

**Section 9. State board of land commissioners.**

- (1) The state board of land commissioners shall be composed of five persons to be appointed by the governor, with the consent of the senate, one of whom shall be elected by the board as its president.
- (2) The governor shall endeavor to appoint members of the board who reside in different geographic regions of the state. The board shall be composed of one person with substantial experience in production agriculture, one person with substantial experience in public primary or secondary education, one person with substantial experience in local government and land use planning, one person with substantial experience in natural resource conservation, and one citizen at large.
- (3) The governor shall appoint a new board of land commissioners on or before May 1, 1997. The term of each member shall be for four years; except that of the first board members appointed under this subsection (3), two members shall be appointed for terms that expire June 30, 1999, and three members shall be appointed for terms that expire June 30, 2001. No member shall serve more than two consecutive terms. Members of the board shall be subject to removal, and vacancies on the board shall be filled, as provided in article IV, section 6 of this constitution.
- (4) The board shall, pursuant to section 13 of article XII of this constitution, hire a director with the consent of the governor, and, through the director, a staff, and may contract for office space, acquire equipment and supplies, and enter into contracts as necessary to accomplish its duties. Payment for goods, services, and personnel shall be made from the income from the trust lands. The general assembly shall annually appropriate from the income from the trust lands, sufficient moneys to enable the board to perform its duties and in that regard shall give deference to the board's assessment of its budgetary needs. The members of the board shall not, by virtue of their appointment, be employees of the state; they may be reimbursed for their reasonable and necessary expenses and may, in addition, receive such per diem as may be established by the general assembly, from the income from the trust lands.
- (5) The individual members of the board shall have no personal liability for any action or failure to act as long as such action or failure to act does not involve willful or intentional malfeasance or gross negligence.
- (6) The board shall serve as the trustee for the lands granted to the state in public trust by the federal government, lands acquired in lieu thereof, and additional lands held by the board in public trust. It shall have the duty to manage, control, and dispose of such lands in accordance with the purposes for which said grants of land were made and section 10 of this article IX, and subject to such terms and conditions consistent therewith as may be prescribed by law.
- (7) The board shall have the authority to undertake nonsimultaneous exchanges of land, by directing that the proceeds from a particular sale or other disposition be deposited into a separate account to be established by the state treasurer with the interest thereon to accrue to such account, and withdrawing therefrom an equal or lesser amount to be used as the purchase price for other land to be held and managed as provided in this article, provided that the purchase of lands to complete such an exchange shall be made within two years of the initial sale or disposition. Any proceeds, and the interest thereon, from a sale or other disposition which are not expended in completing the exchange shall be transferred by the state treasurer to the public school fund or such other trust fund maintained by the treasurer for the proceeds of the trust lands disposed of or sold. Moneys held in the separate account shall not be used for the operating expenses of the board or for expenses incident to the disposition or acquisition of

lands.

**Source:** Entire article added, effective August 1, 1876, see **L. 1877**, p. 56. **L. 09:** Entire section amended, p. 322, effective January 10, 1911. **L. 92:** Entire section amended, p. 2317, effective upon proclamation of the Governor, **L. 93**, p. 2163, January 14, 1993. **Initiated 96:** Entire section amended, effective upon proclamation of the Governor, **L. 97**, p. 2399, December 26, 1996. **L. 2004:** Section 9 (3) amended, p. 2746, effective upon proclamation of the Governor, **L. 2005**, p. 2341, December 1, 2004.

**Cross references:** For state board of land commissioners, see also article 1 of title 36.

### ANNOTATIONS

**Law reviews.** For article, "One Year Review of Constitutional Law", see 40 Den. L. Ctr. J. 134 (1963). For article, "The 'New' Colorado State Land Board", see 78 Den. U. L. Rev. 347 (2001).

**This section is special provision of constitution and deals with special object.** People ex rel. Murphy v. Field, 66 Colo. 367, 181 P. 526 (1919).

**State board of land commissioners is agency of state,** created by this article of the constitution. Sunray Mid-Continent Oil Co. v. State, 149 Colo. 159, 368 P.2d 563 (1961).

**And member of board is clearly made constitutional officer,** deriving all his powers from constitutional authority. People ex rel. Murphy v. Field, 66 Colo. 367, 181 P. 526 (1919).

**This section does not conflict with § 13 of art. XII, Colo. Const.** There is no repugnance between the provisions of the constitution as to civil service and the provisions in the instant section for the appointment of state board of land commissioners, as to render them irreconcilable. A member of the land board holds only for the term for which he was appointed. He is not continued in office by the articles regulating civil service. People ex rel. Murphy v. Field, 66 Colo. 367, 181 P. 526 (1919).

**The changes to this section enacted in 1996 do not violate Colorado's fiduciary obligations arising out of the federal trust enacted by the Colorado Enabling Act and therefore do not facially violate the supremacy clause of article VI of the United States Constitution.** Branson Sch. Dist. RE-82 v. Romer, 161 F.3d 619 (10th Cir. 1998).

**Whatever power board possesses to sell state lands or any part thereof is derived from constitution.** Briggs v. People, 21 Colo. App. 85, 121 P. 127 (1912).

**And general assembly is without power to give to body of its own creation authority to exercise such powers conjointly with such board.** In re Canal Certificates, 19 Colo. 63, 34 P. 274 (1893).

**Although general assembly has constitutional authority to regulate board's activities.** Evans v. Simpson, 190 Colo. 426, 547 P.2d 931 (1976).

**Through reasonable rules.** By the terms "under such regulations as may be prescribed by law", occurring in this section, is meant under such reasonable rules as may be prescribed from time to time by the legislative department of the government. In re Leasing of State Lands, 18 Colo. 359, 32 P. 986 (1893); In re Canal Certificates, 19 Colo. 63, 34 P. 274 (1893).

**And board's activities may not contradict or exceed specific statutory limits.** Evans v. Simpson, 190 Colo. 426, 547 P.2d 931 (1976).

**Where an attempted nonsimultaneous exchange of land did not specify a time period for transfer of the private property and the board issued a patent when the private property had not yet even been identified,** the transfer amounted to a sale in violation of both the constitution and the implementing statutes. East Lake Creek Ranch, LLP v. Brotman, 998 P.2d 46 (Colo. App. 1999), rev'd on other grounds, 31 P.3d 886 (Colo. 2001).

**There is nothing facially invalid about requiring in subsection (2) a diverse board, so long as the board is**

**motivated solely to benefit the public schools.** Diversity in experience on the board may help it make more prudent decisions, considering a variety of factors and circumstances, thereby benefitting the public schools. Branson Sch. Dist. RE-82 v. Romer, 958 F. Supp. 1501 (D. Colo. 1997), *aff'd* on other grounds, 161 F.3d 619 (10th Cir. 1998).

**It is contrary to neither the Enabling Act nor ordinary trust principles to alter in subsection (5) the standards for liability of the individual board members.** The individual members may take no action on their own with regard to school lands. They may act only as a board. The board is subject to the fiduciary duties generally applicable to trustees. Branson Sch. Dist. RE-82 v. Romer, 958 F. Supp. 1501 (D. Colo. 1997), *aff'd* on other grounds, 161 F.3d 619 (10th Cir. 1998).

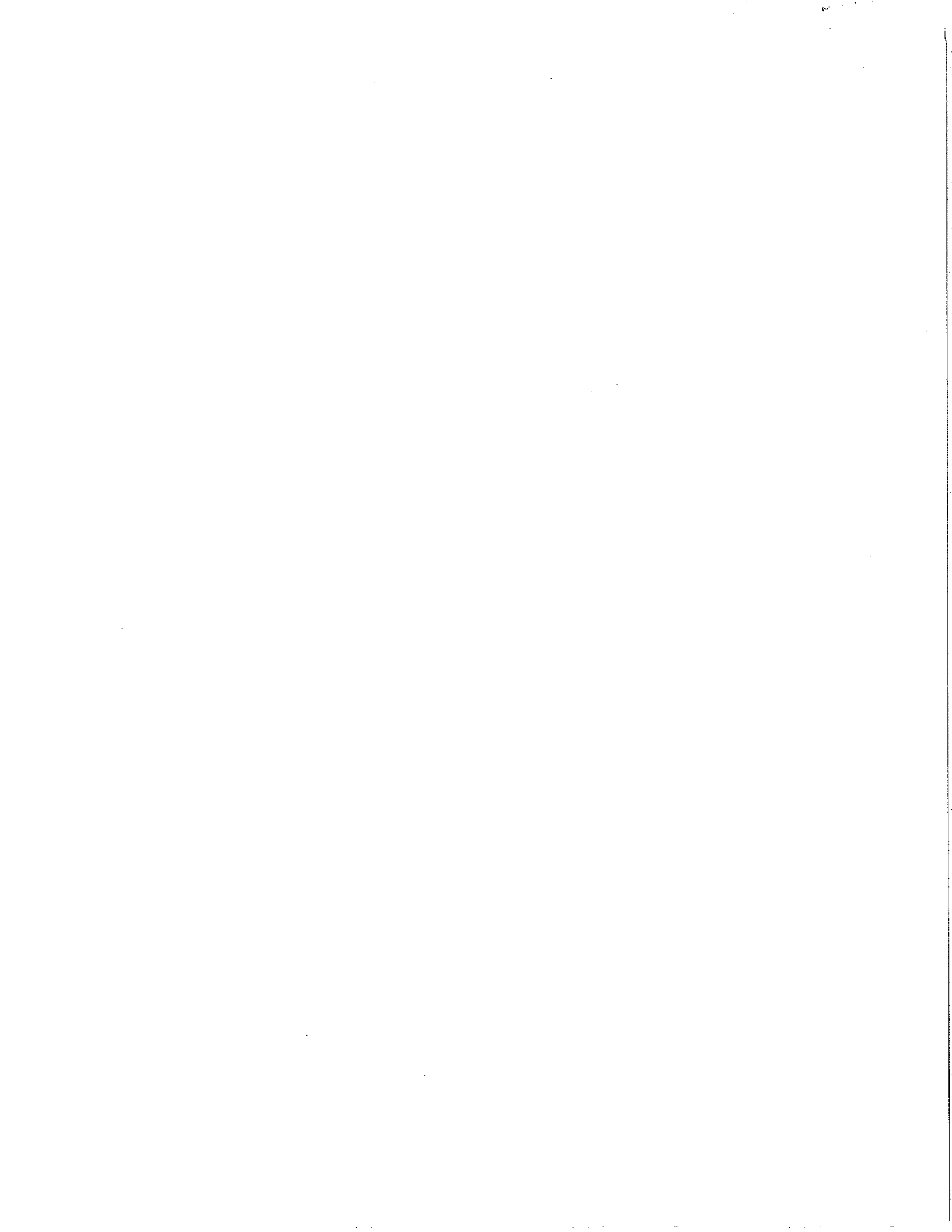
**Leases may contain any terms not prohibited by law.** The constitution mandates that unless limited by express statutory regulations the board shall enter into whatever leases it deems to be most beneficial to the state. It may therefore utilize any lease terms not prohibited by law, such as provision for cancellation to obtain maximum revenues. Evans v. Simpson, 190 Colo. 426, 547 P.2d 931 (1976).

**Effect of failure of board to comply with legislative act.** When the board attempts to dispose of the state lands under its lawful powers, a failure on its part to substantially comply with the requirements of a legislative act concerning such disposition leaves the title unaffected and conveys no title in the land to the purchaser. Briggs v. People, 21 Colo. App. 85, 121 P. 127 (1912).

**Taxpayer has no standing** to challenge the management decisions of the state board of land commissioners with regard to school lands. Such decisions have no effect on taxpayers, because the management of school lands has no effect on the state's funding of schools through the taxing power. Brotman v. East Lake Creek Ranch L.L.P., 31 P.3d 886 (Colo. 2001).

**Moneys held not to be "income" of board.** Moneys received by the state land board from the sale of the state lands, or rentals or royalties therefrom, or for interest on deferred installments of purchase money, are not "the income" of the board within the meaning of this section. In re Salaries of Comm'rs & Employees of State Land Bd., 55 Colo. 105, 133 P. 140 (1913).

**Applied,** as to sale of school lands, in People v. G.H. Hard Land Co., 51 Colo. 260, 117 P. 141 (1911).



**Section 10. Selection and management of public trust lands.**

(1) The people of the state of Colorado recognize (a) that the state school lands are an endowment of land assets held in a perpetual, inter-generational public trust for the support of public schools, which should not be significantly diminished, (b) that the disposition and use of such lands should therefore benefit public schools including local school districts, and (c) that the economic productivity of all lands held in public trust is dependent on sound stewardship, including protecting and enhancing the beauty, natural values, open space and wildlife habitat thereof, for this and future generations. In recognition of these principles, the board shall be governed by the standards set forth in this section 10 in the discharge of its fiduciary obligations, in addition to other laws generally applicable to trustees.

It shall be the duty of the state board of land commissioners to provide for the prudent management, location, protection, sale, exchange, or other disposition of all the lands heretofore, or which may hereafter be, held by the board as trustee pursuant to section 9(6) of this article IX, in order to produce reasonable and consistent income over time. In furtherance thereof, the board shall:

(a) Prior to the lease, sale, or exchange of any lands for commercial, residential or industrial development, determine that the income from the lease, sale, or exchange can reasonably be anticipated to exceed the fiscal impact of such development on local school districts and state funding of education from increased school enrollment associated with such development;

(b) Protect and enhance the long-term productivity and sound stewardship of the trust lands held by the board, by, among other activities:

(I) Establishing and maintaining a long-term stewardship trust of up to 300,000 acres of land that the board determines through a statewide public nomination process to be valuable primarily to preserve long-term benefits and returns to the state; which trust shall be held and managed to maximize options for continued stewardship, public use, or future disposition, by permitting only those uses, not necessarily precluding existing uses or management practices, that will protect and enhance the beauty, natural values, open space, and wildlife habitat thereof; at least 200,000 acres of which land shall be designated on or before January 1, 1999, and at least an additional 95,000 acres of which land shall be designated on or before January 1, 2001; specific parcels of land held in the stewardship trust may be removed from the trust only upon the affirmative vote of four members of the board and upon the designation or exchange of an equal or greater amount of additional land into said trust.

(II) Including in agricultural leases terms, incentives, and lease rates that will promote sound stewardship and land management practices, long-term agricultural productivity, and community stability;

(III) Managing the development and utilization of natural resources in a manner which will conserve the long-term value of such resources, as well as existing and future uses, and in accordance with state and local laws and regulations; and

(IV) Selling or leasing conservation easements, licenses and other similar interests in land.

(c) Comply with valid local land use regulations and land use plans.

(d) Allow access by public schools without charge for outdoor educational purposes so long as such access does not conflict with uses previously approved by the board on such lands.

(e) Provide opportunities for the public school districts within which such lands are located to lease, purchase, or otherwise use such lands or portions thereof as are necessary for school building sites, at an amount to be determined by the board, which shall not exceed the appraised fair market value, which amount may be paid over time.

(2) No law shall ever be passed by the general assembly granting any privileges to persons who may have settled upon any such public trust lands subsequent to the survey thereof by the general government, by which the amount to be derived by the sale, or other disposition of such lands, shall be diminished, directly or indirectly.

**Source:** Entire article added, effective August 1, 1876, see L. 1877, p. 56. L. 96: Entire section amended, effective upon proclamation of the Governor, L. 97, p. 2401, December 26, 1996.

**Cross references:** For the sale of state lands, see also § 36-1-124.

### ANNOTATIONS

**Am. Jur.2d.** See 63 Am. Jur.2d, Public Lands, §§ 112, 113.

**C.J.S.** See 16 C.J.S., Schools and School Districts, §§ 812, 813.

**Law reviews.** For article, "One Year Review of Constitutional Law", see 40 Den. L. Ctr. J. 134 (1963). For article, "The 'New' Colorado State Land Board", see 78 Den. U. L. Rev. 347 (2001).

**The changes to this section enacted in 1996 do not violate Colorado's fiduciary obligations arising out of the federal trust enacted by the Colorado Enabling Act and therefore do not facially violate the supremacy clause of article VI of the United States Constitution.** Branson Sch. Dist. RE-82 v. Romer, 161 F.3d 619 (10th Cir. 1998).

**As phrased, subsection (1)(c) seeks only to further the economic productivity of the school lands through consideration of natural resource concerns.** Therefore, the court did not enjoin it in a facial challenge. Branson Sch. Dist. RE-82 v. Romer, 958 F. Supp. 1501 (D. Colo. 1997), *aff'd* on other grounds, 161 F.3d 619 (10th Cir. 1998).

**Subsection (1)(b)(II) does not require the board to take any action that is not consonant with its duty to benefit the sole beneficiary of the trust.** Facially there is no reason why sound stewardship and land management practices, long-term agricultural productivity, and community stability are at odds with the best interests of the common schools. Branson Sch. Dist. RE-82 v. Romer, 958 F. Supp. 1501 (D. Colo. 1997), *aff'd* on other grounds, 161 F.3d 619 (10th Cir. 1998).

**"General government"**, in the second sentence, can only mean the United States of America. Sunray Mid-Continent Oil Co. v. State, 149 Colo. 159, 368 P.2d 563 (1961).

**State board of land commissioners is legal landlord of state lands** and it executes all leases of state lands in the capacity of landlord. Harrah v. People ex rel. Attorney Gen., 125 Colo. 420, 243 P.2d 1035 (1952).

**Constitution specifically describes lands which shall be subject to disposition by land commissioners.** Sunray Mid-Continent Oil Co. v. State, 149 Colo. 159, 368 P.2d 563 (1961).

**Board alone has duty to provide for sale or other disposition of lands** granted to the state by the general government under such regulations as may be prescribed by law. Sunray Mid-Continent Oil Co. v. State, 149 Colo. 159, 368 P.2d 563 (1961).

**And power applies to oil and gas leases.** Where the lands included within oil and gas leases are lands granted to the state by the general government, they are lands concerning which the land commissioners have exclusive powers of disposal. It does not lie within the power of the general assembly to place limitation or qualification

upon the exercise of that power. *Sunray Mid-Continent Oil Co. v. State*, 149 Colo. 159, 368 P.2d 563 (1961).

**And to school land.** Lands granted to the state by the United States, to be held and maintained as an institution of learning under § 23-52-101, are lands over which the land commissioners have exclusive powers of disposal, and it is not within the power of the general assembly to place limitations upon the exercise thereof. *Sunray Mid-Continent Oil Co. v. State*, 149 Colo. 159, 368 P.2d 563 (1961).

**Yet, board is mere agency**, with the duty to do no less, and power to do no more, in the disposition of the state lands, than to comply with the directions of the statute. *Walpole v. State Bd. of Land Comm'rs*, 62 Colo. 554, 163 P. 848 (1917).

**And board must exercise its constitutional powers in accordance with regulations prescribed** and in such manner as, by its judgment, will secure the maximum amount under such regulations. *In re Leasing of State Lands*, 18 Colo. 359, 32 P. 986 (1893).

**As general assembly has constitutional authority to regulate board's activities.** *Evans v. Simpson*, 190 Colo. 426, 547 P.2d 931 (1976).

**And board's activities may not contradict or exceed specific statutory limits.** *Evans v. Simpson*, 190 Colo. 426, 547 P.2d 931 (1976).

**Leases may contain any terms not prohibited by law.** The constitution mandates that unless limited by express statutory regulations the board shall enter into whatever leases it deems to be most beneficial to the state. It may therefore utilize any lease terms not prohibited by law, such as provision for cancellation to obtain maximum revenues. *Evans v. Simpson*, 190 Colo. 426, 547 P.2d 931 (1976).

**Payment for state land held unconstitutional.** See *In re Canal Certificates*, 19 Colo. 63, 34 P. 274 (1893).

**Board cannot dedicate land simply by showing roadway on original subdivision plat.** The state board of land commissioners does not have the authority to dedicate land to be used as a public highway simply by showing the roadway on an original subdivision plat. *Tuttle v. County Comm'rs*, 44 Colo. App. 334, 613 P.2d 641 (1980).

**Municipal fee for flood control was not a "special assessment"**, but instead was a service fee reasonably related and essential to the provision of flood control services benefiting all property within the municipal flood control district, including school lands. Therefore, imposition of the fee against the State Land Board did not contravene constitutional limitations on the board's authority to expend state funds. *City of Littleton v. State*, 855 P.2d 448 (Colo. 1993).

**Applied** in *People v. G.H. Hard Land Co.*, 51 Colo. 260, 117 P. 141 (1911); *Harrah v. People ex rel. Attorney Gen.*, 125 Colo. 420, 243 P.2d 1035 (1952).

