

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, 1498l; 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.

24.05 History: R. S. 1849 c. 24 s. 53; R. S. 1858 c. 28 s. 72; R. S. 1878 s. 192; Stats. 1898 s. 192; 1917 c. 454 s. 6; Stats. 1917 s. 24.05; 1969 c. 276 s. 588 (2).

24.06 History: R. S. 1849 c. 24 s. 47, 49, 99; R. S. 1849 c. 40 s. 1; R. S. 1858 c. 28 s. 46, 67, 68, 119; R. S. 1878 s. 193; Stats. 1898 s. 193; 1917 c. 454 s. 7; Stats. 1917 s. 24.06; 1969 c. 276 s. 588 (2); 1969 c. 392.

24.07 History: R. S. 1858 c. 28 s. 24; R. S. 1878 s. 195; Stats. 1898 s. 195; 1917 c. 454 s. 8; Stats. 1917 s. 24.07; 1969 c. 392 s. 87 (11).

24.08 History: R. S. 1849 c. 24 s. 2; 1855 c. 22 s. 2; R. S. 1858 c. 28 s. 20, 62; R. S. 1858 c. 29 s. 23; R. S. 1858 c. 30; 1862 c. 269; 1863 c. 160 s. 1 to 3; 1863 c. 287 s. 1, 2; 1864 c. 455 s. 1; 1866 c. 128 s. 2; 1867 c. 50 s. 1; 1867 c. 139 s. 1 to 3; 1869 c. 77 s. 1; 1869 c. 142 s. 1; 1871 c. 12 s. 1; 1873 c. 103; 1877 c. 157; R. S. 1878 s. 202, 203, 204, 284; 1883 c. 332; 1889 c. 365; Ann. Stats. 1889 s. 202, 203, 204, 204a, 206a, 284; Stats. 1898 s. 202, 203, 204, 204a, 205, 206, 284, 285; 1911 c. 184; 1917 c. 454 s. 9; Stats. 1917 s. 24.08; 1957 c. 259 s. 46; 1969 c. 276 s. 588 (2); 1969 c. 392 s. 87 (11), (16).

Interests in escheated lands may be sold by the commissioners without having them appraised, advertised and sold at public auction as required for sale of other lands owned by the state. 19 Atty. Gen. 614.

24.085 History: 1935 c. 498; Stats. 1935 s. 24.085; 1963 c. 467; 1965 c. 163, 433, 646; 1969 c. 392 ss. 13m, 87 (8), (16).

24.09 History: R. S. 1849 c. 24 s. 5, 50; R. S. 1858 c. 28 s. 19, 21, 69; 1872 c. 55; R. S. 1878 s. 207; 1885 c. 222; Ann. Stats. 1889 s. 207, 210a; 1897 c. 367; Stats. 1898 s. 207; 1899 c. 345; 1901 c. 458; 1903 c. 450 s. 13; 1905 c. 264 s. 23; 1907 c. 143; 1909 c. 374; 1917 c. 454 s. 10; Stats. 1917 s. 24.09; 1933 c. 294; 1939 c. 347; 1943 c. 106; 1951 c. 209; 1953 c. 61; 1965 c. 252; 1967 c. 29 s. 4; 1969 c. 276 s. 588 (2); 1969 c. 392 s. 87 (11).

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

The statutes concerning the sale of school and university lands in force at the time of sale become a part of the contract, and later laws cannot change the conditions of the sale. State ex rel. Damman v. Commissioners, 4 W 414.

The sale provided for in sec. 8, art. X, is a transfer of the legal fee and not merely of the equitable estate. The sale provided for in this chapter is different, and lack of provisions for the taking of a mortgage is not repugnant to the constitution. Smith v. Mariner, 5 W 551.

Under secs. 207 and 211, R. S. 1878, the commissioners have full discretion as to when lands shall be first offered at auction, and, after they have been advertised, to withhold such tracts as they deem best. State ex rel. Holston v. Commissioners, 61 W 274, 20 NW 915.

The power to withdraw school lands is conferred upon the commissioners by sec. 8, art. X. The statute did not, therefore, confer any additional power upon the commissioners

as to such lands. It did, however, confer such power as to other public lands. The legislature has power to direct the manner in which public lands shall be sold. The statute is remedial and is to be liberally construed. It applied to such lands as had been withdrawn from sale before it was enacted. To so hold does not disturb any vested rights. State ex rel. Sweet v. Cunningham, 88 W 81, 57 NW 1119, 59 NW 503.

The commissioners are authorized to sell land for national forests under 1.055 without complying with public auction provisions of this section. 26 Atty. Gen. 210.

The minimum price of land to be sold need not be inserted in the notice of sale which must be published under 24.09 (1). A parcel of land, including school or university land, which has actually been offered at sale, may not be withdrawn from such sale if minimum price therefor has been bid. 32 Atty. Gen. 237.

Under 24.09 (1), as amended by ch. 106, Laws 1943, the commissioners may sell state-owned lands lying within Indian reservations, to the United States, for the benefit and use of the Indians, without regard to other or inconsistent statutory provisions applicable generally to the sale of public lands. 34 Atty. Gen. 37.

24.10 History: R. S. 1849 c. 24 s. 6-9; R. S. 1858 c. 28 s. 22, 23, 25; R. S. 1878 s. 208; Stats. 1898 s. 208; 1903 c. 450 s. 14; 1907 c. 143; 1917 c. 454 s. 11; Stats. 1917 s. 24.10; 1969 c. 276 s. 588 (2).

Sec. 9, ch. 24, R. S. 1849, does not apply to the sale of forfeited lands. These may be offered in such order as the commissioners see fit. State ex rel. Crampton v. Commissioners, 14 W 345.

At a sale of any public lands, the minimum price for such lands must be announced at the sale before bids are accepted. No purpose is accomplished by inserting in the notice of sale "the commission reserves the right to reject any and all bids." 32 Atty. Gen. 237.

24.11 History: R. S. 1849 c. 24 s. 10, 11, 14; R. S. 1858 c. 28; R. S. 1858 c. 30 s. 26, 27, 28, 31; 1859 c. 6; 1860 c. 99 s. 1; 1863 c. 287 s. 3; 1865 c. 537 s. 7; 1866 c. 121 s. 2; 1867 c. 22 s. 4; 1867 c. 139 s. 2; 1869 c. 151; R. S. 1878 s. 209, 284; Stats. 1898 s. 209, 284; 1903 c. 450 s. 15; 1905 c. 184 s. 1; Supl. 1906 s. 209; 1907 c. 143; 1911 c. 184, 452; 1911 c. 664 s. 81; 1913 c. 597; 1917 c. 454 s. 14; Stats. 1917 s. 24.11; 1951 c. 279; 1969 c. 392 s. 87 (11).

The state is not liable to its grantee of escheated lands for special assessments therefor levied. 1 Atty. Gen. 586.

A notice of a sale of public lands, part of which are valuable for agriculture, which states that the sales will be for cash, does not prevent the commissioners from determining, at any time before the sale, that, as to the lands valuable for agriculture, the sales will be made on the terms prescribed by statute. 3 Atty. Gen. 648.

24.12 History: R. S. 1849 c. 24 s. 12, 13; R. S. 1858 c. 28 s. 29, 30; 1876 c. 267; R. S. 1878 s. 210; Stats. 1898 s. 210; 1903 c. 450 s. 16; 1907 c. 143; 1917 c. 454 s. 14; Stats. 1917 s. 24.12; 1969 c. 392 s. 87 (11).

24.14 History: 1883 c. 332; Ann. Stats. 1889 s. 206a; Stats. 1898 s. 206a; 1917 c. 454 s. 17; Stats. 1917 s. 24.14; 1969 c. 392 s. 87 (11).

24.145 History: 1939 c. 212; Stats. 1939 s. 24.145.

24.15 History: R. S. 1849 c. 24 s. 29; R. S. 1859 c. 28 s. 32; R. S. 1878 s. 211; Stats. 1898 s. 211; 1917 c. 454 s. 18; Stats. 1917 s. 24.15.

24.15, Stats. 1943, does not require private sale of a parcel of land on application to purchase at the minimum price if such land has been withdrawn from sale pursuant to 24.09 (2). 32 Atty. Gen. 237.

24.16 History: R. S. 1849 c. 24 s. 32, 33; R. S. 1858 c. 28 s. 35, 37; R. S. 1878 s. 212; Stats. 1898 s. 212; 1899 c. 258 s. 4; 1901 c. 432 s. 6; Supl. 1906 s. 212; 1917 c. 454 s. 19; Stats. 1917 s. 24.16; 1969 c. 276 s. 588 (2); 1969 c. 392 s. 87 (11).

The application must be in writing, and must minutely describe the tract or lot. State ex rel. Delaplaine v. Janssen, 2 W 423.

The legislature may legalize entries where the application was not in writing. The application does not constitute a contract between the state and the applicant, nor does the memorandum given the latter impose any legal obligation to purchase. State ex rel. Mariner v. Gray, 4 W 380.

A written application is indispensable to the validity of the purchaser's title as against one who subsequently purchases upon such an application. The right to purchase is not acquired until the application is filed and the money paid. Gough v. Dorsey, 27 W 119.

24.17 History: R. S. 1849 c. 24 s. 34, 35; R. S. 1858 c. 28 s. 38, 39; R. S. 1878 s. 213; Stats. 1898 s. 213; 1917 c. 454 s. 20; Stats. 1917 s. 24.17; 1969 c. 276 s. 588 (2).

24.18 History: R. S. 1849 c. 24 s. 43; R. S. 1858 c. 28 s. 49; R. S. 1878 s. 214; Stats. 1898 s. 214; 1917 c. 454 s. 21; Stats. 1917 s. 24.18; 1969 c. 276 s. 588 (2).

The commissioners must execute patents; the power cannot be transferred. State ex rel. Byrne v. Harvey, 11 W 33.

24.19 History: R. S. 1849 c. 24 s. 22; 1855 c. 21 s. 3; R. S. 1858 c. 28 s. 41, 53; R. S. 1878 s. 215; 1881 c. 263; Ann. Stats. 1889 s. 215; Stats. 1898 s. 215; 1917 c. 454 s. 22; Stats. 1917 s. 24.19; 1969 c. 276 s. 588 (2).

Certificates are not negotiable; an indorsement in blank is not conclusive evidence of ownership in the holder. Whitney v. State Bank, 7 W 620.

One of 2 joint owners of certificates cannot assign them as security for individual debt, so as to affect the other's rights. When land is not occupied as homestead, the husband has absolute control of certificate of which he is the holder. Green v. Lyndes, 12 W 404.

Certificates are not the subject of pledge; but their deposit may operate, under certain circumstances, as an equitable mortgage. Assignment in blank is not a transfer of a certificate at law. Mowry v. Wood, 12 W 413.

Subsequent purchaser of a certificate, with notice of such a mortgage, takes subject thereto; but if he pays sum due the state, and

takes a patent, he will have a prior lien for the money so paid. Dodge v. Silverthorn, 12 W 644.

An assignment of a certificate for land used as a homestead is void without the signature of the wife. McCabe v. Mazzuchelli, 13 W 478.

An assignment must be in writing, as certificates are contracts for the sale of realty. The object of the provision authorizing certificates and assignments thereof to be recorded is to enable the purchasers and their assigns to spread the evidence of their equitable rights upon the public records of the county and make them notice to all the world, and to enable them to deal with the estate conveyed thereby as if they were seized in fee, subject to the conditions of the sale from the state. The equitable interest in the land, created by a school land certificate may be mortgaged, or transferred by deed, without an assignment or delivery to the purchaser or mortgagee of the certificate, but the legal title to the certificate cannot be transferred without an assignment in writing, as prescribed by the statute; and the beneficial interest in the land may become wholly or in part vested in one person, and the legal title to the certificate in another. An equitable mortgage may be created by deposit of the title deeds of a legal or an equitable estate, as security for the payment of money, or by a conveyance legal in its form of an equitable estate for that purpose. Jarvis v. Dutcher, 16 W 307.

One who holds the certificate of a sale of land may maintain ejectment against one in possession and claiming the land under a patent subsequently issued by the commissioners. In such action he may show that the act of the commissioners in setting aside the sale upon which his certificates were issued, and in again selling land to the defendant, was unlawful. Gunderson v. Cook, 33 W 551; Tobey v. Secor, 60 W 310, 19 NW 99.

24.20 History: R. S. 1849 c. 24 s. 37, 38; R. S. 1858 c. 28 s. 42, 43; 1866 c. 56 s. 4; 1867 c. 22; R. S. 1878 s. 216, 252; Stats. 1898 s. 216, 252; 1917 c. 454 s. 23; Stats. 1917 s. 24.20; 1947 c. 9 s. 31; 1961 c. 191; 1969 c. 276 s. 582 (17).

24.21 History: R. S. 1849 c. 24 s. 41; 1854 c. 70 s. 2; R. S. 1858 c. 28 s. 47; R. S. 1878 s. 217; Stats. 1898 s. 217; 1917 c. 454 s. 24; Stats. 1917 s. 24.21; 1969 c. 276 s. 588 (2).

24.22 History: R. S. 1849 c. 24 s. 42; R. S. 1858 c. 28 s. 48; R. S. 1878 s. 218; Stats. 1898 s. 218; 1917 c. 454 s. 25; Stats. 1917 s. 24.22; 1947 c. 9 s. 31; 1961 c. 316.

24.23 History: R. S. 1849 c. 24 s. 19; R. S. 1858 c. 28 s. 50; R. S. 1878 s. 219; Stats. 1898 s. 219; 1917 c. 454 s. 26; Stats. 1917 s. 24.23.

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

24.24 History: R. S. 1849 c. 24 s. 20, 21; R. S. 1858 c. 28 s. 51; 1864 c. 193 s. 1; R. S. 1858 c. 28 s. 52; 1860 c. 95; R. S. 1878 s. 220; Stats. 1898 s. 220; 1917 c. 454 s. 27; Stats. 1917 s. 24.24; 1969 c. 241; 1969 c. 392 s. 87 (11).

24.25 History: R. S. 1849 c. 24 s. 25; R. S. 1858 c. 28 s. 55, 57; 1861 c. 281 s. 1; 1862 c.

235 s. 1; R. S. 1878 s. 221; 1879 c. 220; Ann. Stats. 1889 s. 221, 237b; Stats. 1898 s. 221; 1917 c. 454 s. 28; Stats. 1917 s. 24.25; 1969 c. 276 s. 588 (2).

A patent issued by the commissioners is prima facie evidence of facts necessary to its validity. Understandable description will not be set aside because of a technical defect. *Sexton v. Appleyard*, 32 W 235.

A state patent running to a dead man passes title to his heirs. 5 Atty. Gen. 241.

24.251 History: 1925 c. 345; Stats. 1925 s. 24.251; 1967 c. 29 s. 5; 1969 c. 276 s. 588 (2).

24.26 History: R. S. 1849 c. 24 s. 19-21; R. S. 1858 c. 28 s. 50-52; 1876 c. 314 s. 7; R. S. 1878 s. 222; Stats. 1898 s. 222; 1917 c. 454 s. 29; Stats. 1917 s. 24.26; 1969 c. 392 s. 87 (11).

After the purchaser's rights have become forfeited the right of action for trespasses upon lands is in the state until they are resold. After a resale and patents issued such right passes to the patentee without any formal assignment. *Conklin v. Hawthorn*, 29 W 476; *Smith v. Morgan*, 68 W 358, 32 NW 135.

24.27 History: R. S. 1858 c. 28 s. 58; R. S. 1878 s. 223; Stats. 1898 s. 223; 1917 c. 454 s. 30; Stats. 1917 s. 24.27; 1969 c. 276 s. 588 (2).

24.28 History: R. S. 1849 c. 24 s. 15; R. S. 1858 c. 28 s. 58; R. S. 1878 s. 224; Stats. 1898 s. 224; 1917 c. 454 s. 31; Stats. 1917 s. 24.28; 1939 c. 476; 1969 c. 276 s. 588 (2).

Nonpayment of interest or taxes defeats rights under a certificate of sale. *Jarvis v. Dutcher*, 16 W 307.

If land has been forfeited and resold, all prior dispositions are avoided. A prior mortgage of the equitable estate is not revived by the purchase of the land by the mortgagor of the certificate. *Weber v. Zeimet*, 30 W 283.

The statutes provide for forfeiting lands in case of default in payment of any part of principal, interest or taxes without foreclosure of mortgage. 18 Atty. Gen. 451.

Tax title to lands originally sold by the state cannot be obtained while deferred payments to state remain unpaid; any deed issued on such delinquent taxes would be void. 19 Atty. Gen. 456.

24.29 History: R. S. 1849 c. 24 s. 16; R. S. 1858 c. 28 s. 59; 1859 c. 172 s. 1; 1862 c. 167 s. 1; R. S. 1878 s. 225; 1889 c. 483; Ann. Stats. 1889 s. 225; Stats. 1898 s. 225; 1917 c. 454 s. 32; Stats. 1917 s. 24.29; 1951 c. 279.

The purchaser of school or university lands cannot be deprived of the right, upon forfeiture of contract for nonpayment, to revive it at any time before public sale by payment of the sum due and the penalty. State ex rel. *Mayers v. Commissioners*, 5 W 348; *Smith v. Mariner*, 5 W 551.

24.30 History: R. S. 1849 c. 24 s. 18; R. S. 1858 c. 28 s. 60; R. S. 1878 s. 226; Stats. 1898 s. 226; 1917 c. 454 s. 33; Stats. 1917 s. 24.30; 1969 c. 392 s. 87 (11).

24.31 History: 1855 c. 22 s. 1; R. S. 1858 c. 28 s. 61; 1862 c. 129 s. 1, 2; R. S. 1878 s. 227; Stats. 1898 s. 227; 1913 c. 772 s. 78; 1917 c. 454 s. 34; Stats. 1917 s. 24.31; 1965 c. 252; 1969 c. 392 s. 87 (11).

24.32 History: 1855 c. 22 s. 2; R. S. 1858 c. 28 s. 62; 1862 c. 269 s. 1; 1872 c. 133; R. S. 1878 s. 228; Stats. 1898 s. 228; 1917 c. 454 s. 35; Stats. 1917 s. 24.32; 1969 c. 392 ss. 13s, 87 (11).

A forfeited tract cannot be resold if redeemed. But when marked redeemed by mistake and when a receipt of redemption is given to the holder this is no redemption, and the sale is valid. State ex rel. *Kinney v. Commissioners*, 13 W 409.

The order of sale of forfeited lands is in the discretion of the commissioners. State ex rel. *Crampton v. Commissioners*, 14 W 345.

There can be no redemption of forfeited lands where the land forfeited is not under cultivation and does not touch another tract, partly cultivated, belonging to the former owner. "Adjoining" means touching. Lands do not adjoin where other lands intervene. 4 Atty. Gen. 296.

24.33 History: 1874 c. 328; R. S. 1878 s. 229; Stats. 1898 s. 229; 1917 c. 454 s. 36; Stats. 1917 s. 24.33; 1969 c. 276 s. 588 (2).

The authority of the commissioners to set aside sales is recognized. State ex rel. *Anderson v. Timme*, 70 W 627, 36 NW 325.

24.34 History: R. S. 1849 c. 24 s. 101; R. S. 1858 c. 28 s. 121; 1873 c. 130; R. S. 1878 s. 230; Stats. 1898 s. 230; 1917 c. 454 s. 37; Stats. 1917 s. 24.34; 1919 c. 322 s. 1; 1969 c. 392 s. 87 (11).

If the fraudulent purchaser refuses to surrender his patent after the commissioners have set aside the sale on the ground of fraud, the purchaser at a resale of the land, to whom a new patent has been issued, may obtain a cancellation of the former patent and quiet his title. *Burrows v. Rutledge*, 76 W 22, 24 NW 847.

24.341 History: 1925 c. 246; Stats. 1925 s. 24.341; 1969 c. 392 s. 87 (13).

24.35 History: 1864 c. 317 s. 1-3; 1873 c. 130 s. 2; R. S. 1878 s. 231; Stats. 1898 s. 231; 1917 c. 454 s. 38; Stat. 1917 s. 24.35; 1919 c. 322 s. 1; 1969 c. 276 s. 588 (2).

A patent erroneously issued to A may be annulled and a new patent issued to B. 4 Atty. Gen. 273.

24.355 History: 1919 c. 322 s. 2; Stats. 1919 s. 24.355.

24.36 History: R. S. 1849 c. 24 s. 23; R. S. 1858 c. 28 s. 54; 1863 c. 225 s. 1; R. S. 1878 s. 233; Stats. 1898 s. 233; 1917 c. 454 s. 40; Stats. 1917 s. 24.36; 1969 c. 276 s. 588 (2).

24.37 History: R. S. 1849 c. 24 s. 106; R. S. 1858 c. 28 s. 126; R. S. 1878 s. 235; Stats. 1898 s. 235; 1917 c. 454 s. 42; Stats. 1917 s. 24.37; 1969 c. 276 s. 588 (2).

24.38 History: R. S. 1858 c. 29 s. 22; 1864 c. 156 s. 9; R. S. 1878 s. 236; Stats. 1898 s. 236; 1917 c. 454 s. 43; Stats. 1917 s. 24.38.

24.39 History: 1917 c. 454 s. 45; Stats. 1917 s. 24.39; 1925 c. 159; 1943 c. 389; 1957 c. 8; 1961 c. 535, 622; 1969 c. 276 s. 588 (1), (2); 1969 c. 392 s. 87 (6), (11), (13), (16).

The commissioners have authority to sell fallen timber on state lands. 11 Atty. Gen. 90.

State trust lands may not be taken for highway purposes without compensation. Under 32.03 (1), Stats. 1939, the general power of condemnation does not extend to state or municipally-owned property. 29 Atty. Gen. 458.

Under 24.39 (4) the state may lease riparian rights on shores of Green Bay to the city of Green Bay, which in turn can sublease an area for harbor or navigation improvement purposes. 52 Atty. Gen. 42.

24.40 History: 1949 c. 150; Stats. 1949 s. 24.40.

The department of public welfare has power, under this section, to consent to the annexation of the grounds of the Wisconsin school for boys by the city of Waukesha. 38 Atty. Gen. 395.

CHAPTER 25.

Trust Funds and Their Management.

25.01 History: R. S. 1849 c. 24 s. 63, 64, 73; R. S. 1858 c. 28 s. 80, 81, 92; 1862 c. 89 s. 1; 1862 c. 225 s. 1; 1863 c. 100 s. 1; 1864 c. 217 s. 1; 1867 c. 46 s. 1; 1868 c. 111 s. 1; 1871 c. 42 s. 1; R. S. 1878 s. 258; 1881 c. 167; 1883 c. 82; 1885 c. 354; Ann. Stats. 1889 s. 258, 258a, 262a; 1893 c. 176 s. 1; Stats. 1898 s. 258; 1899 c. 129 s. 1; 1899 c. 130 s. 2; Supl. 1906 s. 258, 258i; 1913 c. 647, 774; 1917 c. 536 s. 3; Stats. 1917 s. 25.01; 1919 c. 65, 119; 1919 c. 671 s. 11a; 1919 c. 702 s. 9; 1923 c. 126; 1925 c. 267; 1929 c. 261; 1931 c. 67 s. 154; 1933 c. 436 s. 14; 1937 c. 349; 1939 c. 158, 510; 1943 c. 574; 1951 c. 14; 1957 c. 192; 1965 c. 292 s. 11 (2); 1967 c. 29 s. 4; 1969 c. 276 s. 588 (2).

On the school fund see notes to sec. 2, art. X; and on the commissioners of the public lands see notes to sec. 7, art. X.

Deposits of state funds in banks by the state treasurer without the concurrence of either of the other commissioners, from any and all the funds in the treasury, are not investments thereof, and such deposits are not forbidden by this section. State v. McFetridge, 84 W 473, 54 NW 1 and 998.

An application for a loan for 2 purposes, one legal and one illegal, cannot be approved where the proceedings of the municipality authorizing such borrowing do not definitely disclose the amount of funds to be used for each purpose. 9 Atty. Gen. 575.

A school district may borrow from the trust funds to equip a school with a heating and ventilating system. 10 Atty. Gen. 978.

A loan to a board of vocational education of a city under 25.01 (3) increases the bonded indebtedness of the city. The loan must be made through and with the approval of the common council. The board of vocational education must provide for repayment of the loan out of its tax under 41.16 (2). 18 Atty. Gen. 516.

Municipalities may borrow money from state trust funds to pay current and ordinary expenses. 25 Atty. Gen. 31.

Trust funds may be loaned to counties for the purpose of paying children's aid, blind pensions and old-age pensions. 25 Atty. Gen. 59.

State trust fund loans (1) may not be made to a county for the purpose of paying a town

therein excess delinquent taxes collected by the county in previous years and spent for county purposes; (2) may not be made to a town for the purpose of paying tuition claim which a school district has against the town; (3) may be made to municipalities for the purpose of refunding current and ordinary expense obligations created by such municipalities pursuant to 67.12 and 67.125; (4) may not be made to refund a municipal obligation unless the same was legally created; (5) may not be made to enable one school district to pay another school district a sum due the latter as the result of adjustment of assets and liabilities made under 66.03. 29 Atty. Gen. 276.

Certificates of indebtedness owed to state trust funds under ch. 25, Laws 1866, could not be paid except by legislative action. 30 Atty. Gen. 290.

25.02 History: 1871 c. 42; R. S. 1878 s. 261; 1881 c. 167 s. 2; 1887 c. 541; 1889 c. 279; Ann. Stats. 1889 s. 258b, 261; 1891 c. 143; Stats. 1898 s. 258a, 261; 1899 c. 129 s. 2; 1899 c. 130; 1901 c. 123; Supl. 1906 s. 258, 261; 1907 c. 216; 1911 c. 363; 1913 c. 236, 563; 1917 c. 536 s. 4; Stats. 1917 s. 25.02; 1925 c. 190; 1935 c. 300; 1937 c. 43; 1939 c. 158, 391; 1947 c. 44; 1951 c. 339; 1955 c. 220, 442, 652; 1961 c. 114; 1963 c. 157; 1969 c. 392 s. 87 (13).

Public utility property not assessed locally and not subject to local tax levy cannot be included as part of "last preceding assessed valuation" in determining the amount which may be loaned from state trust funds. 19 Atty. Gen. 404.

25.03 History: 1909 c. 152; Stats. 1911 s. 258am; 1917 c. 536 s. 5; Stats. 1917 s. 25.03; 1969 c. 276 s. 588 (2).

25.04 History: 1901 c. 72 s. 1; Supl. 1906 s. 258a—1; 1917 c. 536 s. 6; Stats. 1917 s. 25.04; 1935 c. 396.

25.05 History: 1871 c. 42 s. 2, 3, 7; 1873 c. 60 s. 1; R. S. 1878 s. 262; 1881 c. 167 s. 3, 10; 1889 c. 393; Ann. Stats. 1889 s. 258c, 258j, 262; 1893 c. 176 s. 2, 5; Stats. 1898 s. 258b, 258h, 262; 1917 c. 536 s. 7; Stats. 1917 s. 25.05; 1931 c. 461; 1943 c. 20; 1947 c. 44; 1961 c. 39; 1969 c. 276 ss. 588 (2), 590 (1); 1969 c. 392 s. 87 (11), (13).

In order to be valid, a municipal loan from the state trust funds must be made for a lawful purpose, and statutory requirements on the part of the municipality and its governmental authorities, prescribed as necessary to empower the municipal action involved, must be complied with. Handlos v. State Line, 233 W 145, 288 NW 748.

Money may not be borrowed by a town from the trust funds, for the purpose of refunding existing railroad bonds, unless authority to do so has been conferred upon the town board by a vote of the electors of the town. 1902 Atty. Gen. 35.

Taxes levied to pay loans from state trust funds to school districts constitute a lien upon each parcel of taxable property within such district, so that property remains liable for such tax regardless of its purchase by the state or federal government. 20 Atty. Gen. 214.

An election authorizing an issue of bonds