



South Dakota Legislative Research Council

Issue Memorandum 94-10

W.H.H. BEADLE AND THE SOUTH DAKOTA COMMON SCHOOL LANDS: HISTORICAL OVERVIEW OF AMENDMENT A

Introduction

On November 8, the citizens of South Dakota will be asked to vote on 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 a brief overview of the historical background of the proposed amendment may assist voters in determining its relative merits.

Federal Land Policy Prior to South Dakota Statehood

Today, nearly a century after the settlement of the American frontier, it is easy to forget the central role that federal land policy played in the political debate of eighteenth and nineteenth century America. With the acquisition from England of the vast Northwest Territory between the newly independent original thirteen states and the Mississippi River at the end of the Revolutionary war, the Congress, first under the Articles of Confederation and later under the Constitution, struggled to provide for the orderly opening of the West. The Ordinance of 1785 established the "congressional township" system, surveying the public domain into tracts six miles square, which were periodically offered to developers at public auction. Income realized from land sales quickly became a major source of

federal revenues and provided much of the means by which Hamilton was able to establish the credit of the young republic and initiate the retirement of the \$85,000,000 war debt. By the 1820s land sales and tariffs, coupled with the acquisition of the Louisiana Purchase, were producing the consistent federal budget surpluses that permitted Henry Clay and other nationalists to fund a major program of "internal improvements" constructing the roads, bridges, and canals essential to the settlement of the West.

The 1840s witnessed the flood tide of American expansionism. The United States attained its continental dimensions by annexing the sovereign nation of Texas, successfully resolving British claims to the Oregon Country, and forcing the cession of California and the Southwest at the conclusion of the War with Mexico. The federal government now possessed expanses of land so vast and remote that there was little hope of disposing of them by orderly sales to developers or speculators. At the same time federal immigration laws and an agrarian population explosion were creating a social class of enterprising Americans who needed land but who did not have the financial resources for its purchase. First, the Free Soil Party and then the Republicans attempted to fulfill the political agenda of this landless frontier constituency promising "free soil, free speech, free labor, and free men." After the secession of the slave-

holding South and the election of Abraham Lincoln, the Republican Congress was able to enact momentous changes in federal land policy. Passage of the Homestead Act in 1862 promised 160 acres of prime Midwestern farmland to anyone capable of residing on it for five years, making minimal improvements, and paying a low registration fee. The Morrill Land-Grant Act reserved 30,000 acres of public domain for every senator and representative of every state willing to establish a college of agriculture and mechanical arts. Congress also decided to subsidize railroad construction with generous land grants; by 1864, the Union Pacific had received grants that totaled an area greater than New England.

As the western states negotiated the terms of their admission to the Union, it became customary for Congress to make concessions of public land to support the new state governments. Texas, upon annexation, had successfully preserved a broad tract of public land--some of which was sold to finance construction of the state capitol in Austin, some granted to the Texas Pacific to encourage railroad construction. Most of the Midwestern states had received land grants to support public education. By the 1880s, it was usual for a newly admitted state to receive one section in each congressional township as an endowment for public education. Many states quickly sold off their endowment lands--sometimes at less than the appraised value or under questionable circumstances. Some states managed their endowment lands well and for the perpetual benefit of their public school system. By 1885, one man, General William Henry Harrison Beadle, was determined that the school lands of the Northern Plains states should be protected.

General Beadle and the Omnibus Enabling Act

Beadle was a prime example of the self-made,

dedicated, and highly competent statesman that nineteenth century America seemed to replicate in such amazing variety. Born on a modest farm in Indiana in 1838 to Scottish immigrant parents, he worked his way through the University of Michigan taking a degree in civil engineering. Volunteering for service in the Union army, he rose through the ranks to become a brigadier-general at the age of twenty-seven. In 1869 President Grant sent him to Dakota Territory as surveyor-general. In 1877 he was elected to the territorial legislature and quickly became a leader in the statehood movement. Beadle knew that in the mid-1880s Dakota Territory was too poor and thinly settled to support the type of first-class educational system that its rural, agrarian, and often-foreign-born citizens needed. He believed that the sparseness of settlement could be converted to advantage by convincing Congress to set not one, but two, sections in each congressional township aside as a perpetual school trust.

By the time South Dakota's constitutional convention met in Sioux Falls in 1885, General Beadle was the incumbent territorial superintendent of public instruction. He easily convinced his fellow delegates that South Dakota should hold out for a congressional grant of two sections per township as an endowment for public education. In order to safeguard those school lands against dissipation and mismanagement, he had provisions, which still exist today in Article VIII, written into the draft constitution severely limiting the state's ability to sell school land and requiring that the proceeds from all sales be deposited in a permanent school fund.

During the late 1880s, the United States

was enjoying a protracted period of economic prosperity. When the statehood petition of South Dakota reached Congress in 1889, General Beadle's school lands policy was generally viewed as

progressive and farsighted. In the Omnibus Enabling Act of 1889, which provided for the admission to the Union of North Dakota, South Dakota, Montana, and Washington, the Beadle program was adopted in its entirety and extended to all four states. Later similar benefits were granted to Idaho, Wyoming, New Mexico, and Arizona upon their admission to the Union. Thus W.H.H. Beadle became the founding father not only of South Dakota's public education system but of much of the American West's as well. General Beadle was urged to become the state's first commissioner of school and public lands; he chose instead to accept the presidency of Madison State Normal School, now Dakota State, leaving the task of implementing the acquisition of the state's school lands to early commissioners like Osmer Parker, Thomas Ruth, and John Lockhart.

Illustration I

Beginning with the Northwest Territory in 1786, the government surveyed all public lands into thirty-six square mile congressional townships with a grid of 640-acre sections numbered by an alternating "loom" method as illustrated. In South Dakota, the Enabling Act reserved sections 16 and 36 for the support of public education.

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18	17	16	beyond the 100th	14	13
19	20	21	Meridian. But	24	24
30	29	28	statehood brought a	26	25
31	32	33	torrent of settlement, and	34	36

many areas began to fill up quickly.

The Indemnity Process

At the time of statehood, South Dakota was extensively settled only in the southeastern corner. There were scattered holdings throughout the northeast and the James River Valley. Mining claims had attracted a considerable population to the Black Hills and ranching operations were numerous on the open range nearby. Much of western South Dakota was, however, unceded Sioux reservation; and hardly any farms existed

The first consideration of the new commissioner of school and public lands was to claim as many of the allotted school sections as were still available. In the southeast most of these sections were already taken. As column 2 of the following table indicates, nothing at all was available in Clay County and less than a thousand acres remained in Lincoln, Minnehaha, Turner, and Union counties. In other East River counties, availability

varied according to the degree of settlement. In the Black Hills, mining claims restricted the acquisition of the allotments, and claims were not permitted on Indian lands. 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 salvaged and registered. However, because of the settlement and ownership patterns mentioned above, distribution of these lands was not uniform across the state. For example, the four southeastern counties of Union, Clay,

Turner, and Lincoln comprise 2.71 percent of the state but contributed just 0.09 percent of the original common school lands. In the northwestern counties of Harding, Perkins, Butte, and Meade, on the other hand, an area comprising 15.13 percent of the state's landmass yielded

23.41 percent of the original school lands. By way of comparison, for four counties in the central James River Valley, Sanborn, Jerauld, Beadle, and Hand, the respective figures are a relatively proportionate 5.00 percent and 6.52 percent.

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.

TABLE I
DISTRIBUTION ON
PUBLIC SCHOOL
LANDS

COMMON INDEMNITY CURRENT COUNTY SCHOOL LANDS ACREAGE	LAND AREA
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
-	
-	

NOTE:

Land area is expressed as square miles, the other columns in acres

Corson		397	
2,467		Hutchinson	
42,252	34,199	816	2,159
28,873		-	
Custer		-	
1,668		Hyde	
29,726	22,954	860	27,491
10,903		7,965	
Davison		18,450	
436	5,272	Jackson	
-		1,872	
-		24,786	-
Day		4,187	
1,022		Jerauld	
12,012	847	530	14,509
595		-	
Deuel		-	
631	7,541	Jones	
-		971	32,943
-		-	
Dewey		4,080	
2,310		Kingsbury	
24,872	17,269	824	12,118
7,457		-	
Douglas		-	
434	7,434	Lake	
-		560	1,627
-		-	
Edmunds		-	
1,149		Lawrence	
33,767	3,840	800	7,318
13,532		-	
Fall River		-	
1,740		Lincoln	
55,242	-	578	40
20,912		-	
Faulk		320	
1,004		Lyman	
28,257	4,275	1,679	
12,692		45,183	-
Grant		8,348	
881	9,015	McCook	
748		578	4,012
-		-	
Gregory		-	
1,013		McPherson	
21,408	989	1,148	
40		24,496	14,723
Haakon		22,004	
1,822		Marshall	
66,376	9,343	848	15,440
12,602		1,337	
Hamlin		3,250	
512	4,659	Meade	
-		3,481	
-		110,105	9,515
Hand		54,012	
1,437		Mellette	
44,182	-	1,311	
8,555		19,111	29,837
Hanson		11,029	
433	3,605	Miner	
-		570	13,214
-		-	
Harding		-	
2,678		Minnehaha	
93,155	235,366	810	320
273,335		-	
Hughes		-	
757	22,247	Moody	
48		520	1,398

-	-
-	-
Pennington	
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 Short
Grass Era***

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. In these counties aridity and topography discouraged crop farming, and a single homestead was too small to constitute a viable cattle ranch.

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. Since the state paid no property taxes on school lands, counties and school districts were forced to tax private property at higher rates. Various legislatures have 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.

The short grass appropriation was always a controversial item on the legislative agenda. The heavily affected western counties viewed equalization as a necessity and a right. The East River generally conceded the fairness of equalization but often fought over the amount of the appropriation. 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.

The Lease Tax Era

In 1977 an alternative appeared in the form of SB 274. Introduced by Senator Curt Jones of Britton, it 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. There was disagreement about the taxable value of such leases. Some felt that the lease had no commercial value since it could not be transferred; others contended that the value of the lease was the same as the value of the leased land. In the end, both sides agreed that it was time to try something different, and SB 274 passed both houses unanimously.

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. Some continued to doubt the constitutionality of the leasehold tax, but no one was eager to reinstitute the annual short grass appropriation. Finally 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 property of the United States and of the state, county and municipal corporations, both real and personal, shall be exempt from taxation, provided, however, that all state owned lands acquired under the provisions of the rural credit act may be taxed by the local taxing districts for county, township and school purposes, and all state owned lands, known as public shooting areas, acquired under the provisions of § 25.0106 SDC 1939 and acts

amendatory thereto, may be taxed by the local taxing districts for county, township and school purposes in such manner as the Legislature may provide.

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, 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.

**This issue memorandum
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It is designed to supply
background information on the
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