State Treasurer. The Treasurer listed a loss of \$64,853.25 incurred upon resale of 119 farms where the cost to the State exceeded the farm value. By 1905, the State had resold 380 farms at a total loss of \$102,146.35. After 1905, the decline in losses to the State was very noticeable, never exceeding \$14,000 for a biennium and in a few years a profit was shown on the resale of the farms.¹

In 1905, approximately three-fourths of the principal of the Irreducible School Fund was distributed on loans. The remaining one-fourth was divided into three categories and invested as follows: There were \$706,944.98 received through Certificates of Sale, \$200,361.24 cash on hand and \$462,725.15 miscellaneous. The funds derived

¹These figures on farm losses were determined by adding the totals listed in the Biennial reports of the State Treasurer and the State Land Board for the years 1901, 03, and 05.

through the Certificates of Sale represented money accepted in partial payment for indemnity school lands. Many Certificates of Sale were issued on these indemnity selections which were chosen upon invalid base lands, which the Federal government refused to patent. In 1905, there were 233 such claims involving 50,645.81 acres of land. The State refunded these partial payments on Certificates of sale at a cost of \$82,805.25.¹

The cash on hand sum is self-explanatory, but the figure representing "miscellaneous" warrants further explanation. The items varied from year to year. Usually this column consisted of such items as notes being collected, foreclosed lands, unsold farms, school district bonds, investments and royalties receivable.

The interest derived from the principal of \$4,604,261.27 amounted to \$260,176.50 in 1905. This latter figure represented the yearly distributable portion of the Irreducible School Fund. An interesting comparison can be made with the distributable portion of the Irreducible School Fund for 1948. This apportionment amounted to \$235,659.21.² While these figures are relatively similar,

¹ Ibid.

² This figure submitted by the Clerk of the State Land Board, June 30, 1948.

their importance cannot be compared. In 1905, the apportioned \$260,176.50 amounted to \$1.70 per capita distribution per school age child and the total distribution defrayed 9.1% of the school costs.¹ In 1948, the distribution of \$235,659.21 amounted to 69½ cents per child and the defrayment of school costs was less than 1 percent.²

The peak of distributable income from the Irreducible School Fund was reached in 1920, when \$432,276.88 was apportioned to the various counties. This amounted to \$2.02 per school child, but totaled only 3.4% of the total school costs.³

A steady decline in the importance of the Irreducible School Fund has been underway since 1890, when the fund defrayed 19.1% of the total school costs. Unless other sources of income are allocated to the fund, it is likely that the relative value will continue to decline, particularly with rising school costs and increasing school population.

¹Report of the State Superintendent of Public Instruction, 1905.

²Information needed to accurately compute these figures is at present unavailable. The estimated figures are in line with trends during the past ten years.

³Report of the State Superintendent of Public Instruction, 1920.

CHAPTER VII

THE IRREDUCIBLE SCHOOL FUND, 1905-48

Change in Theory of Federal and State Land Policy

The great land investigations conducted throughout the West between 1900 and 1910 served to focus attention upon administration of the public domain. As a result many citizens were alarmed at the manner in which the public domain was being dissipated. Fortunately a few leaders, interested in some measure of conservation, saw the need for more rigid legislation and closer supervision of existing laws. Among this group interested in conservation were such men as Theodore Roosevelt and Gifford Pinchot. These men did not wait for the land fraud trials and the resultant publicity before showing an interest in the merits of conservation of natural resources. They were considered by many as enthusiastic leaders long before the conservation movement achieved national support.

Benjamin Hibbard in his study of public land policy noted that by 1900, a great number of educators, politicians, editors, and others suddenly had awakened to the fact that "the natural resources of the country could not be lavishly used and wantonly wasted

indefinitely without great danger of ultimate disaster."¹ Many of these men agitated for legislative action to control the disposition of the remaining lands. Of all legislative action probably the greatest contribution to the conservation movement was the passage of the Forest Reserve Act in 1891.² Another early act of great significance was the Reclamation Act of June 17, 1902.³

When Theodore Roosevelt became President of the United States he was in a position to render great service to the nation by protecting much of the remaining natural resources. Roosevelt's personal interests were linked closely with the great outdoors and his knowledge of the Federal situation made him an ideal leader of the cause. He familiarized himself with Federal land policy by working closely with the Department of the Interior and the Attorney General in the land fraud prosecutions conducted throughout the West and especially those in Oregon. His knowledge of public land disposition later proved helpful to other organizations.

¹Benjamin Horace Hibbard, A History of the Public Land Policies, (New York: The Macmillan Company, 1924), p. 472.

²United States Statutes at Large, Vol. XXVI, p. 1103.

³Ibid., Vol. XXXII, p. 388.

In 1907, President Roosevelt, at the request of the Inland Waterways Commission, called a conference, mainly of governors, to discuss conservation. As an outgrowth of this conference a National Conservation Commission was established.¹ Soon many States created conservation commissions and eventually the movement became international in scope. At The Hague, in 1909, an international meeting was held to discuss world resources.

President Roosevelt recognized the imperative need of additional conservation measures in the United States. As a consequence he promptly withdrew from public entry 148,000,000 acres of land as forest reserve and 80,000,000 acres of potential coal lands. All in all, before he was through, he closed nearly an eighth of the public domain in the United States to private entry.²

Hibbard linked Roosevelt's desire for conservation with an equally strong desire for monopoly breaking. By rigidly controlling the disposition of water power, minerals, and timber, it was possible to control the development of huge fortunes by speculators in natural resources. Early control of this nature would have

¹This first organization failed to receive the support of Congress.

²Hibbard, op. cit., p. 474.

materially handicapped such men as Jim Hill, Weyerhauser, and the many others.

Efforts by the Federal government to conserve national resources affected many states. In many instances States enacted legislation that would supplement the Federal policies, but in Oregon no such policy was followed. Oregon's apathetic attitude was surprising in view of the State legislative investigations of 1872, 1878, and 1905. These investigating committees were conscientious and reported the evidence clearly for all to see. Governor Geer, in his message to the Legislative Assembly in 1903, noted how the State was suffering from speculation and disgraceful administration.¹ Unfortunately the citizens of Oregon were not sensitized to the serious nature of the graft and corruption existing until after exposure of many prominent officials by the Federal land fraud trials conducted in Portland between 1903 and 1905.

With knowledge of the serious nature of land fraud activity and evidence of a stiffening Federal policy, it was surprising that State policy was not more definite. Certainly efforts were made. In 1902, the Attorney General filed suit in the Circuit Court of Marion County

¹Governor's message to the Legislative Assembly, 1903, Messages and Documents, 1903.

against George W. Davis, former Clerk of the State Land Board; Sylvester Pennoyer, former Governor; George W. McBride, former Secretary of State; and Phil Metschan, former State Treasurer, for failure to protect the interests of the State. The suit was decided in favor of the defendants and no appeal was taken by the State.¹ On April 28, 1905, the Grand Jury of Marion County, after an investigation of the records of the State Land Office, found that a large number of outstanding certificates had been issued upon what appeared to be fraudulent applications. The alleged fraud was forgery and the procuring of irresponsible persons to make application for school lands not for their own use, but the benefit of speculators, was also against the law. H. H. Turner, of Salem, Oregon, and A. T. Kelliher were tried, convicted and sentenced to five years imprisonment for their part in these fraudulent activities.²

In addition to indicting and convicting many of the violators of the State land laws, the State legislators

¹ Annual Report to the State Land Board by M. L. Chamberlin, Clerk, January 1, 1901, to September 30, 1902.

² Biennial Report of the State Land Board, 1907.

on May 21, 1903, curbed school land sales by raising the price of school lands from \$1.25 to \$2.50 per acre.¹

There is no evidence indicating that land prices were raised as a conservation measure. It appears more probable that increased land sales throughout this period warranted higher prices. Rising prices were common for the next several years. In 1905, the price of indemnity school land was advanced from \$5 to \$6, and the following year from \$6 to \$7.50.² In 1907, the indemnity school lands were further increased from \$7.50 to \$8.75 per acre and regular school lands were raised from \$2.50 to \$5 per acre.³ In 1909, three increases were made in the price of indemnity school lands. From \$8.75 the amount was increased to \$10, to \$13, and finally to \$15 per acre. Regular school lands were raised to \$7.50 per acre.⁴ Both indemnity school land and regular school lands remained at these 1909 minimum price levels for many years. The State oftentimes received more money per acre on open

¹Biennial Report of the State Land Board, 1905.

²ibid., 1907.

³ibid., 1909.

⁴ibid., 1911.

bids, but occasionally less than the minimum was accepted when State appraisers found the land of less than minimum value.

The increased prices had a noticeable effect upon the amount of acreage sold. The biennial report of the State Land Board, 1905, showed 377,841.96 acres of school land sold during 1902-04.¹ The next biennium, 1904-06, found a decided drop, when only 32,022.75 acres were sold.²

In summarizing State policy in conservation of natural resources perhaps the best explanation lies, not in the intent, but in what actually occurred. The State policy of increased prices cut sales tremendously. The various trials and resultant publicity created an awareness of extremely poor management in the administration of the Irreducible School Fund. As a result of these developments the Legislature and the State Land Board demanded sound, efficient business methods which have since resulted in increased benefits to the Irreducible School Fund.

¹ Ibid., 1905.

² Ibid., 1907.

Modern Administration of the Lands

Federal Administration

Federal land administration is the responsibility of the General Land Office. In most every respect this office has followed the pattern of conservation established during the Roosevelt administration. The Forest Reserve Act of 1891, was a forerunner of a series of acts designed to conserve and control the fast dwindling public domain. One of these was the Carey Act passed on August 18, 1894.¹ This act permitted the United States to grant to certain States one million acres of desert land upon condition that the State guarantee the reclamation of the lands.² In 1902, the previously cited Reclamation Act was passed. Later, in 1909, incentives were extended to dry farmers by an act permitting such farmers to homestead 320 instead of the usual 160 acres of land. Each of these acts was designed to preserve and develop the vast expanse of marginal land.

An Act of June 25, 1910, permitted withdrawal of

¹United States Statutes at Large, Vol. XXVIII, p. 422.

²Milton Conover, The General Land Office, Institute for Government Research, Service Monograph #13, (Baltimore: The Johns Hopkins Press, 1923), p. 32.

public lands for Indian reservations, and reservoir and power sites. Later, in 1920, when the Federal Power Commission was created, it was provided that lands that could be used for power projects and navigation structures would be reserved from disposal until either the Federal Power Commission or Congress should direct otherwise.¹

In addition to legislative action aimed to preserve the public lands the General Land Office undertook two major tasks. First was surveys. Throughout the period of western expansion surveys had been conducted on a contract basis. Under such a program it was not difficult to visualize overlapping and inaccuracies. Too many people participated in this survey program and unfortunately they did not all have the government's interest at heart. When surveys were reviewed in 1910, by the General Land Office, it was decided from that time onward to conduct the surveys directly. This plan paid great dividends. Inaccuracies were corrected and an average saving of \$5 per square mile was realized by the direct method.² For the next ten years the Federal survey teams averaged ten million acres a year.

¹Ibid., p. 34.

²Ibid., p. 37.

The second administrative improvement was land classification. For years the General Land Office depended upon various sources of information in order to classify lands. In many cases the applicant to purchase the lands furnished the information. This happened in Oregon with much of the mineral land. Other sources of information were from field surveyors working on a contract basis, from the Land Office field service, and from the geological survey teams.

The new program was primarily one of cooperation among agencies of the Federal government. The first step was to make all data available to any affected agency. In this manner the General Land Office could ask for data that might be the property of another governmental agency. When all the data was collected from the governmental agencies that had pertinent information, the General Land Office reviewed the classification of the property in question. When a decision was reached within the General Land Office, the data concerning the land to be classified was forwarded to the Geological Survey Office for confirmation. This method insured more accurate classifications and saved untold amounts of valuable mineral and coal land for the Federal government.

Administrative organization of the General Land Office has changed throughout the years. As the organization became more efficient and more and more of the public domain passed into private ownership, the size of the staff in the General Land Office decreased. In 1920, the General Land Office had about 1,200 employees divided between the Washington Office and the various district land offices. By 1939, there were only 560 employees. This can be better understood when it is realized that the number of district land offices decreased from ninety-four in 1920, to twenty-five in 1939. In 1939, the public domain amounted to 186,000,000 acres in the United States and an additional 323,000,000 acres in Alaska.

State Administration

School land administration in Oregon is the direct responsibility of the State Land Board and has been since 1898, when the title was changed from Board of Land Commissioners to State Land Board. Throughout the years this board has consisted of the Governor, Secretary of State and State Treasurer, although several times political pressure has been exerted to have the Superintendent of Public Instruction included. To date,

however, all efforts have been in vain.¹

Administration of the State Land Office has been the duty of the Clerk of the State Land Board, a position that has been active since 1878. From 1895, until 1912, there also existed a State Land Agent, but his services were discontinued when it was apparent that the business of the Land Office could be conducted by the Clerk of the State Land Board and his administrative staff.

The duties of the State Land Office have varied but the fundamental responsibility to the Irreducible School Fund has remained the same. The Land Office has the responsibility of locating, selling, and leasing school lands. In addition, the Land Office manages the loans of the funds accrued in the principal of the Irreducible School Fund and distributes annually to the various counties the funds accumulated in the Reducible School Fund. This fund represents the earnings of the Irreducible School Fund.

The Land Board also has the responsibility of managing the many other portions of the Irreducible School Fund not directly connected with school land. In this

¹In this respect the legislators have followed the Constitution of Oregon. The Constitution designated the Governor, Secretary of State and State Treasurer as members of the board to administer school lands.

group are escheats, both of estates and bank accounts, tide land management, timber sales, and royalties from sand, gravel, and mineral land leases. The management of the funds derived from these sources constitutes a major portion of the duties of the State Land Office.

Constantly increased administrative efficiency in the State Land Office has caused the principal of the Irreducible School Fund to show a decided yearly growth. In many respects the growth of the Irreducible School Fund and the development of administrative efficiency in the State Land Office can be traced to the improvement in loaning procedures. Legislative investigations in 1872 and 1878 were extremely critical of loaning methods. After such unfavorable publicity the State Land Board inaugurated a new system, in 1901, which protected Land Office employees. The Board stipulated that duplicate receipts be issued on all money received. At the end of each month the Clerk turned these receipts over to the State Treasurer, who charged the sum to the Clerk. If the Clerk turned over funds to the State Treasurer he received credit for the amounts.¹

¹Annual Report to the State Land Board by M. L. Chamberlin, Clerk, January 1, 1900 to December 31, 1900.

In addition to the handling of funds, the sheriff of each county was directed to report all delinquent taxes on land upon which the State holds a mortgage. Also the State Land Board adopted a policy of foreclosing on property upon which it held a mortgage providing payments were between one and three years delinquent. If payments were more than one year and less than three years delinquent the Board would foreclose upon thirty days notice, providing there was an applicant desiring to buy the property. If payments were more than three years delinquent the State automatically took possession without notice.¹

During the administration of Governor Oswald West, 1910-14, the State Land Board reviewed all outstanding loans with respect to their security. It was found that many farm loans were inadequately secured. In order to protect the Irreducible School Fund, the Board demanded that certain poorly secured farm loans be repaid, and in other cases demanded a partial payment of the loans.²

Probably the greatest administrative changes occurred during the biennium, 1934-36, when Rufus C. Holman, State Treasurer, worked for additional reforms. An analy-

¹ Ibid.

² Biennial Report of the State Land Board, 1913.

sis of foreclosed farm properties found \$1,194,246.55 in appraised value tied up in these unsold farms. There were two grievous administrative errors involved. First, the farms were off the tax rolls and, secondly, the sum of \$1,194,246.55 was completely inoperative so far as the Irreducible School Fund was concerned.¹

Realizing the precarious nature of the foreclosed farms as an investment the State Land Board had Dean W. A. Schoenfeld, of Oregon State College, appraise all the farms and establish a recommended sale price. The Board advertised the farms for sale and appointed twenty-five sales agents operating on a commission basis to sell the farms. Within four months \$200,145.24 worth of property was returned to the tax rolls through sale. Despite this recovery Schoenfeld estimated the State lost about \$600,000 because of inadequate security.²

As a result of this experience in farm loans many changes were instituted. Whereas in the past the State Land Board made unlimited loans upon appraisals and recommendations of an attorney in each county appointed by the Board as legal representative, it now limited

¹Ibid.

²An address delivered by Rufus C. Holman before the first annual conference of the Department of Superintendents of the Oregon State Teachers Association, a pamphlet, Oregon Collection, Oregon State Library, Salem, Oregon, Document Collection.

loans to \$5,000 at six per cent for ten years. The loans were approved only in cases where the value of the property exceeded three times the amount of the loan. In addition the new loans were of the installment type of self-liquidating loans which caused the ratio of security to increase rather than decrease.¹

According to E. T. Pierce, Clerk of the State Land Board, the changes made in 1935 have meant good business for the Irreducible School Fund. Pierce pointed, as evidence of successful loaning, to only three foreclosures in 1948. Decrease in loan delinquency has steadily declined from nineteen per cent to six and six-tenths per cent in the 1936-38 biennium and from five and five-tenths per cent to one and ninety-two hundredths per cent in the 1940-42 biennium. With the exception of nine city loans all loans have been made on improved farm property. Loans are occasionally made in excess of \$5,000 but in each instance the Clerk of the State Land Board must make a final appraisal before the loan can be granted. Most of the Irreducible School Fund is loaned on various State bonds, but as of June 30, 1948, the State Land Board had \$1,239,606.18 loaned on real estate.

¹Ibid., See also Laws of Oregon, 1935, Chapter XXII.

The duties of the State Land Board are varied and no particular phase of its responsibility should be emphasized. Fund management is important, but equally essential is the administration of remaining State school lands. According to Pierce, in 1948, there were 766,718.63 acres of school land remaining in Oregon. Approximately nine-tenths of this land was in Eastern Oregon and was suitable only for grazing. Since most of this land originated from sections sixteen and thirty-six, it was scattered in small plots throughout Eastern Oregon. In 1938, the Federal government under the Taylor Grazing Act of June 30, 1938, initiated a plan to exchange State land for Federal land. Under this arrangement the State would receive land from the Federal government that could be blocked,¹ fenced and subsequently leased to cattlemen for grazing. Before these plans for centralized blocking the lands were practically worthless to the State for any purpose.²

¹The term blocking refers to the practice of trading scattered sections of school land to the Federal government for contiguous lands which could be fenced and used for grazing land.

²Biennial Report of the State Land Board, 1941.

From the unblocked grazing lands the State realized less than one cent per acre annual rental. In the areas where blocking had been completed the State, in 1942, received three and six one-hundredths cent per acre.¹

The plan to block the grazing lands of Eastern Oregon had been underway since 1938, but is not yet complete. The war interrupted much of this work, but it is expected that the project will near completion by 1950. Gordon Bernard has been working full time on this project for the State Land Board and the Federal government has promised to exchange lands as rapidly as feasible. Under the present arrangement Oregon has been divided into seven grazing districts; Bonanza, Basin, Malheur, Jordan, Crooked River, Baker, and Echo.

Blocking plans also have been extended to scattered parcels of State school timberland. This plan was first considered in 1920.² State Forestry Superintendent Elliott, with the support of Oswald West, was responsible for most of the consolidations which created the 71,202 acres of State Forest now known as the Elliott Reserve. The Elliott Reserve is composed of young timber under

¹Ibid., 1943.

²Ibid., 1921.

the supervision of the State Forestry Department and will be operated on a sustained yield basis. The first cuttings on this tract were made last year.

The Elliott Reserve is located in Douglas and Coos counties, surrounded by Federal forest lands. If present plans can be completed, an additional 7,000 acres of forest land will be added to the Elliott Reserve in the near future. The State still has approximately 7,000 acres of script which permits lieu land selection. Plans have been underway for many years to make these selections but, again, the war intervened. Just prior to the war an additional 3,000 acres were added to the Elliott Reserve to bring the total to the present 71,202 acres. The present delay in adding these lands to the Elliott Reserve has been caused by a delay in completing the cruise of this timberland by the Federal government; however, according to Pierce, it is expected that this additional land soon will be secured for the State.

Another source of additional school lands may be found in the repossession of lands obtained by fraudulent methods. Two examples of such action occurred during the past year, one of which realized more than \$104,000 to the principal of the Irreducible School Fund.

The first repossessionment was in Klamath county and came to the attention of the State Land Board when a prospective purchaser of a pine timber tract applied to the State to purchase this timberland. After a thorough search of the records, the Clerk of the State Land Board could not discover ownership. However, a further search of records indicated the State as the only possible owner, since the land never was entered on tax rolls nor had it been deeded to private ownership. The State subsequently sold the land, realizing a substantial addition to the Irreducible School Fund. The second repossessionment occurred in connection with 280 acres of timberland near Bend that had originally been a part of a 5,440 acre purchase in 1918, by a member of the Hyde-Benson land fraud ring. The heirs of the original owner were apparently afraid to do anything with the land and so, with a quit claim deed, returned the property to the United States government. A check by the General Land Office found that the State held previous ownership, consequently the land was deeded to the State. The 280 acres proved a valuable acquisition because most of the land was covered with prime pine timber.

The sale of this 280 acre tract of Ponderosa pine

near Bend resulted in a split within the State Land Board which may result in legislative changes in the method of sale of State school lands. Governor John H. Hall and Secretary of State Earl T. Newbry approved the sale of the land at the price of \$18 per thousand board feet. Leslie Scott, State Treasurer, bitterly opposed this sale on the basis that the Irreducible School Fund could have received an additional \$50,000 if the timberland had been open to public bidding. He cited the recommendation of the State Forester, Nelson S. Rogers, that the land was worth a minimum of \$20 per thousand board feet without relinquishing title to the land.¹

Newbry and Hall each defended the sale, reasoning that the timber was over-ripe and that the sale had to be expedited so that logging operations could be completed before winter. They insisted that following any other policy the timber could not have been sold as advantageously.² Regardless of who was right the disagreement caused by this transaction has now become an issue before the current session of the State Legislature. Many proponents of school land sales believe

¹Oregonian, September 3 and 5, 1948.

²Eugene Register Guard, May 13 and September 6, 1948.

it unwise to yield title to the land. They insist that timber rights can be sold, but by retaining the land it could be placed upon a sustained yield basis to insure future generations additional revenue for the Irreducible School Fund.

Possibilities of the State gaining more lands from similar action does exist according to Pierce. Reoccurrence of land repossession is dependent upon the deed checks made by the General Land Office.

Development of the Irreducible School Fund

The provisions of Article VIII, Section 2 of the Oregon Constitution designating sources of income to the Irreducible School Fund have changed very little through the years. The 1946 edition of the Oregon School Laws continues to list as a source contributing to the Irreducible School Fund such an antiquated designation as "all moneys which may be paid as exemption from military duty."¹ The Irreducible School Fund has not received money from this source since the Civil War, yet, the source remains law.

The Superintendent of Public Instruction in his 1940 report listed ten sources contributing to the principal of the Irreducible School Fund.

¹Oregon School Laws, 1946, p. 122.

These sources were:

1. The proceeds of the sales of the sixteenth and thirty-sixth sections of land of every township of this state, or of any lands selected in lieu thereof.
2. The proceeds of all property granted to the state when the purpose of such grant shall not be stated.
3. The proceeds of all gifts, devises, and bequests made by any person to the state for common school fund purposes.
4. All proceeds of the sales of tide and overflow lands.
5. All the moneys and clear proceeds of all property which may accrue to the state by escheat or forfeiture.
6. Unclaimed bank deposits escheated to the state.
7. All moneys received by the state under contracts made in pursuance of the provisions of Chapter IV, title XXXII, Oregon Laws, pertaining to confirmation of land titles.
8. All moneys received from the rental, sale disposition, or use of lands belonging to the state.
9. Royalties from leases of sand and gravel beds of navigable streams within the state.
10. The proceeds of sales of timber on state lands.¹

An idea of how important these sources are to the principal of the Irreducible School Fund can be seen in the 1948 increase in principal. By sources these are:

- | | |
|--------------------------------|-------------|
| 1. Sales of school grant lands | \$17,498.35 |
|--------------------------------|-------------|

¹Report of the State Superintendent of Public Instruction, 1940.

| | |
|--|---------------------------|
| 2. Sales of timber on school grant lands | 5,236.51 |
| 3. Escheats | 58,054.27 |
| 4. Miscel. principal gains and loss | 3,034.07 |
| 5. Royalties--sand and gravel leases | 42,143.83 |
| 6. Royalties--Columbia river sand leases | 7,669.33 |
| 7. Royalties--Mining leases | 80.00 |
| Total | \$133,716.36 ¹ |

The major contributors to the principal of the Irreducible School Fund are escheats and royalties, both of which probably will play an increasingly important part in future increase of the fund. Escheats have contributed to the fund since 1912 and in recent years have become a principal contributor.² Previously the amount realized from escheats was not particularly large for lack of a strong administration to protect the State's interests. Evidence indicated that unscrupulous lawyers exploited the State's negligence, and were well paid for their efforts from funds that rightfully should have become a part of the Irreducible School Fund.³ Any chance to continue pilfering escheated accounts was corrected in 1935, when

¹ Biennial Report of the State Land Board, 1949.

² Ibid., 1915.

³ An address delivered by Rufus C. Holman before the first annual conference of the Department of Superintendents of the Oregon State Teachers Association, op. cit.

a law was passed requiring all claims in excess of \$100 against an escheated estate be reviewed by the State Land Board. Under such a plan the State Land Board has an opportunity to protect the interests of the State.¹

The greatest income from escheats probably is yet to come. In 1947, the Legislature passed an act providing for the disposition of property that had been abandoned in the State of Oregon.² For years Oregon has practiced the policy of escheats regarding real estate and personal property but under this new law the practice is extended to bank accounts that have been inactive for seven or more years. Both savings and checking accounts are included under this law. The State will hold these accounts in trust forever, whereas in the case of estates, the State assumes full ownership after ten years.

How significant these bank deposits may become can be seen in a report issued to the press in February, 1948, by E. T. Pierce, Clerk of the State Land Board. Pierce said the aggregate from escheated bank deposits now was

¹Ibid.

²Laws of 1947 relating to the Oregon Public School System, First Supplement, Oregon School Laws, 1946, issued by Rex Putnam, Superintendent of Public Instruction, Salem, Oregon, pp. 46-50.

\$222,664, and he expected an additional \$40,000 by the end of 1948. The unclaimed deposits ranged from one cent to \$5,000. One chain bank reported in excess of \$70,000 in unclaimed deposits. Pierce pointed out that the banks must report annually to the State Land Board. All banks, both State and Federal, along with savings and loan associations and some other financial institutions are subject to the new law.¹

Royalties are the second major source of income to the principal of the Irreducible School Fund. As with escheats, royalties date back many years in Land Office records. The first mention of royalties is to be found in the Biennial Report of the State Land Board, 1921. This report listed the policy of leasing sand and gravel sites and charging five cents per cubic yard royalties. The validity of the Board's right to levy this charge was tried in court in the case of the State Land Board versus Salem Sand and Gravel Company. The decision was rendered July 31, 1920, in favor of the State Land Board. Since that date the State Land Board's right to levy royalties has not been challenged. All the Board must do is collect royalties from the various companies

¹Oregonian, February 6, 1948.

obtaining sand or gravel in navigable streams and between high and low water mark of tidelands.¹

Other royalties have been obtained from rental of sand islands in the Columbia river for fishing purposes and rental of tide lands for various purposes. Despite the legality of collecting royalties, the State Land Board was negligent in these collections. This was changed in 1935, when Rufus Holman spurred other members of the State Land Board into establishing some type of administrative control. Sand and gravel prices were raised from five cents to ten cents per cubic yard and members of the State Land Office staff were instructed to inspect navigable streams and tidelands of the State to determine who should pay. One company alone had to pay \$10,000, whereas it had previously paid nothing. Since 1935, there has been a continuing search for royalties from companies that have never contributed, yet, according to law owe these royalties to the Irreducible School Fund.²

From a survey of the Biennial reports of the State

¹Biennial Report of the State Land Board, 1921.

²Rules of the State Land Board relating to Leasing and Sale of Sand and Gravel, Oregon Collection, Oregon State Library, Salem, Oregon, Document Collection.

Land Board for the past several years, it appears safe to estimate the biennial increment to the principal of the Irreducible School Fund at between \$250,000 and \$500,000. Escheats should become the largest contributing source. However royalties and sale of timber from the Elliott Reserve should also contribute to the total.

The Reducible School Fund

To school superintendents the Reducible School Fund should hold greater significance, as it is this fund that is annually apportioned pro rata to the counties. The Reducible School Fund consists of the earnings of the Irreducible School Fund. Thus the sources of the Reducible School Fund are derived from interest on investments, rentals and miscellaneous fees. At the end of the fiscal year, 1948, \$235,659.21 was apportioned to the counties of Oregon.¹ This apportionment amounted to 69½ cents per pupil for 339,078 pupils.² This amount compares with the previous year, when the distribution was \$258,318.72, amounting to 81 cents per pupil for

¹E. T. Pierce to Ray Hawk, September 22, 1948, in possession of the author.

²Biennial Report of the State Land Board, 1949.

318,912 pupils.¹

The major portion of the Reducible School Fund is derived from interest received from bond investments, mortgage loans, contracts of sale, certificates of sale and depository balances. The total interest from these sources amounted to \$238,933.23 last year. From rentals the Reducible School Fund realized \$24,908.08, divided between school grant land leases and tide land leases. From miscellaneous sources \$2,845.56 was realized. This sum came from a balance carried forward from the previous year, from miscellaneous fees, loan applications fees, and sales of service.² The total of these earnings amounted to \$266,686.87 from which was deducted \$69.41, a sum undistributed at the end of the previous year, and \$30,958.25 deducted for payment of administrative expenses. The Reducible School Fund must bear the cost of operational expenses of the State Land Office. The largest portion of this sum was \$19,791.78 paid in wages and salaries.

As the principal of the Irreducible School Fund increases there will doubtlessly be a small increase

¹ibid.

²E. T. Pierce to Ray Hawk, September 22, 1948, op. cit.

in the earnings of this fund which, in turn, will increase the amount of the Reducible School Fund to be distributed to the counties. It is not likely that this increase will keep pace with the rapid growth of the school age population, and thus a reduction in the per pupil apportionment can be expected. From 1947 to 1948 there was a decline from 81 cents to 69½ cents. This decline may gradually continue in future years.

CONCLUSION

Management of the Irreducible School Fund and administration of the school lands have been the target of much criticism. In many cases there can be little doubt that this criticism is justified; yet, in other instances, the basis for criticism is questionable. Reviewing momentarily, it is recalled that when the first land grants for education were made, the primary purpose of the Federal legislators was not to create a permanent endowment for education. On the contrary, the school land grants were designed as one of many devices to attract settlers to the sparsely settled West.¹ When such an attitude was expressed in Washington by the representatives of the people, it is not difficult to understand the apathy existing at the State and community level.

There was little appreciation of the value of these lands and scarcely any interest in their management on the part of the public. It is true that there appeared to be an undue haste to sell these school lands at what now appear to be ridiculously low prices, but an attempt to evaluate the wisdom of early land sales is difficult.

¹Howard Cromwell Taylor, The Educational Significance of the Early Federal Land Ordinances, (New York: Columbia University Press, 1922), p. 115.

Certainly if the States had retained these lands today many of them would be worth a fabulous sum. Retention of the lands, however, would have been against the spirit of Federal intent. The land grants for education were made to encourage and assist the early settlers in the new Territories and States. It was never intended that these lands should be held for the benefit of future generations more able to maintain schools than were the pioneers. Some might argue that withholding the school lands from sale was against sound business practices. If the States held title to the lands, the lands would have been non-taxable, depriving the schools of one of the sources of support. The early settlers were not interested in creating a school fund for their great grand-children. They wanted a means of support for the education of their own children. To secure any money in a permanent fund the lands had to be sold, and were sold in most instances. It does not appear fair to criticize the intentions of the early settlers for selling the lands.

Before leaving the topic of State school lands, the popular misconception that "timber barons" gained control of a majority of the State lands should be corrected. Many of these wealthy operators secured

vast tracts of land, but the fundamental land owner has remained the small-acreage owner. Charles R. Ross, extension forester for the State of Oregon, recently stated that sixty-three per cent of Oregon's privately owned forest is owned by individuals with holdings of less than 5,000 acres.¹ In all there are 45,000 owners of woodlands in Oregon.

With regard to the administration and management phases of the Irreducible School Fund and the State school lands there is ample opportunity for criticism. The State and Federal investigations and the ensuing trials have indicated the nature of the administrative shortcomings. A few of the worst mistakes included: (1) inadequate and conflicting legislation; (2) land sales by both the county school superintendents and the State Land Office without adequate records of the sales; (3) failure of the State to select lieu land; and (4) failure of the State to establish sound business principles in the management of the State Land Office and especially in regard to loaning policies.

Even with the administrative bungling throughout the history of the Irreducible School Fund, Oregon

¹Eugene Register Guard, May 13, 1948.

fared better than many of her sister states, ranking eighteenth in a biennial survey made by the United States Office of Education in 1918.¹ Texas was first with the sum of \$81,598,339. However, Texas should not be counted in the totals as it received all of the public lands within her borders as payment for the war debt of the Mexican secession. Of those States receiving the regular land grants, Minnesota ranked first.

In many respects it is difficult to compare Oregon with her neighbor States, for both Washington (admitted to the Union in 1889) and Idaho (admitted in 1890) received their land grants for education, but the Federal government attached a ten dollar per acre minimum sale price. As a result of this action, in 1915, according to Cubberley and Elliott, Idaho still retained 2,811,596 acres of the original 3,068,231 acres granted.² Figures were unavailable on Idaho's permanent school fund; however, there is good reason to believe that a fund of approximately \$40,000,000 is possible.

In Washington a similar situation exists. Of

¹United States Biennial Survey of Education, 1916-18, Vol. III, p. 169.

²Elwood P. Cubberley and E. C. Elliott, State and County School Administration, (New York: The Macmillan Company, 1915), p. 78.

the original grant of approximately 2,800,000 acres, Washington has retained 2,200,000 acres of school land. This land has contributed to a principal in the school fund of \$47,482,770 as of February 2, 1948.¹ This principal realizes a yearly earning of approximately \$1,250,000 or about two per cent of the total school cost in the State of Washington.

If considered upon a proportionate basis, California has suffered to a greater extent than Oregon from mismanagement and fraud. By the land grants California received approximately 6,000,000 acres of school land. Of this amount only 750,000 acres remain in the State's possession today. From the revenue of the school land sales, from escheats and abandoned property, California has received \$16,845,575 as the principal of the school fund as of June 30, 1947.² Yearly earnings of this principal amounted to \$557,405.48 in 1947, or when distributed, much less than one per cent of the per pupil costs in California. The income from the permanent school fund in California is designated for use only in the elementary schools. The secondary schools have

¹Pearl A. Wanamaker to Ray Hawk, May 10, 1948, in possession of the author.

²A. P. Ireland to Ray Hawk, May 20, 1948, in possession of the author.

no permanent funds contributing to their support.

As far as the future is concerned there are several developments which may materially increase the principal of the Irreducible School Fund. The collections of escheated estates and bank accounts should prove an increasingly lucrative source. The returns from the sustained yield forestry crop in the Elliott Reserve now undergoing the first harvest, should bring substantial returns to the Irreducible School Fund. In addition, a new development that may some day be more important than all other sources combined is now under discussion in Congress. This possible source is the submerged lands of the continental shelf surrounding the United States. It is known that some of these lands have tremendous value for mineral and oil deposits. At present these lands are not a part of the "public domain," and Congressional action will be required to make them so.¹ The problem then arises, will Congress grant the lands to the adjoining State or will all States share? Whatever is decided these submerged lands might prove a great aid to the cause of public education.

If it is possible at all to draw any conclusions

¹"News and Trends," NEA Journal, XXXVI (December, 1947), p. 611.

from what has happened on the Pacific Coast, it seems obvious that the earnings of the Irreducible School Fund could never have amounted to much of a permanent endowment for education. In Washington, with governmental control and prudent management a sum of \$47,482,770 has been accumulated, yet, the interest of this sum meets but two per cent of the per pupil costs in that State. Oregon, with a questionable record of land and fund management, has fared nearly as well as sister states with more enviable reputations.

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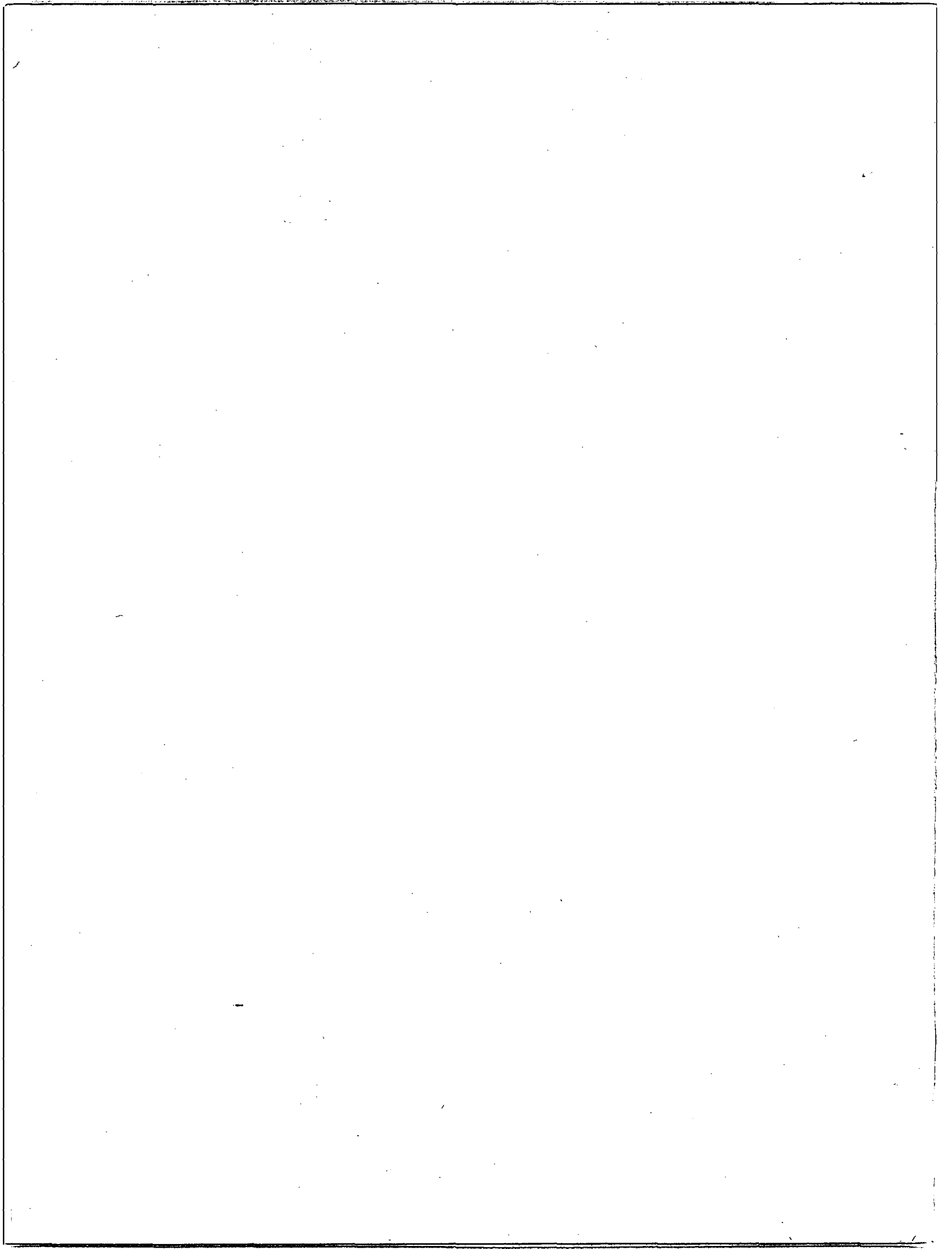
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