



South Dakota Legislative Research Council

Issue Memorandum 94-40

AMENDMENT A--THE TAXATION OF SCHOOL AND PUBLIC LANDS

Introduction

The first of five amendments to the South Dakota Constitution that the voters will be asked to decide upon on November 8 is Amendment A, which proposes to grant the Legislature authority to provide for the payment of local property taxes by the lessees of school and public lands. Some voters may view the provision as a taxation relief issue; others as a question of state aid to schools; still others as an issue of local control or tax equity. This issue memorandum neither endorses nor opposes Amendment A but attempts to provide background and a brief analysis of the measure. A more detailed description of school lands policy, which may also be helpful in the consideration of Amendment A, was published by this office on May 31, 1994, as *Issue Memorandum 94-10--W.H.H. Beadle and the South Dakota Common School Lands: Historical Overview of Amendment A*.

Background

The office of the Commissioner of School and Public Lands was created in 1889 by Article VIII of the state constitution to manage in perpetuity the public school lands of the state and the permanent school fund, which was derived primarily from the sale of a portion of those lands. The driving force behind Article VIII was General William Henry Harrison Beadle, who had been the territorial superintendent of public instruction and who was to acquire a national reputation as an innovative leader in the protection and

management of public endowment lands. In order to ensure that it would be difficult for the unscrupulous or shortsighted to sell the state's birthright of school and public lands, Beadle insisted upon very specific procedures for their sale and maintenance being written into the constitution. It is partially because of the detail and inflexibility of Article VIII that Amendment A and Amendment C are before the voters at this time.

From the implementation of the federal constitution in 1789, when the United States assumed the western land claims of the original thirteen colonies, the federal government has owned large tracts of undeveloped public lands. Early on it became the policy of Congress to subsidize important projects like public education, internal improvements, and railroad construction by means of land grants. After 1862, homesteading became the primary method of disposing of public lands and this hastened the rapid settlement of the West. When large numbers of thinly settled and economically underdeveloped states were admitted to the Union in the 1870s, 1880s, and 1890s, Congress prudently endowed each state with two out of every thirty-six sections of public land for the perpetual support of public education. At the time of statehood, South Dakota was extensively settled only in the southeastern corner. The first consideration of the new commissioner of school and public lands was to claim as many of the still available allotted school sections. With a total state acreage of 48,545,280, the permanent

school fund was theoretically entitled to approximately 2,699,118 acres. Of this amount, 1,614,216 were initially salvaged and registered. However, because of the settlement and ownership patterns, distribution of these lands was not uniform across the state.

Under the terms of the Enabling Act, the state was permitted to indemnify itself by claiming alternative tracts of land to replace school land sections that had been homesteaded or sold prior to statehood. This process of selecting and registering indemnity lands began in the 1890s and was substantially completed by 1910, although a few acres continued to be claimed throughout the Great Depression. By 1944, 608,823 indemnity acres had been taken. But whereas the distribution of original school lands was somewhat disproportionately heavy in the northwest, the distribution of indemnity lands was decidedly so. While virtually no indemnity lands were claimed east of the James River, the four northwestern counties of Harding, Perkins, Butte, and Meade contributed 55.21 percent of all state indemnity lands. Indeed, Harding County alone supplied an amazing 235,366 indemnity acres, or 38.66 percent of all state indemnity lands. Since Harding County's original allotment was 93,156 acres, its indemnity acreage constitutes 253 percent of its original allotment.

NOTE:

In Table I, land area is expressed as square miles, the other columns in acres.

TABLE I
DISTRIBUTION ON PUBLIC SCHOOL LANDS

COUNTY	LAND AREA	COMMON SCHOOL	INDEMNITY LANDS	CURRENT ACREAGE
Aurora	707	21,739	-	880
Beadle	1,258	34,110	-	-
Bennett	1,182	13,771	26,342	17,346
Bon Homme	552	1,293	-	-
Brookings	785	2,588	-	555
Brown	1,722	36,627	800	3,973
Brule	815	27,964	-	19
Buffalo	475	7,407	-	-
Butte	2,251	74,838	46,808	88,635
Campbell	732	22,915	8,307	8,549
Charles Mix	1,080	12,675	-	40
Clark	953	20,121	311	421
Clay	409	-	-	-
Codington	694	5,816	-	-
Corson	2,467	42,252	34,199	28,873
Custer	1,668	29,726	22,954	10,903
Davison	436	5,272	-	-
Day	1,022	12,012	847	595
Deuel	631	7,541	-	-
Dewey	2,310	24,872	17,269	7,457
Douglas	434	7,434	-	-
Edmunds	1,149	33,767	3,840	13,532
Fall River	1,740	55,242	-	20,912
Faulk	1,004	28,257	4,275	12,692
Grant	881	9,015	748	-
Gregory	1,013	21,408	989	40
Haakon	1,822	66,376	9,343	12,602
Hamlin	512	4,659	-	-
Hand	1,437	44,182	-	8,555
Hanson	433	3,605	-	-
Harding	2,678	93,155	235,366	273,335
Hughes	757	22,247	48	397
Hutchinson	816	2,159	-	-
Hyde	860	27,491	7,965	18,450
Jackson	1,872	24,786	-	4,187
Jerauld	530	14,509	-	-
Jones	971	32,943	-	4,080
Kingsbury	824	12,118	-	-
Lake	560	1,627	-	-
Lawrence	800	7,318	-	-
Lincoln	578	40	-	320
Lyman	1,679	45,183	-	8,348
McCook	578	4,012	-	-
McPherson	1,148	24,496	14,723	22,004
Marshall	848	15,440	1,337	3,250
Meade	3,481	110,105	9,515	54,012
Mellette	1,311	19,111	29,837	11,029
Miner	570	13,214	-	-
Minnehaha	810	320	-	-
Moody	520	1,398	-	-
Penningson	2,783	67,739	12,243	22,463
Perkins	2,884	99,727	44,465	62,357
Potter	869	31,016	15,323	21,946
Roberts	1,102	10,536	-	-
Sanborn	589	12,490	-	-
Shannon	2,094	-	-	-
Spink	1,505	40,592	560	2,534
Stanley	1,431	50,883	8,756	9,554
Sully	972	37,545	22,485	15,673
Todd	1,388	-	-	-
Tripp	1,618	48,703	10,429	5,556
Turner	617	400	-	-
Union	453	704	-	-
Walworth	707	23,917	8,582	15,272
Yankton	518	1,105	-	-
Ziebach	1,969	39,676	10,152	6,192
TOTALS	75,952	1,614,216	608,822	807,553

The counties that contributed a disproportionate share of the state's common school lands, and especially its indemnity lands, did not do so voluntarily.

Commissioners of school and public lands selected indemnity lands whenever and wherever they were available and, after 1900, that was increasing the grazing lands of northwestern South Dakota. Early legislatures recognized that by concentrating school lands west of the Missouri River, and especially in the extreme northwest, they were indirectly impacting the tax base of those local governments. Various legislatures attempted to redress this imbalance by appropriating equalization grants for impacted counties. These equalization grants were, in effect, payments in lieu of taxes and were designed to minimize the impact of concentrating the indemnity allotments in a few counties. Gradually the annual equalization appropriation came to be known as the "short grass bill," since it benefited primarily the short grass, or grazing, counties of western South Dakota. At the depth of the Depression in 1939, the Legislature

appropriated a mere \$35,000 in short grass equalization. In 1961, with a strong state economy and high farm prices, the short grass payment was \$841,000. But as the times became hard and budgets tightened, passage of the short grass bill developed into an annual test of political will. By 1975, the short grass payment had shrunk to \$601,000. Everyone was dissatisfied with the short grass system and was looking for an alternative.

In 1977 it was proposed to eliminate the short grass payments by permitting the local governments to tax school land grazing leases. Although the constitution clearly prohibited the direct taxation of school lands, proponents argued that this did not apply to the grazing leases on school lands. The counties interpreted the legislation to permit the taxation of the leaseholders of school and public lands as if the leaseholder were the property owner. Taxes were assessed and collected under this system for fourteen years. Then after a critical Attorney General opinion, the issue came before the South Dakota Supreme Court in the Spring of 1992. In *Harding*

County v. South Dakota State Land Users Association, 486 N.W. 2d 263 (S.D.1992), the Court unanimously declared that the counties could not constitutionally tax the leaseholder of school lands as though the leaseholder were the landowner, citing Article XI, section 5, of the state constitution as authority. The Court did not specifically declare the statute permitting the taxation of grazing leases unconstitutional, but it indicated that the true value of the lease was only a small fraction of the value of the leased property and that any valid leasehold tax would have to reflect that difference.

In response to the decision, legislators representing several of the affected counties requested that the 1992 Local Government Study Commission (LGSC) study the question. The LGSC recommended the introduction of a proposed constitutional amendment which, if enacted, would specifically permit the taxation of school and public lands based on the underlying value of the leased land rather than the value of the lease itself. Senator William J. Johnson and others introduced SJR 1 in 1993 on behalf of the

Local Government Study Commission proposing that Article VIII, section 9, of the constitution be amended to read:

The Legislature may provide by appropriate legislation for the payment of local property taxes by the lessees of school and public lands.

The joint resolution passed both houses unanimously and will appear on the 1994 general election ballot as Amendment A.

The Arguments

Proponents of Amendment A argue that its passage is a matter of simple fairness. The concentration of the vast majority of the school endowment lands in the northwestern corner of South Dakota was an accident of history and circumstance. The presence of so much state-owned property in Harding, Perkins, Butte, and Meade Counties confers no perceptible advantage on the area and seriously depletes the local tax base. These counties are not responsible for their plight, and the Legislature has repeatedly recognized that fact and attempted to redress it-- first by short grass

appropriations, then by leasehold taxes, and now by the passage of Amendment A. Allowing the counties to constitutionally tax school lands in the same way that other agricultural and grazing land is taxed is the simplest, most logical, and a permanent means of redressing a longstanding inequity. Moreover, although its impact would be strongest in the northwest counties, all other counties containing school endowment lands would also benefit in the same manner and to the same degree as all other counties. Leaseholders will benefit from having a portion of their lease expenses remain in the local area as property taxes to support school and local government. Proponents feel that after one hundred five years it is time to fix the flaw in South Dakota's school and public lands system.

Opponents do not dispute that the present system treats some counties unfairly, but they maintain that Amendment A is not the only possible means of redressing the balance. Currently the Commissioner of School and Public Lands administers over 800,000

acres of public lands, which in fiscal year 1994 generated \$2,130,928.33 in lease payments. In the same year, the permanent school fund of approximately \$110 million, derived from past sales of school lands, generated an additional \$9,286,199.21 in revenue. These two sources, coupled with some lesser amounts from oil, gas, and mineral leases, permitted the disbursement of \$67.14 per student to the state's school districts. Opponents maintain that if the leaseholders of school lands are required to pay property taxes on those leased lands, eventually market forces will dictate that the leaseholders will bid less for the leases in order to recoup the additional expense of paying their property taxes. Depending upon how fully market forces would react to and effectuate the reduction, the annual per student distribution would be reduced--perhaps by as little as a few cents, perhaps by as much as a dollar. Those counties containing more school and public lands than average would reclaim the loss and more through increased property tax revenues. Those counties with less than average

amounts of school and public lands would recoup only a portion of the reduction in the per capita distribution. Counties with no school lands would absorb the entire reduction.

Conclusion

Historically the school children of South Dakota have been well served by the school and public lands system that General Beadle created and set in place. Over the years the public has rightfully viewed the many attempts to amend Article VIII with a critical skepticism. But over the course of a century, dramatic changes in investing, range management, oil and mineral leasing, landholding patterns, and public administration has demonstrated that Article VIII is no longer able to cope with all aspects of late twentieth century land management. On general election day, the voters will decide if tax exempt status on school and public lands is an idea that has outlived its usefulness.

This issue memorandum was written by Reuben D. Bezpaletz, Chief of Research Analysis and Legal Services for the Legislative Research Council. It is designed to supply background information on the subject and is not a policy statement made by the Legislative Research Council.
