

MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1848.

Augusta:

WILLIAM T. JOHNSON, PRINTER TO THE STATE.

1849.

TWENTY-EIGHTH LEGISLATURE.

No. 30.

HOUSE.

REPORT.

The undersigned, a minority of the committee on state lands and state roads, having had under consideration the subject of "the lands reserved for public uses," ask leave to submit the following

REPORT:

The call made by the present legislature upon the county commissioners and treasurers of those counties in which public lots are situated, for a detailed account of their proceedings, has been answered, the accounts received, and the following is an abstract:

COUNTY OF FRANKLIN.

Amount paid for expenses upon public lots,	\$1,587 72
Amount received from sales of timber, &c., on same,	1,100 00

The treasurer says that "other bills have accrued which have not been audited and paid; also a committee have just received a warrant to locate lots in two or more townships."

The county commissioners say, "all moneys received on account of timber on the public lands in unincorporated townships in this county, have been paid into the county treasury of said county, and invested in the security of said county, for the benefit of said townships."

COUNTY OF PENOBSCOT.

Amount paid out for expenses on public lots,	\$4,564 80
Amount received from sales of timber, &c., on same,	2,557 52

The county commissioners say, "that the surplus funds arising from the public lots in the county of Penobscot, have been paid into the treasury of said county, and have not been otherwise invested."

COUNTY OF WASHINGTON.

Amount paid out for expenses on public lots,	\$3,635 13
Amount received from sales of timber, &c., on same,	4,955 08
Amount due for stumpage on timber cut previous to winter of 1847-8,	5,815 41

The treasurer says "that no statements having been yet made of the operations of last winter, the amount due cannot be stated."

The county commissioners say, "that all the surplus funds arising from the proceeds of timber rent or stumpage collected for timber cut on the public lots in this county, are invested in the county of Washington, by being put into the treasury thereof at the rate of six per cent. interest, said interest to be paid by the county treasurer annually to the inhabitants of the said incorporated townships, in accordance with the statute which provides for the manner in which said fund shall be applied."

COUNTY OF AROOSTOOK.

Amount received from sales of timber, &c., on public lots,	\$238 00
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COUNTY OF HANCOCK.

Amount paid for expenses on public lots,	\$2,741 31
Amount received from sales of timber, &c., on same,	7,932 73

The county commissioners say, "that seven hundred dollars has been loaned to the town of Ellsworth; the balance of the above is still in the treasury. Exclusive of the above they have taken security for stumpage of timber to the amount of \$2,603.41, which

will be mostly collected during the present season. The claims for stumpage for timber taken during the past winter, amounts to about \$2,282, for which security will be taken as soon as the logs are down."

COUNTY OF PISCATAQUIS.

Amount paid for expenses on public lots,	\$1,279 49
Amount received from sales of timber, &c., on same,	3,749 27

The county commissioners say, "that all money and securities received on account of the public lots, have been deposited in the county treasury, and, that all the locations under the act of 1842, have been and are still in litigation by persons claiming to be adversely interested, and they have made this arrangement with the funds, thinking it the most advisable under the circumstances."

COUNTY OF SOMERSET.

Amount paid for expenses on public lots,	\$3,735 83
Amount received from sales of timber, &c., on same,	16,061 45

The county commissioners say, "Dec. 29, 1847, due from the county of Somerset for repairs on court house, \$2,845.10. A certificate was filed in the treasurer's office certifying that the amount was due from the county to the public land fund."

The footing up of the several accounts, therefore, appear to be as follows :

Total amount of receipts,	\$47,294 87
Total amount of expenditures,	17,554 28

Leaving in the hands of county treasurers a balance of \$29,740 59

Including the operations of last winter, the whole amount at the present time is probably between forty and fifty thousand dollars.

The seventh section of the tenth article of the constitution of Maine provides as follows:—"In all grants hereafter to be made by either state, of unlocated lands within the said district, the same reservations shall be made for the benefit of schools and of the

ministry, as have heretofore been usual, in grants made by this commonwealth.”

The eleventh section of the third chapter of the revised statutes, provides, as follows:—“In every township suitable for settlement, whether timber lands or not, there shall be reserved one thousand acres of land, to average in quality and situation with the other lands in the townships, for the exclusive benefit of said townships, as the legislature may hereafter direct.”

Upon an examination of the reports of the land agents for the years 1839 and 1846, it will be seen that there are about two hundred and twenty unincorporated townships held under grants from Maine and Massachusetts, either jointly or separately, and subject to the usual reservations of lots for public uses. There also remains about one hundred and eighty townships still belonging to the states either jointly or separately, including the unsurveyed lands, all of which, are entitled to the usual reservations of public lots, making in the whole, about four hundred townships, in which the reservations will amount to nearly four hundred thousand acres, equivalent to about seventeen townships.

From an examination of the early resolves and laws of the two states, in relation to these reserved lands, it is apparent that the land itself was originally the principal object of the grant, and nothing was done by the legislatures for the protection of this property while the fee was in abeyance. As timber however became valuable, in the progress of the settlement of the country, it was found necessary to protect these lots from strip and waste. Accordingly in 1831 the land agent was authorized and empowered to take care of the public lots and preserve them from pillage and trespass. The interference of the land agent with the public lots was resisted by the owners of the townships in which such lots were situated, upon the ground, that until the townships should be incorporated, the owners of the townships had the control of the public lots. In order to settle the question, an action was commenced by the land agent, in 1836, to be tried in the county of Washington.

The opinion of the court was delivered in 1840, and it was held, that until the incorporation of the township takes place, the fee of the land in the public lots is in abeyance, and the state by virtue of her sovereign power is entitled to the care and custody of the same, until the fee shall vest in those for whose benefit the grant was made. (See *State vs. Cutler*, 16 vol. *Maine Reports*, page 349.)

In 1842, the care and custody of the reserved lands were transferred to the county commissioners of the several counties, wherein such lands were situated, and they were empowered to cause said lands to be run out and located where locations had not taken place.

In 1845, the county commissioners were authorized to grant permits for cutting timber on the reserved lands and to pay over the proceeds to county treasurers ; and in 1846, they were authorized to invest the funds arising from the sale of timber on the reserved lands, in town, county, and state securities, and in certain cases, to pay over the interest to organized plantations.

Under the decision of our supreme court, before mentioned, the state holds these public lots as trustee for certain beneficiaries, under the provisions of the constitution and the laws of the state, and it is clearly manifest that it has no right to delegate this trust to others, as it alone is responsible for their management, until those shall come into existence for whose benefit the reservations were made. When the inhabitants of those townships become incorporated, in which public lots have been reserved, they will look to the state alone for the forthcoming of such amounts as may have been realized from the sales of timber taken from said lots, and will not consent to be turned over to other corporations or persons, who may have misapplied or lost the funds.

It is well known that a large proportion of these townships containing public lots, will never be incorporated, as they are valuable only for timber ; hence the importance of having the amounts realized from the sales of timber placed in the state treasury, where it will enure to the benefit of all the citizens of the state, and not

to the citizens of the particular counties in which such lands may lie.

In regard to those townships belonging to the two states, either jointly or separately, in which public lots are hereafter to be set out, it is believed that there is a peculiar fitness in having the care and custody of the same in the hands of the land agent, as he can dispose of the timber on such lots when he makes sale of the townships, and thereby save great expense.

It will be seen that the amount eventually to be realized from the sales of timber upon the public lots, must be very large, and that by the existing laws the county commissioners have the control of such funds without giving any bonds, as is usual in the case of receiving and disbursing officers, and it is believed that the several counties who may hold and be responsible for these funds, will in the end, be more embarrassed than benefitted by the use and custody of the same.

No separate account has been kept by any county of the funds arising from the different public lots, and as all the elder grants contain specific reservations for the use of the ministry, and as the constitution provides for a similar use of a portion of the lots in subsequent grants, and as it is doubtful whether the legislature can divert the same from the original destination ; hence, when the townships containing reservations shall be incorporated, the inhabitants have no means of knowing what amount of money has accrued from the school lots, or from the lots appropriated to the use of the ministry.

Having a land agent to take care of the public lands, and seeing no difference between the public lots and other public lands, so far as the state is concerned, they think the care and custody of the same should be placed under the control of the land agent, and the amounts realized from the sales of timber on such lots, should be paid into the state treasury.

With these views, they respectfully submit the accompanying bill.

ELIJAH L. HAMLIN,
S. K. GILMAN,
WILLIAM GOODENOW.

STATE OF MAINE.

IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED AND FORTY-EIGHT.

AN ACT in relation to lands reserved for public uses.

Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows :

SECTION 1. In all unincorporated townships or
2 tracts of land sold or granted, or which may be here-
3 after sold or granted by the state, or the common-
4 wealth of Massachusetts, or by both jointly, in which
5 lands have been, or may be reserved for public uses,
6 the land agent of the state shall have the care and
7 custody of such lands, and protect them from strip or
8 waste, until such township or tract shall be incorpo-
9 rated.

SEC. 2. When there is valuable timber or grass
2 on a township, or tract containing such reserva-
3 tions, whether the same be located or not, which is
4 being taken off, or liable to be taken off by trespass-

5 ers or others, the land agent shall sell at public auc-
6 tion, the right to cut timber and grass upon said re-
7 served lands, until said township or tract shall be
8 incorporated, he giving notice of the time and place
9 of sale, in the state paper, and also in one newspaper,
10 if any there be, in the county where said lands are
11 situated, three weeks successively, the last publica-
12 tion to be at least twenty days before such sale.

SEC. 3. Where such reservations have not been
2 located, and the timber and grass upon them are sold
3 as before mentioned, the purchaser may apply by
4 petition to the district court in the county where such
5 lands are situated, requesting that such reservations
6 be located in severalty, and on such petition the same
7 proceedings shall be had as are provided in chapter
8 one hundred and twenty-two of the revised statutes,
9 on application of the assessors of any town or planta-
10 tion, except as is hereinafter provided.

SEC. 4. In all cases of petition hereinafter filed
2 for the location of public lots, public notice of the
3 pendency of such petition shall be given before the
4 appointment of the committee, by publication in the
5 state paper, three weeks successively, thirty days be-

6 fore such appointment, and in such other manner, as
7 the court may direct, and the committee shall give
8 similar notice of their appointment and time and place
9 of meeting to execute the same, and no other notice
10 shall be required ; and in any such petition, different
11 townships or tracts of land may be embraced and
12 proceedings had to final judgment, in the same man-
13 ner, in relation to each parcel, as would be proper, if
14 each parcel was contained in a separate petition.

SEC. 5. Whenever any township or tract belong-
2 ing to Maine or Massachusetts, or to both jointly,
3 shall be sold, in which lands have been reserved for
4 public uses, it shall be the right and privilege of the
5 purchaser of such township or tract, to purchase the
6 right to cut timber and grass upon such reserved
7 lands, until such township or tract shall be incorpo-
8 rated, whether the same be located or not, upon the
9 same terms and price, per acre, at which the pur-
10 chase was made of the residue of said township or
11 tract, and in case such purchaser shall decline and
12 refuse to make such purchase, then it shall be the
13 duty of the land agent to make sale of said right to
14 cut timber and grass on said reserved lands, under

15 the same terms as are prescribed in the second sec-
16 tion of this act.

SEC. 6. All moneys or securities in the possession
2 of the treasurer or county commissioners of any
3 county, received from the sales of timber and grass
4 cut upon said reservations, or collected from trespass-
5 ers upon the same, shall be delivered and paid over to
6 the land agent, accompanied by a statement, describ-
7 ing the amount belonging to each particular reserva-
8 tion, and the expenses incurred upon the same, and
9 the land agent shall keep an accurate account of all
10 moneys and securities received by him, describing
11 the particular reservations from whence received.

SEC. 7. All expenses heretofore incurred by any
2 county in the location, protection, or management of
3 said reserved lands, shall be reimbursed to such county
4 whenever such amount shall be received from the
5 sales of timber and grass from said reservations in
6 such county, and the account of such expenses shall
7 be audited by the land agent, and when approved by
8 the governor and council, shall be paid by the land
9 agent to the treasurer of the county aforesaid.

SEC. 8. All balances of money in the hands of the

2 land agent, received from the sales of timber and
3 grass from said reservation, and from trespassers on
4 the same, or from county commissioners and county
5 treasurers as before mentioned, shall be paid over to
6 the state treasurer, who shall keep a just account
7 thereof, and pay the same to treasurers of towns, the
8 rightful owners, whenever applied for.

SEC. 9. Whenever the inhabitants of any such
2 township or tract, in which lands have been reserved
3 for public uses, shall have become organized into a
4 plantation for election purposes or otherwise, and
5 shall have organized one or more school districts ac-
6 cording to law, the state treasurer shall cause the
7 annual interest arising from such funds as may have
8 been paid to him by the land agent, arising from the
9 sales of timber and grass on the reserved lands in such
10 township or tract, to be paid yearly to the clerks of
11 such plantations, and the same shall be applied to the
12 support of schools in said district, to be distributed
13 according to the number of scholars in each district:
14 *Provided*, that if any district or plantation shall be
15 composed of parts of two or more townships, the in-
16 terest aforesaid shall be distributed as nearly as may

17 be, according to the proportion of the funds arising
18 from the reserved lands in each township, for the sup-
19 port of schools in such township.

SEC. 10. In all cases, where proceedings have been
2 commenced under the present law, by county com-
3 missioners, in relation to the location of said public
4 lots, the same may be prosecuted to final judgment
5 notwithstanding the passage of this act.

SEC. 11. All acts and parts of acts inconsistent
2 with this act, are hereby repealed.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, July 26, 1848.

ORDERED, That 350 copies of the foregoing report and ac-
companying bill, be printed for the use of the Legislature.

SAMUEL BELCHER, *Clerk.*