

## UTAH ENABLING ACT

(Act of July 16, 1894, ch. 138, 28 Statutes at Large 107.)

An Act to enable the people of Utah to form a constitution and State government, and to be admitted into the Union on an equal footing with the original States.

### **Sec. 3. [Meeting of convention – adoption of constitution – provisions – religious freedom- public lands-taxation of lands – Indian lands-territorial debts-public schools]**

That the delegates to the convention thus elected shall meet at the seat of government of said Territory on the first Monday in March, eighteen hundred and ninety-five, and, after organization, shall declare on behalf of the people of said proposed State that they adopt the Constitution of the United States, whereupon the said convention shall be, and is hereby, authorized to form a constitution and State government for said proposed State.

The constitution shall be republican in form, and make no distinction in civil or political rights on account of race or color, except as to Indians not taxed, and not to be repugnant to the Constitution of the United States and the principles of the Declaration of Independence. And said convention shall provide, by ordinance irrevocable without the consent of the United States and the people of said State –

First. That perfect toleration of religious sentiment shall be secured, and that no inhabitant of said State shall ever be molested in person or property on account of his or her mode of religious worship: Provided, That polygamous or plural marriages are forever prohibited.

Second. That the people inhabiting said proposed State to agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof; and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States; that the lands belonging to citizens of the United States residing without the said State shall never be taxed at a higher rate than the lands belonging to residents thereof; that no taxes shall be imposed by the State on lands or property therein belonging to or which may hereafter be purchased by the United States or reserved for its use; but nothing herein, or in the ordinance herein provided for, shall preclude the said State from taxing, as other lands are taxed, any lands owned or held by any Indian who has severed his tribal relations and has obtained from the United States or from any person a title thereto by patent or any other grant, save and except such lands as have been or may be granted to any Indian or Indians under any Act of Congress containing a provision exempting the lands thus granted from taxation; but said ordinance shall provide that all such lands shall be exempt from taxation by said State so long and to such extent as such Act of Congress may prescribe.

Third. That the debts and liabilities of said Territory, under authority of the legislative assembly thereof, shall be assumed and paid by said State.

Fourth. That provision shall be made for the establishment and maintenance of a system of public schools, which shall be open to all the children of said State and free from sectarian control.

### **Sec. 6. [Land grant for common schools.]**

That upon the admission of said State into the Union, sections, numbered two, sixteen, thirty-two, and thirty-six in every township of said proposed state, and where such sections, or any parts thereof have been sold or otherwise disposed of by or under the authority of any Act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one quarter section and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said State for the support of common schools, such indemnity lands to be selected within said State in such manner as the legislature may provide, with the approval of the Secretary of the Interior: Provided, That the second, sixteenth, thirty-second, and thirty-sixth sections embraced in permanent reservations for national purposes shall not, at any time, be subject to the grants nor to the indemnity provisions of this Act, nor shall any lands embraced in Indian, military, or other reservations of any character be subject to the grants or to the indemnity provisions of this Act until the reservation shall have been extinguished and such lands be

restored to and become a part of the public domain.

#### NOTE TO DECISION

#### ANALYSIS

Access rights.  
Fund held by state as trustee.  
Indemnity land selection.  
Mineral lands not included in grant.  
Mineral proceeds.  
Purchaser's rights.

Access rights.  
State of Utah has right of access to state school trust lands, subject to federal regulation when the crossing of federal property is involved in the exercise of that right; however, such regulation cannot prohibit access or be so restrictive as to make economic development competitively unprofitable. *State v. Andrus*, 486, F. Supp. 995 (D. Utah 1979).

Fund held by state as trustee.  
Under this section the fund embracing revenues derived from grant by federal government of lands of state of Utah for support of common schools, whether now in the form of moneys or lands, taken over in settlement of mortgages for loans of such money, is held by the state as a trustee of an express trust, limited in the amount that can be expended, and the purposes and uses thereof. *Duchesne County v. State Tax Comm'n*, 104 Utah 365, 140 P.2d 335 (1943), defining and discussing trusts generally.

Indemnity land selection  
State did not have right to select as indemnity land valuable mineral lands located within federal grazing districts in acreage equal to original school land grants of significantly lesser values that were lost through preemption or private entry prior to survey, without regard to the relative values of the original land grants and the indemnity selection; 43 U.S.C. § 315f confers on the Secretary of the Interior the authority in his discretion to classify lands within a federal grazing district as proper for school land indemnity selection; policy of rejecting indemnity land selections located in federal grazing districts where the value of the indemnity selection is grossly disparate in value to the original grant is not an abuse of such discretion, and the rejection of Utah's indemnity selection on the basis of disparate values was not an abuse of discretion. *Andrus v. Utah*, 446 U.S. 500, 100 S. Ct. 1803, 64 L. Ed. 2d 458 (1980).

**Mineral lands not included in grant.**  
School land grant to state did not include mineral lands. *United States v. Sweet*, 245 U.S. 563, 38 S. Ct. 193, 62 L. Ed. 473 (1918).

In actions to quiet title by persons claiming under mineral patents against persons claiming under the grant contained in the enabling Act it was held that, where the official survey of the lands in question had not been approved at the time Utah became a state and at and prior to the time the survey was approved the lands were known to be valuable for minerals, title did not pass under the Enabling Act but passed under the mineral patents. *State v. Bradley Estates, Inc.*, 223 F.2d 129 (10<sup>th</sup> Cir.), cert. denied, 350 U.S. 841, 76 S. Ct. 80, 100 L. Ed. 749 (1955).

There was no legislative purpose to include, in the grants of schools lands, lands known to be mineral at the time the grant took effect. *State v. Bradley Estates, Inc.*, 223 F.2d 129 (10<sup>th</sup> Cir.), cert. denied, 350 U.S. 841, 76 S. Ct. 80, 100 L. Ed. 749 (1955).

#### **Mineral proceeds.**

Mineral proceeds derived from state school lands may be deposited in the uniform school fund and are not required to be deposited in the state school fund. *Jensen v. Dinehart*, 645 P.2d 32 (Utah 1982).

#### **Purchaser's rights.**

Purchaser of land set aside under this section and sold by land commissioner has such an interest as will support an action for trespass before issuance of certificate of sale. *Livingston v. Thornley*, 74 Utah 516, 280 P. 1042 (1929).

## COLLATERAL REFERENCES

Journal of Energy Law and Policy. – Utah's School  
Trust Lands: Dilemma in Land Use Management and the

Possible Effect of Utah's Trust Land Management Act, 9 J.  
Energy L. & Pol'y (1989).

### **Sec. 7. [Land grant for public buildings.]**

That upon the admission of said State into the Union, in accordance with the provisions of this Act, one hundred sections of the unappropriated lands within said State to be selected and located in legal subdivisions as provided in section six of this Act, shall be, and are hereby, granted to said State for the purpose of erecting public buildings at the capital of said State when permanently located, for legislative, executive, and judicial purposes.

### **Sec. 8. [Land grant to university and agricultural college – Permanent fund.]**

That lands to the extent of two townships in quantity, authorized by the third section of the Act of February twenty-one, eighteen hundred and fifty-five, to be reserved for the establishment of the University of Utah, are hereby granted to the State of Utah for university purposes, to be held and used in accordance with the provisions of this section; and any portions of said lands that may not have been selected by said Territory may be selected by said State. That in addition to the above, one hundred and ten thousand acres of land, to be selected and located as provided in the foregoing section of this Act, and including all saline lands in said State, are hereby granted to said State, for the use of said university, and two hundred thousand acres for the use of an agricultural college therein. That the proceeds of the sale of said lands, or any portion thereof, shall constitute permanent funds, to be safely invested and held by said State; and the income thereof to be used exclusively for the purposes of such university and agricultural college, respectively.

## NOTES TO DECISIONS

### ANALYSIS

#### **Proceeds for sale of university lands.**

##### **Saline lands.**

##### **Use of income for buildings.**

#### **Proceeds from sale of university lands.**

The provision of this section apply to proceeds derived from sale of lands granted for university purposes. State ex rel. Univ. of Utah v. Candland, 36 Utah 406, 104 P. 285, 24 L.R.A. (n.s.) 1260, 140 Am. St. R. 834 (1909).

#### **Saline lands.**

This section granted to state only the saline lands within the specific grant of 110,000 acres, although such land

was not specifically selected or located therein. Montello Salt Co. v. Utah, 221 U.S. 452, 31 S. Ct. 706, 55 L. Ed. 810, 1912D Ann. Cas. 633 (1911).

#### **Use of income for buildings.**

Under this section and Utah Const., Art. X, § 5, the income from the federal land grants could be pledged to pay off a loan for the construction of two dormitories by the University of Utah. The words "support and maintenance" used in Art. X § 5, do not mean only current expenses. Buildings are a necessary part of a university and the terms "support" and "maintenance" do not necessarily exclude the right to repair or construct them. Condor v. Univ. of Utah, 123 Utah 182, 257 P.2d 367 (1953).

### **Sec. 9. [Five per cent of sales of public lands granted to schools.]**

That five per centum of the proceeds of the sales of public lands lying within said State, which shall be sold by the United States subsequent to the admission of said State into the Union, after deducting all the expenses incident to the same, shall be paid to the said State, to be used as a permanent fund, the interest of which only shall be expended for the support of the common schools within said State.

### **Sec. 10. [Permanent school fund – Lands granted not subject to entry under laws of United States.]**

That the proceeds of lands herein granted for educational purposes, except as hereinafter otherwise provided, shall constitute a permanent school fund, the interest of which only shall be

expended for the support of said schools, and such land shall not be subject to pre-emption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be surveyed for school purposes only.

#### NOTES TO DECISIONS

#### ANALYSIS

##### **Exemption from taxation.**

##### **Mineral proceeds.**

##### **Proceeds from sale of university lands.**

##### **Exemption from taxation.**

Proceeds from sale of lands granted by federal government to the state of Utah for the support of the common schools are exempt from taxation. *Duchesne County v. State Tax Comm'n*, 104 Utah 365, 140 P.2d 335 (1943).

##### **Mineral proceeds.**

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##### **Proceeds from sale of university lands.**

The provisions of this section do not apply to proceeds derived from sale of lands granted for university purposes. *State ex rel. Univ. of Utah v. Candland*, 36 Utah 406, 104 P. 285, 24 L.R.A. (n.s.) 1260, 140 Am. St. R. 834 (1909).

#### COLLATERAL REFERENCES

**Journal of Energy Law and Policy.** – Utah's School Trust Lands: Dilemma in Land Use Management and

the Possible Effect of Utah's Trust Land Management Act, 9 J. Energy L. & Pol'y 195 (1989).

### **Sec. 11. [Schools, colleges, and university must remain under state control.]**

The schools, colleges and university provided for in this Act shall forever remain under the exclusive control of said State, and no part of the proceeds arising from the sale or disposal of any lands herein granted for educational purposes, or of the income thereof, shall be used for the support of any sectarian or denominational school, college, or university.

### **Sec. 12. [Other land grants – Enumeration – Penitentiary granted.]**

That in lieu of the grant of land for purposes of internal improvement made to new States by the eighth section of the Act of September fourth, eighteen hundred and forty-one, which section is hereby repealed as to said State, and in lieu of any claim or demand by the State of Utah under the Act of September twenty-eighth, eighteen hundred and fifty, and section twenty-four hundred and seventy-nine of the Revised Statutes, making a grant of swamp and overflowed lands to certain States, which grant it is hereby declared is not extended to said State of Utah, the following grants of land are hereby made to said State, for the purposes indicated, namely:

For the establishment of permanent water reservoirs for irrigating purposes, five hundred thousand acres; for the establishment and maintenance of an insane asylum, one hundred thousand acres; for the establishment and maintenance of a school of mines in connection with the university, one hundred thousand acres; for the establishment and maintenance of a deaf and dumb asylum, one hundred thousand acres; for the establishment and maintenance of a reform school, one hundred thousand acres; for establishment and maintenance of State normal schools, one hundred thousand acres; for the establishment and maintenance of an institution for the blind; one hundred thousand acres; for a miner's hospital for disabled miners, fifty thousand acres. The United States penitentiary near Salt Lake City and all lands and appurtenances connected therewith and set apart and reserved therefor are hereby granted to the State of Utah.

The said State of Utah shall not be entitled to any further or other grants of land for any purpose than as expressly provided in this Act; and the lands granted by this section shall be held, appropriated, and disposed of exclusively for the purposes herein mentioned, in such manner as the legislature of the State may provide.

**Date of vesting title.**

Grant of land made by United States under this

section was grant in praesenti, and when the state of Utah made the selection of lands, which was approved by the

secretary of interior, the title thereto vested in state of Utah, as of the date of the passage of the Enabling Act, or at least as of the date the state made the selection of the lands. *Brigham City v. Rich*, 34 Utah 130, 97 P. 220 (1908).

### **Sec. 13. [Selection of lands granted.]**

That all land granted in quantity or as indemnity of this Act shall be selected under the direction of the Secretary of the Interior, from the unappropriated public lands of the United States within the limits of the said State of Utah.

#### NOTES TO DECISIONS

##### ANALYSIS

Effect of rejection by secretary of interior.  
Right to possession of selected lands.

##### **Effect of rejection by secretary of interior.**

Where, under Enabling Act, state had exclusive right to select, unoccupied and unclaimed nonmineral lands, and made selection, it was held that secretary of interior could not, by mere rejection of state's selection, defeat rights of state, since the act conferred no such powers upon him. *McKinney v. Carson*, 35 Utah 180, 99 P. 660 (1909).

##### **Right to possession of selected lands.**

Where, under Enabling Act, state had exclusive right to select unoccupied and unclaimed nonmineral lands, right of selection carried with it the right to take possession and to continue in such possession, at least until one with better right claimed lands or until they were found to be mineral in character, and if state had this right, it could transfer right of possession to another, and person who obtained it would certainly have right to exclude mere intruders who had no right in or to land whatever. *McKinney v. Carson*, 35 Utah 180, 99 P. 660 (1909).