

22.06; 1967 c. 211 s. 11; Stats. 1967 s. 22.165; 1969 c. 276 ss. 159, 160; Stats. 1969 s. 22.19.

**22.20 History:** 1961 c. 435; Stats. 1961 s. 22.08; 1967 c. 211 s. 11; Stats. 1967 s. 22.166; 1969 c. 276 ss. 159, 160; Stats. 1969 s. 22.20.

**22.21 History:** 1963 c. 293; Stats. 1963 s. 22.10; 1967 c. 211 s. 11; Stats. 1967 s. 22.167; 1969 c. 276 ss. 159, 160; Stats. 1969 s. 22.21.

**22.22 History:** 1959 c. 551, 664; Stats. 1959 s. 22.03; 1967 c. 5; 1967 c. 211 s. 11; Stats. 1967 s. 22.162; 1969 c. 276 ss. 158, 161; Stats. 1969 s. 22.22.

**22.30 History:** 1967 c. 211; Stats. 1967 s. 22.17; 1969 c. 276 s. 159; Stats. 1969 s. 22.30.

**22.31 History:** 1967 c. 211; Stats. 1967 s. 22.18; 1969 c. 276 ss. 159, 162; Stats. 1969 s. 22.31.

**22.32 History:** 1967 c. 211; Stats. 1967 s. 22.19; 1969 c. 276 ss. 159, 610; Stats. 1969 s. 22.32.

**22.33 History:** 1967 c. 211; Stats. 1967 s. 22.20; 1969 c. 276 s. 159; Stats. 1969 s. 22.33.

**22.40 History:** Stats. 1959 ss. 94.08 to 94.13; 1961 c. 149 ss. 3, 5, 6; 1961 c. 621, 622; Stats. 1961 s. 27.30; 1965 c. 29, 249, 252; 1965 c. 433 ss. 53, 121; 1965 c. 591, 592; 1967 c. 43; 1967 c. 291 s. 14; 1969 c. 24; 1969 c. 154 s. 377; 1969 c. 276 ss. 188, 189; 1969 c. 392 ss. 12, 84; Stats. 1969 s. 22.40.

**Editor's Note:** Questions concerning liability for negligent acts or omissions at State Fair Park were considered in *Morgan v. Fisher*, 160 W 621, 151 NW 475, and in an opinion published in 32 Atty. Gen. 245. On the authority of municipal governments at State Fair Park see opinions published in 20 Atty. Gen. 506 and 28 Atty. Gen. 325.

The Wisconsin exposition department, created by statute, is not set up expressly as a separate corporate or politic body or given the power to sue or be sued, and the powers granted do not constitute the department a *sui juris* entity; hence it is not subject to suit as a separate entity. *Townsend v. Wisconsin Desert Horse Asso.* 42 W (2d) 414, 167 NW (2d) 425.

State aid for agricultural fairs on the basis of premiums actually paid is confined to cash premiums and first cost of premiums other than cash possessing intrinsic value; it does not include cost of ribbons, badges, banners and the like used to designate award of premiums to particular exhibits or exhibitors. 13 Atty. Gen. 428.

State aid for agricultural fairs does not include the cost of grand champion pennants awarded to exhibitors of grand champion livestock. 13 Atty. Gen. 519.

In the requirement that fairs to receive state aid shall report all cash premiums, time is directory and aid may be paid where reports are made later. 20 Atty. Gen. 1214.

**22.41 History:** 1961 c. 149; Stats. 1961 s. 27.30 (3) (c); 1965 c. 591; Stats. 1965 s. 27.305; 1969 c. 276 ss. 190, 191; 1969 c. 392 s. 87 (2); Stats. 1969 s. 22.41.

**22.42 History:** 1969 c. 276; 1969 c. 392 s. 84; 1969 c. 424 s. 26; Stats. 1969 s. 22.42.

**22.43 History:** 1965 c. 258, 529; Stats. 1965 s. 14.84; 1967 c. 26; 1969 c. 154 s. 124; 1969 c. 276 s. 60; Stats. 1969 s. 22.43.

**22.76 History:** 1969 c. 491; Stats. 1969 s. 22.76.

## CHAPTER 23.

### Public Lands and Conservation.

**23.01 History:** 1917 c. 456 s. 3; Stats. 1917 s. 23.01; 1969 c. 276.

On commissioners of the public lands see notes to sec. 7, art. X.

**23.02 History:** 1917 c. 456 s. 3; Stats. 1917 s. 23.02; 1969 c. 276 s. 588 (2).

On sale of public lands see notes to sec. 8, art. X.

The state has no title to swamp and overflowed lands until a patent has been issued to it; and the commissioners cannot be compelled to receive money and grant patents therefor before title is obtained. *State ex rel. Parsons v. Commissioners*, 9 W 236.

The commissioners are alone authorized to execute conveyances or patents; their power cannot be delegated. *McCabe v. Mazzuchelli*, 13 W 478.

Their decisions are subject to review by the courts. *Gough v. Dorsey*, 27 W 119.

One who holds the certificate of sale of land by the commissioners, which has been set aside by them, may show that their action was unlawful. If the commissioners attempt to annul a certificate where they have no legal right to do it, their act is void, and the court will adjudge a patent subsequently issued void. *Gunderson v. Cook*, 33 W 551.

Where the commissioners upon investigation are satisfied that the state has no valid claim to the island created by the federal government they may lawfully grant a quitclaim deed to a city for the purpose of clearing title. 20 Atty. Gen. 477.

The Swamp Land Act of 1850, ch. 84, 9 Stat. 519, granting to the several states the swamp and overflowed lands therein operated in praesenti but does not pass legal title until such lands have been surveyed, selected by the state, approved by the secretary of the interior and a patent issued, whereupon fee simple title vests in the state and its inchoate or equitable title becomes perfect as of the date of the act. Even though a patent has not been issued to the state it may protect its equitable interest in such lands against a trespasser cutting timber thereon by appropriate legal proceedings upon proof that the lands in question were of swamp and overflowed character as of the date of the act so as to be subject thereto. 36 Atty. Gen. 346.

**23.03 History:** R. S. 1878 s. 185; 1879 s. 175; Ann. Stats. 1889 s. 185, 237a; 1895 c. 242; Stats. 1898 s. 185; 1913 c. 772 s. 78; 1917 c. 456 s. 4; Stats. 1917 s. 23.03; 1937 c. 181 s. 2, 5; 1969 c. 276.

Expense of a survey to determine corners and lines of land on which school fund timber stands may be charged to the school fund. Expense of survey to secure portion of land given state in original swamp land grant may be charged to normal school fund. The land commission may not charge witness fees in tres-

pass action to fund to be benefited. 23 Atty. Gen. 374.

**23.04 History:** R. S. 1849 c. 24 s. 103; R. S. 1858 c. 28 s. 123; 1861 c. 267 s. 1, 2; 1866 c. 19 s. 1; R. S. 1878 s. 186; 1879 c. 194 s. 2; 1885 c. 177; Ann. Stats. 1889 s. 186, 186a; Stats. 1898 s. 186; 1899 c. 258 s. 1; 1901 c. 432 s. 3; 1905 c. 354 s. 1; Supl. 1906 s. 186; 1909 c. 219; 1917 c. 456 s. 5; Stats. 1917 s. 23.04; 1969 c. 276 s. 588 (2); 1969 c. 392 s. 87 (11).

**23.05 History:** 1856 c. 93 s. 1, 2; R. S. 1858 c. 28 s. 75, 76; 1865 c. 401 s. 1; 1866 c. 56 s. 1; R. S. 1878 s. 187; 1897 c. 355; Stats. 1898 s. 187; 1899 c. 258 ss. 2, 7, 8; 1901 c. 432 s. 4; Supl. 1906 s. 187; 1909 c. 527; 1911 c. 663 s. 6; 1917 c. 456 s. 6; Stats. 1917 s. 23.05; 1919 c. 93 s. 9; 1967 c. 291 s. 14; 1969 c. 392.

**23.06 History:** R. S. 1849 c. 24 s. 54, 55; 1855 c. 82 s. 1; R. S. 1858 c. 28 s. 73; R. S. 1878 s. 188; Stats. 1898 s. 188; 1917 c. 456 s. 7; Stats. 1917 s. 23.06; 1969 c. 276 s. 588 (2).

**23.07 History:** R. S. 1849 c. 24 s. 56, 95; R. S. 1858 c. 28 s. 77, 114; R. S. 1878 s. 191; Stats. 1898 s. 191; 1911 c. 663 s. 8; 1917 c. 456 s. 8; Stats. 1917 s. 23.07; 1951 c. 33; 1969 c. 392.

**23.08 History:** 1917 c. 456 s. 9; Stats. 1917 s. 23.08; 1969 c. 276.

The commissioners have no power to pay out moneys from the normal school fund to another department of the state for planting or otherwise enhancing value of normal school fund lands. 20 Atty. Gen. 1265.

**23.09 History:** 1923 c. 118; Stats. 1923 s. 23.09; 1927 c. 426; 1929 c. 262 s. 4; 1931 c. 45 s. 1; 1931 c. 295 s. 1; 1933 c. 140 s. 4; 1933 c. 152 s. 1; 1933 c. 159 s. 8; 1935 c. 365; 1943 c. 391; 1947 c. 332; 1949 c. 52, 405; 1951 c. 95, 97, 247; 1951 c. 319 ss. 199, 231; 1953 c. 219; 1955 c. 642; 1957 c. 14, 97; 1959 c. 122, 547; 1959 c. 659 s. 45; 1961 c. 174, 250, 346, 389; 1961 c. 427 ss. 8, 10, 13; 1961 c. 446, 520, 676; Stats. 1961 ss. 23.09, 46.70, 109.05 (3); 1963 c. 283, 340, 345; 1965 c. 252, 276, 367; 1965 c. 433 s. 121; 1965 c. 646; 1967 c. 26; 1967 c. 29 ss. 1, 2; 1967 c. 38; 1967 c. 211 ss. 15, 20; 1967 c. 291 s. 14; Stats. 1967 ss. 22.13 (3), 23.09, 46.70; 1969 c. 154 ss. 123, 125, 377; 1969 c. 276 ss. 168, 169, 309, 588 (4), 610; 1969 c. 353 ss. 28, 29, 30, 34; 1969 c. 394, 397, 407; 1969 c. 424 s. 27; Stats. 1969 s. 23.09.

On taking private property for public use see notes to sec. 13, art. I; on delegation of power see notes to sec. 1, art. IV; on internal improvements see notes to sec. 10, art. VIII; on jurisdiction on rivers and lakes see notes to sec. 1, art. IX; and on acquisition of lands by the state and cities see notes to sec. 3a, art. XI.

See note to sec. 3, art. VII, on control of corporations and non-judicial officers (quo warranto), citing *In re Nagler*, 194 W 437, 216 NW 493.

Where the state conservation commission had authority to order an appeal from a judgment requiring that the name of a reinstated employe be placed on the pay roll, and the director, under 23.09 (6), had the same authority between meetings of the commission, and the commission approved the appeal after it had been ordered by the director, the appeal will not be dismissed on the ground

that it was not authorized by the commission. *Baken v. Vanderwall*, 245 W 147, 13 NW (2d) 502.

A rule prohibiting the carrying of rifles larger than .22 caliber in certain designated counties without a permit is valid and a conviction sustained regardless of a jury verdict that offender was not intending to hunt. *State v. Winkler*, 255 W 352, 38 NW (2d) 471.

The conservation commission in establishing a wildlife refuge under 23.09 (7) (b) must investigate and have public hearing before establishing same. It may make orders to prohibit hunting and fishing on such refuges. Violation of said orders is punishable under 23.09 (11). 17 Atty. Gen. 204.

If the conservation commission in its experience finds it reasonably necessary to require report by operators of fur farms of animals sold to persons outside the state as well as within the state, that is sufficient to sustain such rule. 19 Atty. Gen. 230.

A city and the conservation commission have power to contract for the commission to maintain a fish hatchery on and in a lake in a city park and contiguous land and for improvement and use of same for such purposes. 19 Atty. Gen. 493.

If in the judgment of the conservation commission it is necessary to establish rules and regulations defining pound nets, trap nets and trammel nets it has power to do so. 21 Atty. Gen. 206.

The authority of the conservation commission to adopt rules and regulations is confined to administration of powers specifically conferred and to enforcement of statutes. 21 Atty. Gen. 606.

Conservation commissioners acting as individuals have no authority to officially represent the state or the conservation department. 21 Atty. Gen. 1004.

The conservation commission has no power to change levels of lakes and streams. That power is delegated to the public service commission under 31.02. 24 Atty. Gen. 242.

The conservation commission may advertise recreational advantages of Wisconsin outside the state by exhibits at outdoor shows and similar expositions and expenses of employes may be paid. 25 Atty. Gen. 123.

The conservation commission has broad discretion in carrying out requirements relative to publicity but may not allocate money appropriated therefor to regional groups and associations publicizing Wisconsin's facilities and attractions as vacation land. 26 Atty. Gen. 452.

The conservation commission has power relative to publicity to join with private groups or associations in carrying on out-of-state advertising projects and pay part of the costs thereof. 28 Atty. Gen. 210.

Members of the conservation commission to be appointed under this section should be appointed and confirmed in February but do not take office until July 27 following. 30 Atty. Gen. 62.

A conviction of a violation of a conservation commission order made pursuant to 23.09 (7) does not, pursuant to 29.63 (3), cause forfeiture of any license held by violator under ch. 29, nor prevent issuance of such license to

such violator for a period of one year thereafter. 30 Atty. Gen. 212.

The conservation commission may compromise a claim arising under a written lease for fish ponds by paying agreed amount of money in lieu of fish which it was orally agreed lessor was to receive at termination of lease, fish having been destroyed by disease, and such claim approved by the conservation commission should be audited. 31 Atty. Gen. 312.

In 23.09 (7) and 29.174 (2), Stats. 1951, the legislature has delegated power to the conservation commission, in accordance with an expressed standard, to issue rules and regulations which modify statutes concerning the conditions governing the taking of fish and game. 41 Atty. Gen. 254.

The conservation commission has power in the development of long-range conservation programs to make general statements of policy for information and guidance of the department and future commissions. 51 Atty. Gen. 118.

The conservation commission and the natural resources board lack the authority to adopt rules providing for "controlled hunting" through restrictions on the numbers of hunters and fishermen allowed in limited areas during open seasons. 57 Atty. Gen. 31.

Judicial review of conservation rules. Boles, 39 MLR 218.

Initiating rule-making process of the conservation commission. Boles, 39 MLR 333.

Public hearing as part of rule-making process of conservation commission. Boles, 40 MLR 167.

Post-hearing clearance of rules of conservation commission. Boles, 40 MLR 251.

**23.092 History:** 1961 c. 427; Stats. 1961 s. 23.092; 1965 c. 366; 1969 c. 392 s. 87 (16).

**23.093 History:** 1965 c. 276; Stats. 1965 s. 23.093; 1969 c. 392 s. 87 (16).

**23.095 History:** 1911 c. 143; 1911 c. 664 s. 13; Stats. 1911 s. 4570m; 1925 c. 4; Stats. 1925 s. 348.425; 1955 c. 696 s. 269; Stats. 1955 s. 23.095; 1967 c. 29 s. 2.

**23.10 History:** Stats. 1913 s. 1498, 1498a, 1498b, 1498b-1, 1498b-2, 14981; 1915 c. 594 s. 5; 1915 c. 598; 1915 c. 635 s. 10; Stats. 1915 s. 62.03; 1917 c. 456 s. 12; Stats. 1917 s. 23.10; 1923 c. 191 s. 1; 1965 c. 207; 1967 c. 29 ss. 1, 4; 1969 c. 392 ss. 12s, 87 (7), (16).

Conservation wardens are not entitled to witness fees. 5 Atty. Gen. 68.

**23.11 History:** 1917 c. 456 s. 13; Stats. 1917 s. 23.11; 1919 c. 303 s. 1, 2; 1919 c. 571 s. 2; 1929 c. 21; 1931 c. 179; 1967 c. 29 s. 1; 1967 c. 79; 1969 c. 392 s. 87 (7).

The conservation commission had authority under 23.11 (1) to enter into a temporary contract with a trapper to trap muskrats on Horicon marsh; this was not an evasion of the civil service law. *Rehse v. Industrial Comm.* 1 W (2d) 621, 85 NW (2d) 378.

The conservation commission has power to purchase feed for flocks of prairie chickens during an emergency period when large numbers of birds are threatened with starvation. 11 Atty. Gen. 130.

The conservation commission has authori-

ty to make regulation prohibiting aeroplanes from flying within certain reasonable distance of a game refuge. 18 Atty. Gen. 571.

Accounting between forestry funds and normal school funds under decision in State ex rel. *Owen v. Donald*, 160 W 21, released the forestry lands and funds from the special trust imposed by said decision in favor of the normal school funds and restored them to the jurisdiction of the conservation commission. 18 Atty. Gen. 602.

The conservation department has authority to provide uniforms for its wardens if the uniforms are issued to the wardens and returned to the department when the wardens have finished using them on departmental duties. 39 Atty. Gen. 354.

**23.12 History:** 1917 c. 456 s. 13; Stats. 1917 s. 23.12; 1969 c. 392 s. 87 (8).

**23.13 History:** 1917 c. 456 s. 14; Stats. 1917 s. 23.13; 1969 c. 276 s. 588 (2).

**23.25 History:** 1931 c. 179; Stats. 1931 s. 23.25; 1967 c. 29 s. 1; 1969 c. 276.

**23.26 History:** 1951 c. 203; Stats. 1951 s. 23.26; 1953 c. 61, 441; 1957 c. 528; 1959 c. 442; 1959 c. 659 s. 82; 1961 c. 336; 1965 c. 614; 1967 c. 29 s. 4; 1969 c. 276.

**23.27 History:** 1951 c. 566; Stats. 1951 s. 23.27; 1953 c. 61 s. 1, 2; 1957 c. 528; 1965 c. 359; 1967 c. 29 s. 1; 1969 c. 276.

**23.30 History:** 1969 c. 353; Stats. 1969 s. 23.30.

**23.31 History:** 1969 c. 353, 424; Stats. 1969 s. 23.31.

## CHAPTER 24.

### Entry and Sale of Public Lands.

**24.01 History:** 1865 c. 537 s. 1; 1867 c. 22; 1869 c. 151 s. 1; R. S. 1878 s. 184; Stats. 1898 s. 184; 1917 c. 454 s. 2; 1917 c. 671 s. 7; 1917 c. 677 s. 87; Stats. 1917 s. 24.01; 1929 c. 330; 1935 c. 448; 1949 c. 474; 1951 c. 247; 1969 c. 276.

On jurisdiction of the commissioners of the public lands see notes to 23.02.

On the classification of public lands see State ex rel. *Owen v. Donald*, 162 W 609, 157 NW 794.

**24.02 History:** 1917 c. 454 s. 3; Stats. 1917 s. 24.02.

**24.03 History:** R. S. 1858 c. 30; R. S. 1878 s. 283; Stats. 1898 s. 283; 1917 c. 454 s. 4; Stats. 1917 s. 24.03; 1967 c. 29 s. 5; 1969 c. 276 s. 588 (2).

On escheats see note to sec. 3, art. IX.

**24.04 History:** R. S. 1858 c. 28 s. 74; 1859 c. 189 s. 1; 1861 c. 281 s. 4; 1865 c. 537 s. 22; 1866 c. 56 s. 4; 1867 c. 22; R. S. 1878 s. 189, 252; Stats. 1898 s. 189, 252; 1899 c. 258 s. 3; 1901 c. 432 s. 5; Supl. 1906 s. 189; 1911 c. 663 s. 7; 1917 c. 454 s. 5; Stats. 1917 s. 24.04; 1929 c. 463 s. 2; 1965 c. 433 s. 121; 1967 c. 291 s. 14; 1969 c. 276 s. 588 (2).

The commissioners are entitled to collect fees for all certificates and patents, not for certificates and patents of swamp lands only. *Harrington v. Smith*, 28 W 43.