

# MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1847.

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*AUGUSTA:*

Wm. T. JOHNSON,.....PRINTER TO THE STATE

1848.

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# TWENTY-SEVENTH LEGISLATURE.

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No. 20.]

[HOUSE.

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## STATE OF MAINE.

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THE joint standing committee on state lands and state roads, to which was referred a bill and an order, in relation to the "lands reserved for public uses," having had the same under consideration, ask leave to submit the following

### REPORT:

That upon examination of the reports of the land agents for the years 1839 and 1846, they find 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. They also find that there are about one hundred and eighty townships still belonging to the two 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 entire townships.

Provision is made for these reservations in the seventh section of the tenth article in our constitution, and they are for the benefit of the inhabitants of such townships, whenever they become incorporated, for the support of the ministry and of schools in such townships.

Until therefore such incorporation takes place, the fee of the land 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 rest in those for whose benefit the grant was made.

It is apparent from an examination of the early resolves and laws of the two states, in relation to these reservations, that the land itself was originally the principal object of the grant, hence little or no legislation, until recently, has been had for the protection of this property, while the fee was in abeyance. As the settlement of the country however, progressed, and the value of the timber became enhanced, it was found necessary to protect the growth upon these lots from trespass.

Accordingly in 1831, the land agent was authorized and empowered to take care of the public lots, and preserve the same from pillage and trespass. Under his administration suits were commenced against trespassers upon the public lots, and the question was raised, who could rightfully maintain such an action, and it was decided by the supreme court, (see *State vs. Cutler*, 16 vol. Maine reports, page 349,) that such an action could be maintained in the name of the state.

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.

What has been done by the county commissioners in relation to these lots, the committee have not full information. They have examined the annual returns made by county treasurers to the secretary of state; but these returns are incomplete, and not one shows an account current of the receipts and expenses arising from

the management of these lands, or what is the present balance in their hands.

In one county no returns are found for the last two years, except mere estimates for the annual appropriations. In this county, it appeared from other evidence, that the present board of county commissioners have in their hands about seven thousand dollars in securities arising from the sales of timber upon the reserved lands, besides an unascertained balance in the possession of a former board who had made no settlement with the present board, and that a court house was being rebuilt from these funds. In another county, the county commissioners were building a gaol from these funds.

A serious objection to the present system arises from the fact, that in many cases, the amount of the sales of timber from these reservations in one township, is appropriated by the county commissioners to pay for expenditures upon other townships, and in one instance, in an organized plantation, where the sales had amounted to about fifteen hundred dollars, the interest of which had been divided among the schools in said plantation, this amount had been taken away and absorbed in expenses incurred elsewhere.

In some counties, large amounts have been drawn from the county treasurers, by the commissioners, to pay for the expenses in running out and setting off the public lots, in selling stumpage, scaling timber, and protecting the growth from trespass. Perhaps under the present system, these expenditures are necessary; but your committee believe that an alteration of the laws is called for, in order to save these expenses, by making provision for a more speedy sale of the timber, and of transferring to the purchaser of the timber, the expenses of the location, where no location has been made.

The committee can see no good reason why an exception should be made of the lands reserved for public uses, to take them from the care and custody of the land agent, whose duty it is to take care of all the public lands, and who is paid for that service.

It is understood that in some townships where the fee is still in the two states, that the county commissioners are making locations

of the reserved lots, and threaten to bring suits in the name of the state against persons cutting timber upon those townships under lawful permits granted by the land agents of Maine and Massachusetts. And should the present system continue, an inevitable collision may be anticipated between the county and state authorities.

Considering the large number of these lots, and the location of many of them in valuable timber districts, it is apparent that large amounts of money must be eventually realized from the sales of timber growing on them, and it may be well for the state to consider the relation in which she stands in regard to these reservations.

As the state holds these lands as trustee for certain beneficiaries, under the provisions of the constitution and the laws of the state, she has no right to delegate this trust to others, as she is alone 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 a well settled principle in financial affairs, that the accountability of all receiving and disbursing officers should be secured by responsible bonds ; but no such provision has been made in relation to the funds arising from the sale of timber on the reserved lands in the hands of county commissioners.

It is believed, therefore, that the care and custody of these lots should be in the land agent, and that the amount realized from the sale of timber on such lots should be paid into the state treasury, where it can be under the control of the state, and where in case no incorporation takes place, the amount may enure to the benefit of the whole state.

In regard to all 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, at the same time he makes sale of the townships and thereby save expense.

The main question therefore appears to be, whether the state shall have the management of these lands, and the custody of the funds arising from the sales of timber on the same, or shall surrender them to the counties wherein such reservations exist.

The committee, believing that this property should be under the immediate control of the state authorities, and in order to carry out their views as herein expressed, for the better management of these lands, respectfully submit the accompanying bill.

ELIJAH L. HAMLIN, *per order.*

# STATE OF MAINE.

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

---

AN ACT in relation to lands reserved for public uses.

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*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 sale of timber and grass  
4 cut upon said reservations, or collected from trespass-  
5 ers upon the same, shall be delivered and paid over  
6 to the land agent, accompanied by a statement, de-  
7 scribing the amount belonging to each particular  
8 reservation, and the expenses incurred upon the  
9 same, and the land agent shall keep an accurate  
10 account of all moneys and securities received by him,  
11 describing the particular reservations from whence  
12 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 reservations, 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 the 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 sale 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 that township.

SEC. 10. All acts and parts of acts inconsistent  
2 with this act, are hereby repealed.

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**STATE OF MAINE.**

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HOUSE OF REPRESENTATIVES, July 12, 1847.

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

SAMUEL BELCHER, *Clerk.*

# MINORITY REPORT.

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THE undersigned, a minority of the committee on state lands and state roads, having had under consideration the subject of reserved lands in unincorporated townships, and tracts of land in the state of Maine, respectfully submit the following

## REPORT:

They find by a reference to the constitution of this state, article seventh, the following provisions :

“ And in all grants hereafter to be made by either state of unlocated lands in said district, the same reservation shall be made for the benefit of schools and of the ministry, as have heretofore been usual in grants made by this commonwealth.”

In an act in the revised statutes of this state, chapter 3, section 11, are the following enactments :

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, under the foregoing provisions, the state when it made sales of townships and tracts of land, remained the trustee of the reserved lands for the further beneficiaries.

The trust in question is one of great importance, and one which in the opinion of the undersigned should be executed in such a manner as fully and fairly to carry out the true intent and design of the reservation.

This trust is now by the act of A. D. 1842, chapter 33, section 21, especially reposed in the hands of the county commissioners, in

those counties where the land lies, and they are in said act especially directed to protect it from strip and waste, to cause the reserved lands to be located after a sale and grant in such townships as contain timber and grass which is being taken off and liable to be taken off by trespassers, to seize trespass timber and sell the same, and to pay the proceeds (deducting the expenses,) into the county treasury ; the county commissioners are also by subsequent enactment directed to grant permits under certain restrictions therein contained, to pay the proceeds thereof into the county treasury, and further, by the act of A. D. 1846, are directed to loan the funds received from any of the before mentioned sources, into our state, county, or town securities.

No proof has been presented to the undersigned that the county commissioners have not in all cases faithfully carried out the several cases in question, and honestly executed their trust. On the other hand, it does appear to the undersigned that large sums of money have accrued under their management of the reserved lands, when none accrued before they were so appointed trustees.

The proposition before your committee is now to change this trust from the hands of the commissioners to the hands of the land agent, and to withdraw the funds accrued from the treasuries of the several counties, and deposit them in the treasury of the state.

The history of past transactions in relation to this matter does admonish the undersigned that, if such a course be adopted, the amount received by the state from such a source would be small indeed. Because, from the time of separation up to 1842, a period of twenty-two years, while the state undertook to execute the trust by their land agent, and before they delegated the same to the county commissioners, little or nothing has been received, while a very large number of townships have, to the certain knowledge of the undersigned, been entirely stripped of the timber which constitutes their chief value, and which, so far as the reserved tracts are concerned, should have been sacredly protected.

The undersigned are further of the opinion that the duties of the land agent are already sufficiently onerous ; that to mix up this

small interest of trustee with the great interest of the land agent would be the result to sacrifice the small to the large interest ; and that, in the management, sale, and transfer of the great interest, (be the agent ever as vigilant and faithful as his duties would possibly permit him,) the small interests would in some way quietly slip into the pockets of the traders and speculators in lands, instead of going into the treasury of the state. In short, that the land agent has great, and varied, and complicated duties to perform by virtue of his office ; that he must necessarily be at a distance from a great portion of these reserved lands, while the commissioners in the several counties are in their vicinity, and have but a single interest to protect, and would naturally have a much stronger feeling, as well as a much better opportunity to protect the reservations, than the land agent could have ; and that it would be attended with no greater expense to locate these reservations with the timber upon them than with the timber off.

The undersigned are further of the opinion that the county treasury is as safe a place of deposit, for the amount of funds arising from the sale of the timber on these reservations, as the state treasury. They are aware that, in several of the counties, a portion of this fund will soon be called for by the inhabitants of plantations therein ; and they believe it will be more convenient for the citizens of a county to draw their funds from the county treasury than from the state.

In view of the foregoing facts and circumstances, the undersigned are of opinion that this trust should not be changed from the hands of the county commissioners. They believe that all difficulties existing under the present system may be remedied, by passing an act additional to the present acts, containing substantially the following provisions.

WILSON GODFREY,  
WILLIAM R. FLINT,  
FRANCIS LOW,  
ENOCH WESCOTT.



# STATE OF MAINE.

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

---

AN ACT in relation to the reserved land in unincorporated townships of this state.

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

SECTION 1. The committee appointed by the  
2 court, under the provisions of the act A. D. eighteen  
3 hundred and forty-two, shall be empowered to set out  
4 the reservations, whether timber lands or not, of an  
5 average quality and situation within the township, as  
6 it was at the time of filing the petition for the ap-  
7 pointment of said committee.

SECT. 2. So much of the act of A. D. eighteen  
2 hundred and forty-six as authorizes the county com-  
3 missioners to make loans as therein provided, is  
4 hereby repealed.

SECT. 3. All moneys, notes, bonds, and other  
2 securities, taken by the county commissioners for the

3 sale of timber on reserved lots, whether the same be  
4 received from the sale of trespass timber, or grass,  
5 or from permits, shall be made payable to the county  
6 treasurer, or his successor in office, and immediately  
7 deposited in the county treasury; and the county  
8 treasurer is hereby empowered and directed to loan  
9 the same on state, county, and town securities, the  
10 principal and interest to be accounted for as is now  
11 provided by law.

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## STATE OF MAINE

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IN SENATE, July 13, 1847.

ORDERED, That 350 copies of the foregoing report be printed for the use of the Legislature.

DANIEL T. PIKE, *Secretary.*