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Report on Common School Fund Constitutional Amendment (State Ballot Measure No. 1)

City Club of Portland (Portland, Or.)

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REPORT
ON
COMMON SCHOOL FUND
CONSTITUTIONAL AMENDMENT
(State Ballot Measure No. 1)

Stated Purpose: Amends Constitution authorizing State Land Board to expend monies in the Common School Fund in carrying out its powers and duties to the end that the greatest benefit shall be obtained from the conservation and management of the land resource. The Board to invest unexpended monies in the fund as the Legislative Assembly shall provide by law. Interest from the investments applied in support of primary and secondary education as provided in the Constitution.

To the Board of Governors,
The City Club of Portland:

Your Committee was authorized to study and report on the above State Ballot Measure to be voted on at the primary election on May 28, 1968. This measure, which was referred to the voters by the 1967 Legislature, would substantially amend Article VIII of the Oregon Constitution pertaining to the common school fund.

I. SCOPE OF COMMITTEE RESEARCH

The following persons were interviewed by the Committee:
Dale Mallicoat, Director, Division of State Lands;
J. Edward Schroeder, Oregon State Forester;
Charles E. Poulton, Professor of Range Ecology, Oregon State University;
Warren K. Sandau, Range Specialist, Bureau of Land Management;
Charles B. Waldron, Division of Range and Wildlife Management, U. S. Forest Service;
Robert F. Smith, State Representative, Burns, Oregon, one of the sponsors of the measure;
Ernest L. Kolbe, Director of Forestry Services, Western Wood Products Assn.;
William Bade, Fiscal Officer, Portland Public Schools.

The Committee reviewed the Oregon statutes relating to the common school fund together with certain opinions of the Oregon Supreme Court and of the Oregon Attorney General concerning the administration of the common school fund. It also reviewed the explanation of Ballot Measure No. 1 and the statement in support thereof printed in the Official Voters Pamphlet.

II. THE COMMON SCHOOL FUND

The common school fund was created by Article VIII of the Oregon Constitution at the time of the adoption of the Constitution. By the terms of section 2 of Article VIII the proceeds of certain lands granted to the state, all monies and property accruing to the state by escheat or forfeiture and the proceeds of gifts or grants to the state for common school purposes or where no purpose is stated constitute the common school fund. By the terms of section 2 of Article VIII the common school fund is to "be set apart as a separate, and irreducible fund . . . the interest of which together with all other revenues derived from the school lands . . . [is to] . . . be exclusively applied to the support and maintenance of common schools in each school district, and the purchase of suitable libraries, and apparatus therefor."
By the terms of section 5 of Article VIII the Governor of Oregon, the Secretary of State and the State Treasurer constitute a board of commissioners (State Land Board) for the sale of “school lands”(1) and for the investment of funds arising therefrom.

At the present time the principal assets of the common school fund (other than school lands) consist of approximately $13,500,000 of bonds and $5,100,000 of mortgage loans. Of the approximately 4,000,000 acres of land originally granted to the state for school support, the state still owns approximately 614,000 acres of Eastern Oregon grazing land, 124,000 acres of timberland, and 32,000 acres of land in miscellaneous categories, including approximately 24,000 acres of Warner Valley Swamp Land.

The State Land Board administers some 945 miles of navigable stream beds and an estimated 811,500 acres of offshore lands under legislation (not constitutional provision) which stipulates that the proceeds therefrom be treated as revenue of common school fund.

The bulk of the grazing lands are in Malheur, Harney and Lake counties. Most are checkerboarded throughout federal lands, although approximately one-fourth part of such lands have been consolidated by exchange into contiguous tracts. The Board lacks sufficient current information about the quality, productivity and potential of the range lands to be in a position to manage these lands properly. The Board is currently having the range lands classified and analyzed by Oregon State University under a pilot contract. Part of the grazing lands are leased to cattle ranchers who have grazing allotments upon federal lands in the same locale. Grazing leases usually are negotiated rather than put to bid, because ordinarily there is only one potential lessee for a tract.

The timberland owned by the state is managed for the Board by the State Forester, pursuant to legislative provision. The State Forester deducts the costs of management from the proceeds from the sale of timber. The costs run about 17 and 18 per cent of timber sale proceeds. It is generally agreed that the timberlands are very well managed.

The State Land Board has reported that water lands are not well administered due to its “small staff and questionable legal authority.”

The State Land Board reports income received by the common school fund in two categories: “irreducible” income and “distributable” income.

Irreducible income consists principally of income from the sale of school lands and income from the sale of sand and gravel and from mining leases. The proceeds from sale of land, sand and gravel, and mineral leases are all treated as “capital items,” with amounts received added to the principal of the common school fund. Until the 1964-1966 biennium, income from the sale of timber was also treated as a capital item. Presently, however, timber is treated as a crop and proceeds of timber sales are considered distributable income.

During the 1964-1966 biennium distributable income consisted of the following:

**Investment income:**
- Interest on mortgage loans $717,476
- Interest on bond investments $750,419
- Interest on contracts & certificates $2,122
- Interest on depository balance $204,558

**Total distributable income** $1,674,575

**Revenues from state lands:**
- Income from grant lands $104,197
- Income from tidelands $39,413
- Miscellaneous income $32,881
- Sales of timber $2,755,790

**Total distributable income** $4,430,365

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(1) At the time Oregon became a state, two sections out of every township were dedicated to the state to benefit public schools.
In several cases the Oregon Supreme Court has said that diversion of common school funds from the purpose for which they were dedicated by the Constitution would be unconstitutional. In State Land Board v. Lee, 84 Or. 431, for example, the Supreme Court said:

"*' * * ' the Constitution commands that the School funds derived from specified sources shall be irreducible and that the interest shall be applied exclusively to the support of the common schools."

"In view of this plain, mandatory constitutional provision, any act of the legislature purporting, directly or indirectly, to divert the common school funds from the purpose to which they were thus dedicated would be unconstitutional."

As a result of these decisions and of several opinions of the Attorney General of Oregon the State Land Board has been in doubt as to the extent to which it can use revenues from state lands for the purpose of paying the cost of administering the lands. Inconsistent practices are presently being followed. The State Land Board for many years has been paying its own expenses from distributable income of the common school fund. Furthermore, as already stated, in accordance with an act of the State Legislature, timberlands are being managed by the State Forester and revenues therefrom are being used to pay the cost of management. At the same time, however, the Board has hesitated to use revenues from grazing lands or water lands to pay for the cost of administration thereof. The Legislature has not appropriated money for this purpose and, as a result, there has been little management or development of these categories of lands.

Distributable income of the common school fund is paid over to school districts within Oregon in a manner consistent with the provisions of section 4 of Article VIII of the Constitution which requires that such income shall be distributed among the counties in proportion to the number of children resident therein between the ages of 4 and 20 years. During the 1966-1967 fiscal years the amount distributed for each such child was $3.86. Since not all children of these ages were in public schools the amount per child in average daily membership in public schools amounted to $5.25. That this amount represents a small part of the total cost of education is reflected by the fact that the average cost of educating a pupil in average daily membership in the State of Oregon during 1967 was $605.00.

III. PROPOSED CHANGES

As the Committee interprets Ballot Measure No. 1 the proposed amendment to Article VIII of the Constitution would result in the following significant changes:

(1) The State Land Board would be authorized and required to manage lands under its jurisdiction with the object of obtaining the greatest benefit for the people of Oregon, consistent with the conservation of this resource using sound techniques of land management. As the Committee interprets the proposed provisions, the Board would no longer be required to manage school lands solely for the purpose of maximizing the revenue therefrom but could manage and develop school lands for nonrevenue producing purposes, such as recreation, conservation, and the like.

(2) The Board would be authorized to expend monies in the common school fund to carry out the Board's powers and duties in connection with the management of lands subject to its jurisdiction.

(3) Net revenues from school lands would no longer be distributed to school districts but would be added to the principal of the common school fund with only the interest from the invested fund to be distributed for school purposes.

(4) The present provision that the Governor, Secretary of State and State Treasurer are responsible for the investment of common school funds would be deleted and it would be provided instead that unexpended monies in the common school fund shall be invested as the legislative assembly may provide by law.

(5) It would become mandatory that the common school fund distributable income be used only for the support of primary and secondary schools. At present revenues are not used for the support of kindergarten or community colleges. The amendment would preclude their being so used in the future.
IV. ARGUMENTS IN FAVOR OF PROPOSED AMENDMENT

1. The amendment would eliminate the uncertainty as to whether the State Land Board has authority to use money in the common school fund for the purpose of managing school lands.

2. It is desirable that school lands belonging to the state be properly managed so as to assure maximum revenue and continued productivity. The amendment would require that the school lands be so managed.

3. The amendment would permit State school lands to be used for their highest and best purposes and would provide a source of money for the development and management of lands for such purposes.

V. ARGUMENTS AGAINST THE PROPOSED AMENDMENT

1. The amendment is not necessary in order to enable the state to manage and develop school lands properly. The Legislature may appropriate money for this purpose.

2. It is undesirable to abandon the concept that school lands and school funds are held in trust for schools by permitting use of such lands for nonrevenue producing purposes and use of such funds for the development and management of school lands for nonrevenue producing purposes. The amendment is not necessary to enable use of state lands for their highest and best purpose.

3. It is undesirable to grant to the State Land Board authority to expend school monies for the management and development of school lands and to dedicate school lands to nonrevenue producing purposes without clear provision for control by the Legislature or some other limitation on the amount which may be expended.

4. It is highly undesirable to require that revenues from school lands be invested rather than distributed to schools. It is particularly undesirable that such a requirement be in the Constitution.

VI. DISCUSSION OF PROPOSED CHANGES

Of the changes which would be effected by the proposed amendment to the Constitution, the Committee considers the following to be significant and therefore limits its discussion to these changes:

1. The common school fund may be used for the purpose of paying expenses incurred in managing the lands from which revenues for the common school fund are derived.

2. Lands from which common school fund revenues are derived could be used for nonrevenue producing purposes and monies in the common school fund may be used for the development and management thereof.

3. Revenues from school lands not expended for management would have to be added to the principal of the common school fund and could no longer be paid directly to school districts.

A. Use of monies in the common school fund to pay management expenses

At present the right of the Board to use monies in the common school fund to pay expenses incurred in managing school lands is not clear. The Board is presently following inconsistent practices. Timberlands apparently are well managed with revenues from timber sales used to pay management expenses. Grazing lands, on the other hand, apparently are managed to a most minimal extent, the Board being in doubt as to whether it may expend common school fund monies for the management and development of these lands.

Since water lands are not “school” lands in the constitutional sense, even though they are administered with school lands, there is no constitutional prohibition that could be construed to prevent the use of water land revenues for the administration of water lands if the Legislature should choose to provide therefor.
The Committee was advised that the productivity on improvable range lands could be remarkably increased through proper management techniques. Apparently it is biologically feasible to double or treble production on improvable range lands through management. This could be accomplished primarily by spraying sagebrush, seeding range lands with grass, withholding land from grazing for two or more growing seasons, and adjusting stock to the carrying capacity of the land. Theoretically such improvement of the lands would increase the revenues of the common school fund. Whether in actual practice increased revenues would result is not known. The Committee observes that the number of potential lessees of grazing lands is very limited and that the Board could maximize its opportunity to increase revenues only by further blocking up of its lands. In any event it would take some time to recover, from increased revenues, the money which would be best used for the development of the range lands.

The proposed amendment to the Constitution would eliminate the confusion which now exists as to the right of the State Land Board to expend monies in the common school fund for management of school lands. No doubt elimination of this confusion would be desirable. Also, the Committee assumes that it would be in the public interest for grazing lands within the state to be made more productive.

However, clarification of the existing constitution is not essential to make proper provision for the management and development of school lands since the Legislature may appropriate monies from the general fund of the state for the purpose of managing lands from which the common school fund revenues are produced. The State Legislature is responsible for providing a system of public schools. To the extent that the common school fund has revenues the Legislature's obligation to provide other monies for schools from the general fund is reduced. Therefore, it would be quite appropriate for the Legislature to appropriate money for the management of school lands if such appropriation would result in greater revenues for schools from the common school fund.

Notwithstanding a statement to the contrary in the explanation of the measure in the Voter's Pamphlet, it appears to the Committee that if the amendment is adopted, the Board will have authority to decide the extent and manner in which common school monies will be used for management of school lands without effective supervision by the Legislature. Normally the Legislature controls the use of public monies. The Committee feels that vesting, in the Board, unfettered control of the use of school monies for the management of school lands would not be desirable.

B. Right to use school lands for nonrevenue producing purposes and to devote common school fund monies to the development and management thereof

There can be little argument that when the highest and best use of land is for recreational or other nonrevenue producing purposes the lands should be used for such purpose. However, it would be quite inconsistent with the concept that school lands are to be used to produce revenues for schools to permit the State Land Board to use school lands for public purposes, no matter how desirable, which would impair the production of revenues for schools. It would be particularly inconsistent with the "trust for schools" concept to permit the State Land Board to use school monies for the development and management of nonrevenue producing lands. The proposed amendment permitting such use of school lands and school monies would mean the end of the time-honored requirement that the school lands and the common school fund be held in trust for the benefit of schools.

Amendment of the Constitution to permit school lands and school monies to be used to develop and manage nonrevenue producing facilities appears to be completely unnecessary to accomplish the end that the lands involved be used for their highest and best purpose. The Board either has or could be given the power to sell or exchange lands which are best suited to nonrevenue producing uses, with the proceeds of the sale or exchange to be used for the purpose of augmenting the common school fund.

If the amendment were passed it is conceivable that the State Land Board might develop a system of parks, camps and other recreational facilities paralleling that of the State Highway Commission. Duplicate administration of such facilities
would not necessarily be desirable. As in the case of use of school monies to pay management expenses, the power of the State Land Board to dedicate lands to non-revenue producing purposes and to expend monies from the school fund for the development and management thereof for such purposes would not appear to be subject to control by the Legislature. Rather vast power would be given to the Board which, if the Committee properly interprets the proposed amendment, could be exercised without the usual check by the Legislature.

C. Investment of revenues from school lands in lieu of distribution to schools

During the 1966-1967 fiscal year 58.3 per cent of the distributable income of the common school fund was derived from revenues from school lands. The amount thereof was approximately $1,860,606. The requirement in the proposed amendment that these revenues be added to the principal of the common school fund rather than distributed directly to school districts means that monies available for schools from the common school fund would be reduced. If the level of education were to be maintained the lost monies would have to be replaced either by increased ad valorem taxation or by increased appropriations for schools from the general fund. It is true that to the extent that revenues are added to the principal of the common school fund, interest earnings from the fund would be increased, and that at some time in the future the lost revenues available for schools might be recovered and that total income for schools might even be increased.

It is difficult to understand why the Legislature should have proposed the taking away of revenues from schools and the investment of these revenues in what would amount to an endowment fund at a time when it is generally recognized that the monies appropriated by the state for schools are completely insufficient. The storing rather than the use of school monies appears to be contrary to good public policy.

VII. CONCLUSIONS

The Committee believes that the undesirable features of the amendment clearly outweigh the desirable features. This is particularly true since proper management and use of the school lands can be achieved without the adoption of the amendment to the Constitution. The Committee feels that monies in the common school fund should not be diverted to purposes other than school purposes, no matter how worthy, that it would be very unwise to require that revenue from school lands be invested rather than distributed to schools, and that in any event the power to dedicate lands and to expend monies in the common school fund for nonrevenue producing purposes should be subject to control by the Legislature.

VIII. RECOMMENDATION

In view of the foregoing your Committee recommends that the City Club of Portland go on record as opposing passage of State Ballot Measure No. 1 by urging a “No” vote thereon.

Respectfully submitted,

James H. Burghardt
Robert L. Furniss
James S. McCready
Clifford E. Zollinger
William W. Wyse, Chairman

Approved by the Research Board May 20, 1968 and submitted to the Board of Governors.

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