

October 3, 1933.

At the last session of the legislature Chapter 42, relating to rentals to be charged for agricultural and grazing lands and town lots owned by the State, was passed. It received the approval of the governor on March 2, 1933, and became effective from and after that date. Thereafter, it was the subject of attack in the supreme court, but the attack failed. On May 18, 1933, two days after the opinion of the court was handed down, the State Board of Land Commissioners adopted a motion closely conforming to the provisions of Section 3 of the Act so far as the rentals of grazing lands are concerned, but providing that where there was no competitive bidding all new leases should expire on or before February 28, 1935.

It appears that shortly before March 2 certain persons, being desirous of leasing state grazing lands, applied to the Land Office for the privilege of so doing and tendered the rentals required for a period of one year under the old law. It appears, also, that shortly after March 2 certain other persons, being likewise desirous of leasing state grazing lands, applied to the Land Office for the privilege of so doing, and tendered the rentals required for a period of one year under the new law. Some time after March 2 leases running from March 1, 1933, to February 28, 1935, were issued to both classes of applicants, but those applicants who applied before the 2nd of March remitted about twice as much for the same character of grazing land as did those applicants who applied after the 2nd of March. Of course the rental moneys long since found their way into the state treasury.

The question now arises as to what should or can be done to place both classes of lessees on an equal footing. As we have stated the State Board of Land Commissioners executed all these leases after the 2nd of March. Such being the case, the provisions of Chapter 42 could well have been followed, indeed should have been followed, not only as to the persons who applied after but also as to the persons who applied before the 2nd of March. As the leases issued to the latter do not conform to the terms of the Act to the

Opinion No. 351

**State Board of Land Commissioners—
State Lands—Grazing Lands—Rentals.**

HELD: The State Board of Land Commissioners may, by resolution, credit those persons who paid rentals for state grazing lands prior to March 2, with full payment upon the basis of Section 3 of Chapter 42, Laws of 1933.

same extent as do those issued to the former it is our view that the Board has the power to recall them for correction under Section 115, Chapter 60, Laws of 1927.

From the nature of the state it can act only through its officers and agents and it is bound by their contracts in its behalf which are entered into within the scope of their authority and in compliance with the constitutional and **statutory provisions** which regulate the contracts of the state. (3 Page on Contracts, §1866, and 1929 Supp.) The law of a state under which its agent makes a contract on its behalf is a part of the contract. (Id. §1844; 59 C. J. 171.)

By the execution of an **authorized** contract the state acquires certain legal rights and incurs certain liabilities which are fixed and ascertained, or ascertainable. Thereafter no one can increase or diminish the rights of the state or increase or reduce its liabilities thereunder unless he has been vested with authority so to do by express grants or by clear implication. (California Highway Comm. v. Riley, 218 Pac. 579.)

We have already said that the rentals have been turned into the state treasury. It is not possible, therefore to make refunds to those who forwarded their moneys to the Land Office before the 2nd of March. But we believe the Board may by resolution give them full credit for payments made, using the rental prices fixed by section 3 of the Act as the basis therefor. If that be done, the advantage enjoyed by the one set of leases over the other set of leases will practically disappear.

While section 26 of Chapter 60 fixes the time for the payment of rental hereafter falling due, it can be confidently asserted that payment of the same before it falls due is not prohibited.