April 5, 1916

To Frank E. Mace, Land Agent
Re: Timber and Grass on Public Lots

. . . I assume that your inquiry relates to cases where the timber and grass on public lots have been sold by the State to individuals prior to the passage of Chapter 306 of the Public Laws of 1915.

In order to construe the Act of 1915 so that it would not be open to the objection that its effect would be to impair an obligation already entered into by the State, it must be held that under this act no lease of camp sites could be given by the State which permitted in any way an infringement of the rights of the owner of the timber and grass. You have observed undoubtedly that the sale by the State to various parties of the so-called timber and grass rights really consists of nothing more nor less than a permit to cut and carry away timber and grass, the State reserving the title to the soil.

Of course, the right to cut and carry away timber and grass carries with it the implied right to enter upon the premises for that purpose, to maintain roads and do anything that is necessary in order to carry out the rights expressly granted.

The objection to the State's leasing land for camp sites would be that camping parties must necessarily in a limited way at least injure either the timber or the grass or both. In the form of lease which you have already drawn, you have carefully safeguarded this danger by inserting the clause that nothing in the lease is to be construed as granting any right to cut or destroy the timber or grass and have added thereto the warning that such rights must be obtained from the owner of the timber and grass.

It seems to me, however, that it would be much safer and much more likely to avoid future litigation for leases for camp sites to be executed jointly by the State Land Agent and the owner of the timber and grass or else drawn by the Land Agent and consented to in writing by such owner. I do not see how the owner of the timber and gras would have any authority on his own account to lease a camp site to anyone. His rights are very limited indeed. On the other hand, without his consent I do not deem it safe for the State to lease land for camp sites, realizing that in every case where a camp site is occupied there must of necessity be some injury to the property which the State has already conveyed. Joint action on the part of the State and the owner of the timber and grass is, therefore, not only advisable but in my opinion necessary in order to give the party leasing the camp site such rights as he would need to enjoy to make his lease worth anything to him.

William R. Pattangall
Attorney General