

difference between the rental paid therefor and the statutory rental for grazing land in a case where the land instead of being used to produce crops has been summer fallowed, and also regarding the power of the State Board of Land Commissioners to make a refund to a lessee of state land of the unearned part of the rental paid in a case where the land is sold and possession given before the expiration of the current year.

Section 1 of Chapter 60, Laws of 1927, provides: "There is hereby created a department of the government of the State of Montana to be known and designated as the 'Department of State Lands and Investments.' The general purpose of this department shall be to administer the Federal Land Grants made to the State of Montana, and the other state lands, and the funds arising from these lands, and the funds coming under its control through the provisions of Article XXI of the State Constitution, or otherwise, as hereinafter more specifically provided."

Section 3 of the same chapter provides: "The State Board of Land Commissioners, consisting of the Governor, Superintendent of Public Instruction, Secretary of State and Attorney General, as provided by the Constitution, shall be the governing board of the Department of State Lands and Investments; it shall have and exercise general authority, direction and control over the care, management and disposition of all state lands and the funds arising from the leasing, use, sale and disposition of such lands or otherwise coming under its administration. In the exercise of these powers, the guiding rule and principle shall be that these lands and funds are held in trust for the support of education, and for the attainment of other worthy objects helpful to the well being of the people of this State; and that it is the duty of the board so to administer this trust as to secure the largest measure of legitimate and reasonable advantage to the State. The enumeration in this Act of specific powers conferred upon the board shall not be so construed as to deprive the board of other powers not enumerated but inherent in the general and discretionary powers conferred by the Constitution, and neces-

#### Opinion No. 564

##### State Lands—Leases—Refunds of Rentals.

HELD: Proper refunds of rentals, charged against the proper fund, may be made by the State Board of Land Commissioners from rentals paid before same are deposited with the state treasurer: (a) Where the lessee of agricultural land has summer fallowed such land, (Sec. 3, Chapter 42, Laws of 1933); and (b) Where the leased land is sold and possession given before the expiration of the current year.

June 27, 1934.

You request an opinion regarding the power of the State Board of Land Commissioners to make a refund to a lessee of state agricultural land of the

sary for the proper discharge of its duties; but there can be no such implied powers inconsistent with any part of the Constitution, nor shall any inherent powers be assumed to exist which would be inconsistent with any statutory provision or with the general rule and principle herein stated."

Section 3 of Chapter 42, Laws of 1933, provides that "agricultural rentals shall apply and be charged and collected when the land is leased for or used for the raising of grain of any description, potatoes, beets or other cultivated crops, or for raising and harvesting alfalfa, clover, timothy or other grasses, or for other crops gathered or harvested from the land except that the grazing rates only shall be charged for summer fallowed land."

State lands are a trust and the funds derived therefrom are trust funds. (State ex rel. Koch v. Barret, 26 Mont. 62; Rider v. Cooney, 94 Mont. 295.) It has been held that the expenses of administering such trust may be taken from the trust funds without a specific appropriation therefor being made by the legislature. (State ex rel. Greenbaum v. Rhoades, 4 Nev. 312; Betts v. Commissioners of Land Office, 110 Pac. 766; United States v. Swope, 16 Fed. (2d) 215; State v. Searle, 109 N. W. 770; State v. Brian, 120 N. W. 916; 59 C. J. 240; note to Dickinson v. Edmondson, Ann. Cas. 1917C, at page 917.)

We may interject here that as a lease of state land, no matter what its character, is ordinarily, if not always, made on or before the first day of March, as the rental for the first year must then be paid and as the rental for each succeeding year must be paid between the 14th day of December of the preceding year and the 2nd day of February of the succeeding year (Sec. 26, Chap. 60, supra), it can be readily seen that a lessee of state agricultural land, when he pays the rental for any particular year, is not in a position to tell whether or not the land will be used to grow crops or will be summer fallowed that year.

It is said in the letter by way of suggestion that "if the lease in connection with which a certain refundment is made embraces public school lands, the refundment is due from the Public School Interest and Income Fund; if

the lease embraces State University lands, the refundment would come from the University Interest and Income Fund and so on." But we think sections 5 and 12, Article XI, of the Constitution present an insuperable obstacle to any attempt to make the suggestive effective. (Betts v. Commissioners of Land Office, supra.)

Our understanding, however, is that the practice of allowing refunds of the kinds in question has long prevailed and that its propriety has never been questioned. This is highly significant. Moreover, it strikes us that the practice is both fair and just. The trust funds should not be augmented in such a way as to work injustice on some of those whose money has gone into them.

Rentals from state lands are paid to the Commissioner of State Lands and Investments. Refunds therefrom could be made from time to time, as the occasion required, before depositing them with the state treasurer. We believe the law quoted above, custom, and the authorities cited justify it. In that way any conflict with constitutional or statutory provisions may be avoided. Care should be taken, of course, in each instance to make the charge against the proper fund.