

JOURNAL OF THE SENATE

WEDNESDAY, July 12, 1972.

The chief clerk makes the following entries under the above date.

COMMITTEE REPORT

The committee on Governmental and Veterans' Affairs reports and recommends:

The appointment by the Governor of Vivian L. Munson, of La Crosse, as a member of the Board of Veterans' Affairs, to succeed Theodore F. Fetting, who resigned to serve for the remainder of the unexpired term ending March 1, 1973.

Confirmation; Ayes, 4; Noes, 0.

GORDON W. ROSELEIP,
Chairman.

PETITIONS AND COMMUNICATIONS

The State of Wisconsin
Department of Justice
Madison

The Honorable, The Senate
State Capitol
Madison, Wisconsin 53702

Dear Senators:

Pursuant to your direction, through **Senate Resolution 34**, as amended, the Department of Justice has conducted an investigation into the Department of Natural Resources' land acquisition program.

This report sets forth the results of this investigation.

Sincerely yours,

ROBERT W. WARREN,
Attorney General.

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Report to the Wisconsin State Senate on Department of Natural Resources Land Acquisition Practices and Policies

July 10, 1972.

Introduction

Senate Resolution 34, as amended, directed the Wisconsin Department of Justice, Division of Criminal Investigation, to investigate the land acquisition practices and policies of the Department of Natural Resources.

Since 1960, the Department of Natural Resources has processed approximately 3,300 land transactions. These were screened during the investigation and approximately 500 transactions were reviewed in greater detail. The investigation file upon which this summary is based is quite voluminous and is available for inspection as a public document in the Office of the Attorney General, 114 East, State Capitol. The table of contents for the investigation and the list of supporting exhibits are attached as Appendix A to this report.

During the course of this investigation, reviews were conducted on all Department of Natural Resources' employes, past and present, who were used in the land acquisition and appraisal program to determine if any had been involved in real estate transactions or had been engaged in any activity which would indicate a conflict of interest. This investigation included a review of some 100 tax returns, as well as checking each name through the list of state-wide real estate brokers and salesmen and a check of all lands owned by Department personnel within Department project boundaries. The only acquisition agent found to own property within Department project boundaries was Max Morehouse, whose case is dealt with in this report.¹

The only person from the list of Department of Natural Resources appraisers mentioned in the files of the Real Estate Examining Board was that of William H. Field, who has been an employe of the Department since 1936. For many years prior to 1968, Mr. Field held the position of Chief Game Appraiser, and in October of that year be-

¹ Another purchase of land discussed in this report involved a former Department employe, Mr. von Dahlen.

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came and currently holds the position of Chief of the Appraisal and Negotiation Section, Bureau of Real Estate. Mr. Field applied for a real estate broker's license in 1967 and again in 1968.

Specific Land Transactions

Transaction No. 1:

Senate Resolution 34 alluded to a Department employe who allegedly purchased property in the southern unit of Kettle Moraine State Forest, constructed a house on it, and then sold the property to the Department of Natural Resources at a large profit.

This is believed to be in reference to former employe, Max von Dahlen, who retired in 1965. The transaction is covered in the body of this report. Mr. von Dahlen, in 1957, purchased an 18-acre tract which was within the project boundary of the Kettle Moraine State Forest but which the State "was making no effort to secure." Mr. von Dahlen improved the property by building a house in which he resided until 1970. Negotiations began between the Department and von Dahlen in September of 1969.

Two fee or independent appraisals were made on the property because von Dahlen was a former Department employe and because the acquisition involved a major purchase. The appraisals were made in April and September of 1969 and indicated a fair market value of \$42,500 and \$66,100 respectively. In November of 1969, the Land Control Committee of the Department inspected the property and in December, the State informed Mr. von Dahlen that it intended to exercise the option subject to approval by the Governor. In January of 1970, the Governor's approval was secured in the amount of \$59,300. This property was held by Mr. von Dahlen for 13 years, during which time property values appreciated greatly in the area. An adjacent 47-acre tract sold in 1967 for \$1,800 per acre. (Statement by Attorney Dale Arenz—page 110 in DCI report.)

Transaction No. 2:

Also mentioned in **Senate Resolution 34** is an allegation that an acquisition agent of the Department of Natural Resources purchased for the Department a parcel for \$32,500

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from an individual with whom he was associated in business and who had purchased the property only seven months and twenty days earlier for \$16,500.

This is believed to be in reference to a 206-acre tract located in the Town of Palmyra, Jefferson County, purchased by Richard U. Beischel and W. J. Ketterhagen in 1962. This property had been offered for sale for some time, with no takers.

The land was appraised in May of 1963 by Robert L. Steiro, a Forester with the Department, for \$46,509, or \$223 per acre. An option was signed with the owners by the Department in May of 1962. The option was signed by Mr. Steiro and Max von Dahlen, the latter of whom was in partnership with Richard U. Beischel in a Christmas tree growing and marketing venture.

Statements by R. U. Beischel and Max von Dahlen indicated that they were members of a corporation which was in the Christmas tree growing and marketing business in northcentral Wisconsin. Their statements indicated that von Dahlen was not a partner in the aforementioned land transaction, that he did not steer them to the property, and that he realized nothing from it. No information was found indicating Max von Dahlen was a partner or otherwise received any personal gain from the property transaction.

In this transaction, no fee appraisal was made. Rather, a Department Forester made the appraisal. Further negotiations were held and an option secured. This option was witnessed by Steiro and von Dahlen. The transaction file does not indicate that an adequate review of the appraisal was conducted. Further, one memo, dated August, 1962, from Roman H. Koenigs to Max von Dahlen, stated that the property of Beth Martineau, owner of the Upper Spring Lake dam site, should be optioned before any other lands adjacent to the lake were optioned. Max von Dahlen replied that, should the State decide to buy Beischel-Ketterhagen, Mrs. Martineau would possibly consider an option on her property or an easement to the dam site and the lands underwater. The option was then exercised on the Beischel-Ketterhagen property.

Subsequent negotiations with Mrs. Martineau proved fruitless, and the resulting condemnation proceedings, which

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ended in a Supreme Court decision, concluded that the Department did not have the power to condemn for State forest lands.

Max von Dahlen was apparently closely connected with one of the owners, to the extent at least, of being in business with him. The property in question was in an estate proceeding prior to its purchase by Mr. Ketterhagen and Mr. Beischel. Max von Dahlen was the local forest employe. It is not clear why Mr. von Dahlen did not recommend purchase from the estate rather than wait until his business associate had purchased the property and then, five months later, seek to purchase the parcel from his associate at twice the figure paid to the estate.

We have been further advised that the employe who made the appraisal was (apparently) a trainee under the supervision of Mr. von Dahlen.

Because of the extensive lapse of time, little can be done to further this investigation. The acquisition does, however, clearly illustrate the potential danger involved in leaving much of the land acquisition work in the hands of the local park or forest employe.

Transaction No. 3:

Senate Resolution 34 also alleges that certain alphabetical corporations and corporations of short existence have been able to command high prices for their property. This apparently refers to the ARK Corporation, a Chicago-based water bottling company, which purchased a 68-acre tract in the Town of Eagle, Waukesha County, in 1967. A large natural spring and fishing ponds, plus a resort-hotel with a liquor license and a water bottling business, are located on the property. ARK paid \$139,900 for the property.

In March of 1968, the owner contacted the Department about purchase of the property. A fee appraisal conducted in March of 1968 indicated a fair market value of \$137,500. During the course of 32 negotiating sessions, beginning in September of 1968, the *Martineau* decision barred the Department from condemnation of this (State forest) land. In September of 1970, an option was delivered to the State containing the following terms—for \$136,500, the State would obtain the property excluding the following:

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1. About six acres of land in the southwest corner of the property.
2. Twenty-five percent of the spring flow (monitored by State).
3. Easements for underground pipeline from spring to 6-acre parcel.
4. Two-year tenancy on existing buildings.

This transaction was recently completed under conditions close to those aforementioned.

In this transaction, one fee appraisal was made, later updated by a staff appraisal. No negotiations were conducted prior to the appraisal. The negotiations were conducted by officials of the Department's land acquisition staff. Although the property owner initially contacted the Department regarding the sale of this property, an extensive negotiating period was necessitated by lack of condemnation authority. It appears that several reviews of the appraisal were conducted, including the updating by the staff.

Transaction No. 4:

In addition to those transactions mentioned in the senate resolution, several other property acquisitions are particularly worth noting.

The McBride acquisition involved a 118-acre parcel for the Kettle Moraine State Forest in 1967. As a direct result of this acquisition, Mr. Orin Benson, an adjacent property owner of the McBrides, received from the State of Wisconsin a 20-acre parcel of land which was severed from the original 118-acre parcel that the State had initially set out to acquire. Additionally, Mr. Benson received \$7,000. The transfer of the 20-acre parcel and the payment of the \$7,000 was for an alleged leasehold interest of Orin Benson in the McBride property. Our investigation has failed to disclose sufficient information to show that such a property interest in fact existed in Mr. Benson. It is possible that steps could be taken to recover for the State, not only the monetary consideration, but the land as well, on the ground of lack of consideration for the payment and transfer of the alleged leasehold interest.

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Transaction No. 5:

Furthermore, an acquisition from Orin Benson of a 15-acre tract for the Kettle Moraine State Forest in 1966, illustrates an acquisition where it appears that settlement was reached prior to an appraisal being made on the subject property.

Transaction No. 6:

The Department had an interest at least as early as January, 1964, in acquiring a 6-acre parcel owned by the Eiches as an addition to the Pike Lake State Park project. The acquisition of this parcel covered a period of approximately seven and one-half years. Apparently, the State never considered eminent domain in the acquisition of the six acres necessary for the park but chose to meet the demands of the owners. In this acquisition, the Department had an independent appraisal in 1969 on the whole farm, including a newly constructed home, which indicated a value of \$54,000. Approximately two years later, the Department reappraised the property and found the value to be \$58,000 excluding, however, the new home and surrounding 6.2 acres. It appears that the property was reappraised in this manner so as to document the demands of the owners and to avoid condemnation.

Transaction No. 7:

The Savina acquisition during 1970 involves a 120-acre acquisition by Mr. Max Morehouse for the Navarino project. Mr. Morehouse, while an employe of the Department of Natural Resources, appraised and negotiated the acquisition of this 120-acre parcel while having an undisclosed interest in the land. Mr. Morehouse has since been discharged by the Department of Natural Resources. An agent for the Department of Justice has filed a criminal complaint in Langlade County alleging misconduct in public office. Mr. Morehouse has subsequently been arraigned for violation of sec. 946.13, Wis. Stats., which prohibits a public employe from participating in a public contract in which he has a private pecuniary interest.

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Land Acquisition Procedures

General

As early as 1960, the Department of Natural Resources recognized the need for improvement in its land acquisition practices, particularly with the inception of ORAP and a substantially increased acquisition program. In 1969, the Department created the Bureau of Real Estate. This Bureau has improved many of the Department's land acquisition practices and procedures, particularly with respect to training of personnel involved in the land acquisition program and in the more technical aspects of the acquisition procedure, i.e., appraisal procedure.

Most of the transactions discussed in this report were prior to the establishment of the Bureau of Real Estate and it is doubtful that many aspects of these transactions would be duplicated under the improved land acquisition program.

Condemnation Policy

During recent years, there has been considerable discussion, investigation and evaluation of the use of the condemnation power by the Department of Natural Resources. This has culminated in the enactment of ch. 326, Laws of 1971, which restricts the authority of the Department of Natural Resources to condemn lands for State park purposes. Lands can now be condemned only after approval of the Senate and Assembly Committees on Natural Resources.

It appears that, because of the controversy surrounding the use of their condemnation powers, the Department of Natural Resources has in recent years avoided the use of this statutory power. Land condemnations have been involved in less than 2 percent of the acquisitions since ORAP began and none have been instituted in the past two years. Mr. Edward J. Faber, Director of the Bureau of Real Estate, in a prepared statement dated August 20, 1971, to the legislative committee hearing on Bill 280, which would have deprived the Department of condemnation power, stated in part:

"In conclusion, to us in the department, the use of eminent domain is repulsive and the Natural Resources Board

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and the department assure you that this power is not used indiscriminately."

Condemnation is an inherent power of the State of Wisconsin which has, in the past, been duly delegated to the Department by the legislature for the Department's use in appropriate situations. Reluctance of the Department to exercise condemnation can result in protracted negotiations and gives the uncooperative property owner a distinct advantage over the more cooperative, or possibly, timid property owner. The purpose of condemnation is to insure equal treatment and the Department, by its reluctance to use this power in appropriate situations, can frustrate a primary objective of the State's condemnation power. Reluctance on the part of the Department to use condemnation, or actual absence of such power, will not only result in a higher land acquisition program cost, but, in addition, has the indirect fiscal impact of delay and higher personnel costs.

A former attorney for the Department made the following observation regarding this problem:

"* * * I frankly felt, and I still do that the department in the acquisition of the land should not negotiate as much as it does, that it should pretty much adopt a one-appraisal policy based upon a competent appraisal or appraisals. They offer that price and don't attempt to go buy it for less, and they don't attempt to buy it for more; and if they can't buy the land, then acquire it via a condemnation if necessary but I think that is possibly some of their problems—that the land acquisitions have been—because that perhaps people felt that they felt that they would negotiate upward, and in some instances this has been the case;
* * *"²

Mr. Bakken's comment is even more relevant to the present operations of the Department as evidenced by the absolute lack of condemnation acquisitions during the past two years.

² Statement of Attorney James F. Bakken (p. 28). Mr. Bakken was employed with the Department from July, 1962, to July, 1966.

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ARK acquisition (Transaction No. 3 above) clearly illustrates the futility of a State agency attempting to acquire lands for public purposes at or near fair market value without the condemnation authority available. An appraisal of fair market value serves little real value when at most it is merely a starting point and has little relevancy after 32 negotiating sessions with a revision of the appraisal and when the owner receives other consideration in addition to monetary consideration. When a State agency does not have the power to condemn, or fails to exercise such power when it lawfully may do so, the result, if the land is to be acquired, is typified by this acquisition.

Conclusions and Recommendations

1. An independent, fair market appraisal should be acquired in all land transactions involving substantial acquisitions. In major transactions, more than one independent appraisal is desirable.

2. In no case should the local Department employe make an appraisal on lands within his park boundaries or be responsible for negotiations on land acquisitions within his park boundaries. Often, the local field employe of the Department does not have the training to make a competent fair market appraisal. The local Department representative will often have a personal acquaintance with the private property owners living within his project boundaries. These factors create a situation where the State employe may have several contacts with the property owners regarding the possible acquisition of their lands prior to any independent appraisal; yet, subsequently, this same State employe may make an appraisal of these lands and even negotiate their purchase. Use of the local Department employe lends itself to a situation where it may be difficult for the State employe to be absolutely objective in his feelings towards particular property owners. Secondly, it is difficult for the State employe to separate his feelings as to the necessity or desirability of the particular parcel for the project under his jurisdiction, and the fair market value of the parcel, which may be of secondary importance in his judgment. Thirdly, the State employe wishing to acquire the parcel for the State with a minimum of trouble has the opportunity under these circumstances to tailor his appraisal to meet the known demands of the property owner.

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It may be desirable to use the local employe in conjunction with the negotiator to establish rapport with the property owner, but in no case should he have a principal responsibility in the land acquisition.

3. The functions of appraising the property to be acquired and the negotiations conducted in acquiring the property should be performed by separate individuals.

4. The process of land acquisition with respect to a particular parcel should not be commenced until the Department is ready and willing to follow through on the acquisition of the property, even to the extent of condemnation.

It appears that the general practice of the Department is to proscribe proposed project boundaries, but not to establish a timetable for the acquisition of the parcels within the boundaries. Thus, the Department in some cases will repeatedly contact property owners regarding acquisition of their property. Such a practice may keep the property owners in a state of anxiety for a period of years. For example, the Bluewater Development property acquisition involved negotiations over an 18-month period. The St. Aubin and the Dempsey properties for the Kettle Moraine State Forest involved negotiations over a one-year period. The Drumm property for Collins Marshal involved formal offers over a four-year period. Further, such practice lends itself to negotiating upwards by the Department in an attempt to satisfy the property owner and avoid condemnation.

5. The Department should attempt to set some definite time schedules or establish an order of priority for property acquisitions within project boundaries so as to minimize public criticism and complaints of favoritism either in dealing with the public or in allowing certain parcels to remain in private ownership for extended periods of time.

6. There be an adequate, thorough and competent review of all appraisals.

Differences of opinion can exist among appraisers as to the value of land. However, the Department should make an extensive effort to determine the nature of these differences and to resolve them, if possible. For example, in the Harrington Beach project, the Nelson property had three private appraisals ranging from a high of \$400,000 to a low of \$218,000. In the Eiche acquisition for the Kettle

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Moraine State Park, the three private appraisals ranged from a low of \$147,000 to a high of \$210,000. In the acquisition of the Bluewater Development property for Mirror Lake, a staff appraisal indicated a value of \$180,000 while an independent appraisal indicated a value of \$128,700. An extensive and competent review of appraisals prior to their formalization and a resolution of their differences is essential to any program of land acquisition.

7. The Department must exercise extreme caution when it seeks to acquire land from its own employes, former employes or persons who have close connections with the Department or Department employes. The Department would be wise to employ the services of another State agency when attempting to acquire land under such circumstances.

The Department has a policy regarding dealings with its own employes (see Department Manual Code, sec. 9103.11) but it is questionable if this policy is sufficiently restrictive.

Appendix A

D.N.R. Land Acquisition Investigation as per Senate Resolution 34, as Amended

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- CHAPTER 4B—(Kettle Moraine State Forest) Investigation
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Directory of Exhibits

Department of Natural Resources Land Acquisition Investigation

Senate Resolution 34, as Amended

Exhibits—Reference Chapter 2

- A-1—Organization Handbook, page 7
- A-2—Secretary's Directive, Manual Code 9103.21, page 7
- A-3—Secretary's Directive, Manual Code 9103.11, page 7
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- A-5—Intra-department Memorandum, Department of
Natural Resources Employees Owning Land in Project
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A-6—Acquisition & Sales Manual, page 8

A-7—Department of Natural Resources Board Policies, Manual Code : 2203.1, 2203.2, 2203.3, 2203.4, 2203.8, 2203.9, 2240.3, 2240.32, 2240.33, and 2250.3, page 8

A-8—Secretary's Directive, Manual Code 2204.1, page 8

A-9—Organizational Chart, Department of Natural Resources, page 9

A-10—Department of Natural Resources Secretary and Staff, and Members of the Department of Natural Resources Board, pages 9 & 10

Exhibits—Land Acquisition Practices

B-1—Letter to E. J. Faber from Assistant Attorney General Charles Bleck, page 25

B-2—Letter of Reply from E. J. Faber with Attached Memos from William H. Field and John M. Keener, Including Enclosures, pages 25–30

Exhibit—Condemnations

C-1—Report on Condemnations from September 1, 1961 through December 8, 1967 with Revisions and Updating to April of 1971, pages 31–39

Exhibits—Information from Federal Agencies

D-1—Letter from DCI Director Frank A. Meyers Requesting Evaluation of the Land Acquisition Practices of the Wisconsin Department of Natural Resources, page 40

D-2—Reply from the United States Department of the Interior, Fish and Wildlife Service, Bureau of Sports Fisheries, pages 41–44 (and enclosures)

D-3—Reply from the United States Department of the Interior, Bureau of Outdoor Recreation, Lake Central Region, pages 44–46 (and enclosures)

Exhibits—Chapter 3

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E-2—Documents from Senator Dale McKenna Regarding A.R.K. Corporation

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E-3—Documents from Senator Dale McKenna Regarding Max von Dahlen Transaction

E-4—Documents from Senator Dale McKenna Regarding the Beischel-Ketterhagen Transaction

Exhibit—Chapter 4A

F-1—Transaction File Regarding Max von Dahlen Property, pages 70-73—extractions 1-20

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H-1—Documents Regarding Land Owners Rights Citizens' Committee, Received from Mrs. Beth Martineau, pages 94-97

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K-1—News Article from the *Milwaukee Journal*, dated January 14, 1966, page 129

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N-1—Copy of Tape Recorded Interview between Max Morehouse and D.N.R. Officials, pages 137 and 147-188

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N-2—Memo from Max Morehouse to J. R. Smith, William Matson, and John Brasch

N-3—Memo from Max Morehouse

Exhibit—Chapter 6

P-1—Copy of Tape Recorded Interview of Max Morehouse by Division of Criminal Investigation Personnel, pages 189-251

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Q-1—Warranty Deed, Savina Transaction, page 263

Q-2—Transaction File Regarding Albert Savina Property, pages 268-270—extractions 1-17

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R-1—Transaction File regarding McBride-Benson extractions 1-45

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S-1—Transaction File regarding Benson Acquisition—extractions 1-29

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T-1—Transaction File regarding Eiche Acquisition—extractions 1-10

EXECUTIVE COMMUNICATIONS

To the Honorable, the Senate:

Pursuant to the provisions of the statutes governing, I have, on behalf of Governor Patrick J. Lucey, nominated and with the advice and consent of the senate do appoint Robert Cook, of Green Bay, as a member of the Pesticide Advisory Council, to serve for a term ending July 1, 1975.

Sincerely,

MARTIN J. SCHREIBER,
Acting Governor.

Referred to committee on Natural Resources.