

## THE ENABLING ACT

(Act of February 22, 1889, Ch. 180, 25 Statutes at Large 676.)

An act to provide for the division of Dakota into two states, and to enable the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and state governments, and to be admitted into the union on an equal footing with the original states, and to make donations of public lands to such states.

Be it enacted by the senate and house of representatives of the United States of America in Congress assembled, that the inhabitants of all that part of the area of the United States now constituting the territories of Dakota, Montana, and Washington, as at present described, may become the states of North Dakota, South Dakota, Montana, and Washington respectively, as hereinafter provided.

§ 2. The area comprising the territory of Dakota shall, for the purposes of this act, be divided on the line of the seventh standard parallel produced due west to the western boundary of said territory; and the delegates elected as hereinafter provided to the constitutional convention in districts north of said parallel shall assemble in convention, at the time prescribed in this act, at the city of Bismarck; and the delegates elected in districts south of said parallel shall, at the same time, assemble in convention at the city of Sioux Falls.

§ 3. That all persons who are qualified by the laws of said territories to vote for representatives to the legislative assemblies thereof, are hereby authorized to vote for and choose delegates to form conventions in said proposed states; and the qualifications for delegates to such conventions shall be such as by the laws of said territories, respectively, persons, are required to possess to be eligible to the legislative assemblies thereof, and the aforesaid delegates to form said conventions shall be apportioned within the limits of the proposed states, in such districts as may be established as herein provided, in proportion to the population in each of said counties and districts, as near as may be, to be ascertained at the time of making said apportionments by the persons hereinafter authorized to make the same, from the best information obtainable, in each of which districts three delegates shall be elected, but no elector shall vote for more than two persons for delegates to such conventions; that said apportionments shall be made by the Governor, the chief justice and the secretary of said territories; and the governors of said territories shall, by proclamation, order an election of the delegates aforesaid in each of said proposed states, to be held on the Tuesday after the second Monday in May, 1889, which proclamation shall be issued on the fifteenth day of April 1889; and such election shall be conducted, the returns made, the result ascertained and the certificates to persons elected to such conventions issued in the same manner as is prescribed by the laws of the said territories regulating elections therein for delegates to Congress; and the number of votes cast for delegates in each precinct shall also be returned. The number of delegates to said conventions respectively, shall be seventy-five; and all persons resident in said proposed states, who are qualified voters of said territories as herein provided, shall be entitled to vote upon the election of delegates, and under such rules and regulations as said conventions may prescribe, not in conflict with this act, upon the ratification or rejection of the constitutions.

§ 4. That the delegates to the conventions elected as provided for in this act shall meet at the seat of government of each of said territories, except the delegates elected in South Dakota, who shall meet at the city of Sioux Falls, on the fourth day of July, 1889, and, after organization, shall declare on behalf of the people of said proposed states, that they adopt the Constitution of the United States; whereupon the said conventions shall be, and are hereby authorized to form constitutions and state governments for said proposed states, respectively. 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 be repugnant to the Constitution of the United States and the principles of the Declaration of Independence. And said convention shall provide by ordinances irrevocable without the consent of the United States and the people of said states:

First. That perfect toleration of religious sentiment shall be secured, and that no inhabitant of said states shall ever be molested in person or property on account of his or her mode of religious worship.

Second. That the people inhabiting said proposed states do 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 states shall never be taxed at a higher rate than the lands belonging to residents thereof; that no taxes shall be imposed by the states 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 ordinances herein provided for, shall preclude the said states 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 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 ordinances shall provide that all such lands shall be exempt from taxation by said states so long and to such extent as such act of Congress may prescribe.

Third. That the debts and liabilities of said territories shall be assumed and paid by said states, respectively.

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

### **Indian Lands.**

#### **-Federal Jurisdiction and Control.**

Since jurisdiction and control of Indian lands remains in the United States under section 4 of the Enabling Act, congress could enact an act making criminal the introduction of intoxicating liquor upon an allotment within the limits of an Indian reservation. *United States v. Sutton*, 215 U.S. 291, 30 S. Ct. 116, 54 L. Ed. 200 (1909).

Lands within South Dakota which were formerly a part of an Indian reservation and not restored to the public domain and open to settlement, but held by an Indian allottee under a trust patent, are Indian lands over which the United States has exclusive jurisdiction. *Ex Parte Van Moore*, 221 F. 954 (D. S.D. 1915).

Under the Enabling Act and the disclaimer provision in the Constitution of South Dakota, not only lands, but all other property issued by the United States government to Indian allottees for use thereon, remained subject to federal control until Congress relinquished the trust. *United States v. Pearson*, 231 F. 270 (D.S.D. 1916).

Whether Indian patentees of land in a reservation, created by Indian treaty, took to high or low watermark of a lake was not a question of state law. *Montana Power Co. v. Rochester*, 127 F.2d 189 (9th Cir. 1942).

### **-Jurisdiction of State.**

The compact between the United States and North Dakota created by section 4 of the Enabling Act and art. XIII, § 1 of the state Constitution did not reserve to the United States exclusive jurisdiction of civil causes of action not involving lands, between Indians residing on reservations. *Vermilion v. Spotted Elk*, 85 N.W.2d 432 (N.D. 1957).

### **-Voting Rights of Indians.**

It was the duty of county commissioners to establish a voting precinct within or for a territory situated within the county limits and also within the limits of an Indian reservation, where the territory had, under an act of Congress, been allotted to certain Indians and they were living upon the allotments and farming the same. *State ex rel. Tompton v. Denoyer*, 6 N.D. 586, 72 N.W. 1014 (1897).

### **Schools and School Districts**

An act of the territorial legislature organizing an independent school district was subject to amendment by the state legislature. *Jones v. Brightwood Indep. Sch. Dist.*, 63 N.D. 275, 247 N.W. 884 (1933).

### **State Political and Governmental Control.**

Section 4, subdivision 2, of the Enabling Act and the compact embraced in art. XIII, § 1 of the state Constitution, vested in the state all jurisdiction not expressly reserved in the Congress of the United States, over certain territory embraced in what is known as the Ft. Berthold Indian reservation. *State ex rel. Baker v. Mountrail County*, 28 N.D. 389, 149 N.W. 120 (1914).

The state may rightfully exercise political and governmental control over lands formerly within a military reservation and reserved by the United States for Indian school and Indian agency purposes, to the extent of including them within its political subdivisions for political and governmental purposes. *La Duke v. Melin*, 45 N.D. 349, 177 N.W. 673 (1920).

### **Unappropriated Public Lands.**

The beds of navigable streams are not "unappropriated public lands" included within the disclaimer of title contained in section 4 of the Enabling Act. *State v. Loy*, 74 N.D. 182, 20 N.W.2d 668 (1945).

§ 5. That the convention which shall assemble at Bismarck shall form a Constitution and state government for a state to be known as North Dakota, and the convention which shall assemble at Sioux Falls shall form a Constitution and state government for a state to be known as South Dakota; provided, that at the election for delegates to the constitutional convention in South Dakota, as hereinbefore provided, each elector may have written or printed on his ballot, the words, "For the Sioux Falls Constitution," or the words, "Against the Sioux Falls Constitution," and the votes on this question shall be returned and canvassed in the same manner as for the election provided for in section 3 of this act; and if a majority of all votes cast on this question shall be "For the Sioux Falls Constitution," it shall be the duty of the convention which may assemble at Sioux Falls, as herein provided, to resubmit to the people of South Dakota, for

ratification or rejection, at the election hereinafter provided for in this act, the Constitution framed at Sioux Falls, and adopted November 3, 1885, and also the articles and propositions separately submitted at that election, including the question of locating the temporary seat of government, with such changes only as relate to the name and boundary of the proposed state, to the reapportionment of the judicial and legislative districts, and such amendments as may be necessary in order to comply with the provisions of this act; and if a majority of the votes cast on the ratification or rejection of the Constitution shall be for the Constitution irrespective of the article separately submitted, the state of South Dakota shall be admitted as a state in the union under said Constitution as hereinafter provided; but the archives, records and books of the territory of Dakota shall remain at Bismarck, the capital of North Dakota, until an agreement in reference thereto is reached by said states. But if at the election for delegates to the constitutional convention in South Dakota a majority of all that votes cast at that election shall be "Against the Sioux Falls Constitution," then, and in that event, it shall be the duty of the convention which will assemble at the city of Sioux Falls on the fourth day of July, 1889, to proceed to form a Constitution and state government as provided in this act the same as if that question had not been submitted to a vote of the people of South Dakota.

§ 6. It shall be the duty of the constitutional conventions of North Dakota and South Dakota to appoint a joint commission, to be composed of not less than three members to each convention, whose duty it shall be to assemble at Bismarck, the present seat of government of said territory, and agree upon an equitable division of all property belonging to the territory of Dakota, the disposition of all public records, and also adjust and agree upon the amount of the debts and liabilities of the territory, which shall be assumed and paid by each of the proposed states of North Dakota and South Dakota; and the agreement reached respecting the territorial debts and liabilities shall be incorporated into the respective Constitutions, and each of said states shall obligate itself to pay its proportion of such debts and liabilities the same as if they had been created by such states respectively.

§ 7. If the Constitutions formed for both North Dakota and South Dakota shall be rejected by the people at the elections for the ratification or rejection of their respective Constitutions as provided for in this act, the territorial government of Dakota shall continue in existence the same as if this act had not been passed. But if the Constitution formed for either North Dakota or South Dakota shall be rejected by the people, that part of the territory so rejecting its proposed Constitution shall continue under the territorial government of the present territory of Dakota, but shall, after the state adopting its Constitution is admitted into the union, be called by the name of the territory of North Dakota or South Dakota, as the case may be; provided, that if either of the proposed states provided for in this act shall reject the Constitution which may be submitted for ratification or rejection at the election provided therefor, the Governor of the territory in which such proposed Constitution was rejected shall issue his proclamation reconvening the delegates ejected to the convention which formed such rejected Constitution, fixing the time and place at which said delegates shall assemble; and when so assembled they shall proceed to form another Constitution or to amend the rejected Constitution, and shall submit such new Constitution or amended Constitution to the people of the proposed state for ratification or rejection, at such time as said convention may determine; and all the provisions of this act, so far as applicable, shall apply to such convention so reassembled and to the Constitution which may be formed, its ratification or rejection, and to the admission of the proposed state.

§ 8. That the constitutional convention which may assemble in South Dakota shall provide by ordinance for resubmitting the Sioux Falls Constitution of 1885, after having amended the same as provided in section 5 of this act, to the people of South Dakota for ratification or rejection at an election to be held therein on the first Tuesday in October, 1889; but if said constitutional convention is authorized and required to form a new Constitution for South

Dakota, it shall provide for submitting the same in like manner to the people of South Dakota for ratification or rejection, at an election to be held in said proposed state on the said first Tuesday in October. And the Constitutional conventions which may assemble in North Dakota, Montana, and Washington, shall provide in like manner for submitting the Constitutions formed by them to the people of said proposed states respectively, for ratification or rejection, at elections to be held in said proposed states on the first Tuesday in October. At the elections provided for in this section the qualified voters of said proposed states shall vote directly for or against the proposed Constitutions, and for or against any articles or propositions separately submitted. The returns of said elections shall be made to the secretary of each of said territories, who, with the Governor and chief justice thereof, or any two of them, shall canvass the same; and if a majority of the legal votes cast shall be for the Constitution, the Governor shall certify the result to the president of the United States, together with a statement of the votes cast thereon and upon separate articles or propositions, and a copy of the said Constitution, articles, propositions, and ordinances. And if the Constitutions and governments, of said proposed states are republican in form, and if all the provisions of this act have been complied with in the formation thereof, it shall be the duty of the president of the United States to issue his proclamation announcing the result of the election in each, and thereupon the proposed states which have adopted Constitutions and formed state governments, as herein provided, shall be deemed admitted by congress into the union, under and by virtue of this act, on an equal footing with the original states from and after the state of said proclamation.

### **Adoption of Article**

An article of the Constitution which received a majority of all the votes cast upon the question of its adoption and upon the question of the adoption of the Constitution was legally adopted though it failed to receive a majority of votes cast for governor. State ex rel. Larabee v. Barnes, 3 N.D. 319, 55 N.W. 883 (1893).

§ 9. That until the next general census, or until otherwise provided by law, said states shall be entitled to one representative in the house of representatives to the fifty-first Congress, together with the Governors and other officers provided for in said Constitutions, may be elected on the same day of the election for the ratification or rejection of the Constitutions; and until said state officers are elected and qualified under the provisions of each Constitution and the states, respectively, are admitted into the union, the territorial officers shall continue to discharge the duties of their respective offices in each of said territories.

§ 10. That upon the admission of each of said states into the union, sections numbered sixteen and thirty-six in every township of said proposed states, 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 states for the support of common schools, such indemnity lands to be selected within said states in such manner as the Legislature may provide, with the approval of the secretary of the interior; provided, that the sixteenth and thirty-sixth sections embraced in permanent reservations for national purposes shall not, at any time, be subject to the grant 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.

### **Bankruptcy Act Proceedings.**

The fact that land being sold under contract to a bankrupt farmer was a part of the trust funds created by the Enabling Act did not exclude the land from administration under Bankruptcy Act proceedings. *North Dakota v. Hegstad*, 134 F.2d 598 (8th Cir. 1943).

A bankrupt whose land is sold to the state on foreclosure of a mortgage securing a loan of permanent school funds may redeem by payment of the value of the land as fixed under the provisions of the Federal Bankruptcy Act, even though for less than the amount required for redemption under state law. *North Dakota v. Towner County*, 142 F.2d 48 (8th Cir. 1944).

### **Permanent School Fund.**

The entire grant of land to the state for educational purposes was in trust and the express terms of the grant required the state as trustee to maintain the permanency of the funds acquired through the grant. The state is limited to the use of the interest from the permanent fund and the interest shall be used only for the support of schools. *State ex rel. Bd. Of Univ. & Sch. Lands v. McMillan*, 12 N.D. 280, 96 N.W. 310 (1903), distinguished, *Lang v. City of Cavalier*, 59 N.D. 75, 228 N.W. 819 (1930).

The assembly cannot divert nor authorize diversion of any part of the principal or interest or income from the investment of funds under the control of the board of university and school lands arising from the rental or sale of lands granted by the United States to any purposes other than those for which grants were made and any diversion to other purposes or any donation thereof in aid of an individual, by the assembly directly, or by the board of university and school lands by legislative enactment is unconstitutional. *State ex rel. Sathre v. Board of Univ. & Sch. Lands*, 65 N.D. 687, 262 N.W. 60 (1935).

§ 11. That all lands granted by this act shall be disposed of only at public sale after advertising - tillable lands capable of producing agricultural crops for not less than \$10 per acre and lands principally valuable for grazing purposes for not less than \$5 per acre. Any of the said lands may be exchanged for other lands, public or private, of equal value and as near as may be of equal area, but if any of the said lands are exchanged with the United States such exchange shall be limited to Federal lands that are surveyed, nonmineral, unreserved public lands within the state or are reserved public lands within the State that are subject to exchange under the laws governing the administration of such Federal reserved public lands.

All exchanges heretofore made under section 11 of the Act approved February 22, 1889 (25 Stat. 676), as amended by the Act approved May 7, 1932 (47 Stat. 150), for reserved public lands of the United States that were subject to exchange under law pursuant to which they were being administered and the requirements thereof have been met, are hereby approved to the same extent as though the lands exchanged were unreserved public lands.

The said lands may be leased under such regulations as the legislature may prescribe.

The state may also, upon such terms as it may prescribe, grant such easements or rights in any of the lands granted by this act, as may be acquired in privately owned lands through proceedings in eminent domain: provided, however, that none of such lands, nor any estate or interest therein, shall ever be disposed of except in pursuance of general laws providing for such disposition, nor unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state.

With the exception of the lands granted for public buildings, the proceeds from the sale and other permanent disposition of any of the said lands and from every part thereof, shall constitute permanent funds for the support and maintenance of the public schools and the

various state institutions for which the lands have been granted. Rentals on leased land, proceeds from the sale of timber and other crops, interest on deferred payments on land sold, interest on funds arising from these lands, and all other actual income, shall be available for the acquisition and construction of facilities, including the retirement of bonds authorized by law for such purposes, and for the maintenance and support of such schools and institutions. Any state may, however, in its discretion, add a portion of the annual income to the permanent funds. Notwithstanding the foregoing provisions of this section, each of the states of North Dakota, South Dakota, and Washington may pool the moneys received by it from oil and gas and other mineral leasing of said lands. The moneys so pooled shall be apportioned among the public schools and the various state institutions shall receive an amount which bears the same ratio to the total amount apportioned as the number of acres (including any that may have been disposed of) granted for such public schools or for such institutions bears to the total number of acres (including any that may have been disposed of) granted by this act. Not less than fifty per centum of each such amount shall be covered into the appropriate permanent fund.

The lands hereby granted 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 reserved for the purposes for which they have been granted.

History: As amended by Act of August 11, 1921, ch. 61, 42 Stat. 158; Act of May 7, 1932, ch. 172, 47 Stat. 150; Act of June 25, 1938, ch. 700, 52 Stat. 1198; Act of April 13, 1948, ch. 183, 62 Stat. 170; Act of June 28, 1952, ch. 480, 66 Stat. 283; Act of June 30, 1967, Public Law 90-41, 81 Stat. 106; Act of October 16, 1970, Public Law 91-463, 84 Stat. 987.

### **Condemnation of School Lands.**

Where a state statute relating to the condemnation of right of way by the state highway commission contemplates that title to lands shall be acquired, such procedure cannot be resorted to acquire school land granted to the state. *State Hwy. Comm'n v. State*, 70 N. D. 673, 297 N.W. 194 (1940).

### **Oil and Gas Leases**

Under the Enabling Act, as amended, the state has full power to provide for the execution of oil and gas leases on school and university lands. *State ex rel. Rausch v. Amerada Petro. Corp.*, 78 N.D. 247, 49 N.W.2d 14 (1951).

### **Taxation**

When a contract for the sale of school land is canceled, the land reverts to the state, and no interest in the land is subject to taxation until a resale or redemption is made. Upon reversion of the land to the state, all unpaid taxes levied thereon are canceled. *State v. Towner County*, 68 N.D. 629, 283 N.W. 63 (1938).

§ 12. That upon the admission of each of said states into the union, in accordance with the provisions of this act, fifty sections of the unappropriated public lands within said states, to be selected and located in legal subdivisions as provided in section 10 of this act, shall be, and are hereby granted to said states for public buildings at the capital of said states for legislative, executive, and judicial purposes, including construction, reconstruction, repair, renovation, furnishings, equipment, and any other permanent improvement of such buildings, and the acquisition of necessary land for such buildings, and the payment of principal and interest on bonds issued for any of the above purposes.

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

§ 14. That the lands granted to the territories of Dakota and Montana by the Act of February 18, 1881, entitled "An Act to grant lands to Dakota, Montana, Arizona, Idaho, and Wyoming for university purposes," are hereby vested in the states of South Dakota, North Dakota, and Montana respectively, if such states are admitted into the union as provided in this act, to the extent of the full quantity of seventy-two sections to each of said states, and any portion of said lands that may not have been selected by either of said territories of Dakota or Montana may be selected by the respective states aforesaid; but said Act of February 18, 1881, shall be so amended as to provide that none of said lands shall be sold for less than \$10 per acre, and the proceeds shall constitute a permanent fund to be safely invested and held by said states severally, and the income thereof be used exclusively for university purposes. And such quantity of the lands authorized by the fourth section of the Act of July 17, 1854, to be reserved for university purposes in the territory of Washington, as together with the lands confirmed to the vendees of the territory by the Act of March 14, 1864, will make the full quantity of seventy-two entire sections, are hereby granted in like manner to the state of Washington for the purposes of a university in said state. None of the lands granted in this section shall be sold at less than \$10 per acre; but said lands may be leased in the same manner as provided in section 11 of this act. The schools, colleges and universities provided for in this act shall forever remain under the exclusive control of the said states, respectively, and no part of the proceeds arising from the sale or disposal of any lands herein granted for educational purposes shall be used for the support of any secretarian or denominational school, college, or university. The section of land granted by the Act of June 16, 1880, to the territory of Dakota, for an asylum for the insane shall, upon the admission of said state of South Dakota into the union, become the property of said state.

§ 15. That so much of the land belonging to the United States as have been acquired and set apart for the purpose mentioned in "An act appropriating money for the erection of a penitentiary in the territory of Dakota," approved March 2, 1881, together with the buildings thereon, be, and the same is hereby granted, together with any unexpended balances of the money appropriated therefor by said act, to said state of South Dakota, for the purposes therein designated; and the states of North Dakota and Washington shall, respectively, have like grants for the same purpose, and subject to like terms and conditions as provided in said Act of March 2, 1881, for the territory of Dakota. The penitentiary at Deer Lodge City, Montana, and all lands connected therewith and set apart and reserved therefor, are hereby granted to the state of Montana.

§ 16. That ninety thousand acres of land, to be selected and located as provided in section 10 of this act, are hereby granted to each of said states except to the state of South Dakota, to which one hundred twenty thousand acres are granted for the use and support of agricultural colleges in said states, as provided in the acts of Congress making donations of lands for such purposes.

§ 17. 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 4, 1841, which act is hereby repealed as to the states provided for by this act, and in lieu of any claim or demand by the said states, or either of them, under the Act of September 28, 1850, and section 2479 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 the states provided for in this act, and in lieu of any grant of saline lands to said states, the following grants of land are hereby made, to wit:

To the state of South Dakota: For the school of mines, forty thousand acres; for the reform school, forty thousand acres; for the deaf and dumb asylum, forty thousand acres; for the agricultural college, forty thousand acres; for the university, forty thousand acres; for state normal school, eighty thousand acres; for public buildings at the capital of said state, fifty thousand acres, and for such other educational and charitable purposes as the Legislature of said state may determine, one hundred seventy thousand acres; in all, five hundred thousand acres.

To the state of North Dakota a like quantity of land as is in this section granted to the state of South Dakota, and to be for like purposes, and in like proportion as far as practicable.

To the state of Montana: For the establishment and maintenance of a school of mines, one hundred thousand acres; for state normal schools, one hundred thousand acres; for agricultural colleges, in addition to the grant hereinbefore made for that purpose, fifty thousand acres; for the establishment of a state reform school, fifty thousand acres; for the establishment of a deaf and dumb asylum, fifty thousand acres; for public buildings at the capital of the state, in addition to the grant hereinbefore made for that purpose, one hundred fifty thousand acres.

To the state of Washington: For the establishment and maintenance of a scientific school, one hundred thousand acres; for state normal schools, one hundred thousand acres; for public buildings at the state capital in addition to the grant hereinbefore made for that purpose, one hundred thousand acres; for state, charitable, educational, penal, and reformatory institutions, two hundred thousand acres.

That the states provided for in this act 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 legislatures of the respective states may severally provide.

### **In General.**

The power to determine the manner of the use of public lands granted by the Enabling Act is purely legislative and cannot be delegated to a commission. *State ex rel. Rusk v. Budge*, 14 N.D. 532, 105 N.W. 724 (1905), distinguished, *More v. Western Grain Co.*, 37 N.D. 547, 164 N.W. 294 (1917).

### **Charitable Purposes.**

The words "charitable purposes" should be construed in a broad, and not limited meaning, to include acts of public benefaction which are done for public purposes, as well as mere almsgiving or benefaction to the poor, and, as so construed, the section authorizes the maintenance of an institution which shall care for all classes of aged and infirm soldiers, irrespective of their monetary worth. *State ex rel. Skeffington v. Seigfried*, 40 N.D. 57, 168 N.W. 62 (1918).

### **Governor's Residence.**

The erection of a resident for the governor at the capital is within the purposes of the grant of land made by congress to the state for public buildings at the capital under the Enabling Act. *State ex rel. Rusk v. Budge*, 14 N.D. 532, 105 N.W. 724 (1905), distinguished, *More v. Western Grain Co.*, 37 N.D. 547, 164 N.W. 294 (1917).

### **Limitation on Legislative Disposal of Lands.**

The Montana legislature must act in subordination to the state Constitution in executing the authority entrusted to it in section 17 of the Enabling Act. *Montana ex rel. Haire v. Rice*, 204 U.S. 291, 27 S. Ct. 281, 51 L. Ed. 490 (1907).

§ 18. That all mineral lands shall be exempted from the grants made by this act. But if sections sixteen and thirty-six, or any subdivision or portion of any smallest subdivision thereof in any township shall be found by the department of the interior to be mineral lands, said states are hereby authorized and empowered to select, in legal subdivisions, an equal quantity of other unappropriated lands in said states, in lieu thereof, for the use and benefit of the common schools of said states.

§ 19. That all lands granted in quantity or as indemnity by this act shall be selected, under the direction of the secretary of the interior, from the surveyed, unreserved, and unappropriated public lands of the United States within the limits of the respective states entitled thereto. And there shall be deducted from the number of acres of land donated by this act for specific objects to said states the number of acres in each heretofore donated by Congress to said territories for similar objects.

§ 20. That the sum of twenty thousand dollars or so much thereof as may be necessary, is hereby appropriated, out of any money in the treasury not otherwise appropriated, to each of said territories for defraying the expenses of the said conventions, except to Dakota for which the sum of forty thousand dollars is so appropriated, twenty thousand dollars each for South Dakota and North Dakota, and for the payment of the members thereof, under the same rules and regulations and at the same rates as are now provided by law for the payment of the territorial legislatures. Any money hereby appropriated not necessary for such purpose shall be covered into the treasury of the United States.

§ 21. That each of said states, when admitted as aforesaid, shall constitute one judicial district, the names thereof to be the same as the names of the states, respectively; and the circuit and district courts thereof shall be held at the capital of such state for the time being, and each of said districts shall, for judicial purposes, until otherwise provided, be attached to the eighth judicial circuit, except Washington and Montana, which shall be attached to the ninth judicial circuit. There shall be appointed for each of said districts one district judge, one United States attorney and one United States marshal. The judge of each of said districts shall receive a yearly salary of three thousand five hundred dollars payable in four equal installments, on the first days of January, April, July, and October of each year, and shall reside in the district. There shall be appointed clerks of said courts in each district, who shall keep their offices at the capital of said state. The regular terms of said courts shall be held in each district, at the place aforesaid on the first Monday in April and the first Monday in November of each year, and only one grand jury and one petit jury shall be summoned in both said circuit and district courts. The circuit and district courts for each of said districts and the judges thereof, respectively, shall possess the same powers and jurisdiction, and perform the same duties required to be performed by the other circuit and district courts and judges of the United States, and shall be governed by the same laws and regulations. The marshal, district attorney, and clerks of the circuit and district courts of each of said districts, and all other officers and persons performing duties in the administration of justice therein, shall severally possess the powers and perform the duties lawfully possessed and required to be performed by similar officers in other districts of the United States; and shall, for the services they may perform, receive the fees and compensation allowed by law to other similar officers and persons performing similar duties in the state of Nebraska.]

§ 22. That all cases of appeal or writ of error heretofore prosecuted and now pending in the Supreme Court of the United States upon any record from the Supreme Court of either of the territories mentioned in this act, or that may hereafter lawfully be prosecuted upon any record from either of said courts, may be heard and determined by said Supreme Court of the United States. And the mandate of execution or of further proceedings shall be directed by the Supreme Court of the United States to the circuit or district court hereby established within the state succeeding the territory from which such record is or may be pending, or to the Supreme Court of such state, as the nature of the case may require; provided, that the mandate of execution or of further proceedings shall, in cases arising in the territory of Dakota, be directed by the Supreme Court of the United States to the circuit or district court of the district of South Dakota, or to the Supreme Court of the state of South Dakota, or to the circuit or district court of the district of North Dakota, or to the Supreme Court of the state of North Dakota, or to the Supreme Court of the territory of North Dakota, as the nature of the case may require. And each of the circuit, district, and state courts, herein named, shall, respectively, be the successor of the Supreme Court of the territory, as to all such cases arising within the limits embraced within the jurisdiction of such courts respectively, with full power to proceed with the same, and award mesne or final process therein; and that from all judgments and decrees of the Supreme Court of either of the territories mentioned in this act, in any case arising within the limits of any of the proposed states prior to admission, the parties to such judgment shall have the same right to prosecute appeals and writs of error to the Supreme Court of the United States as they shall have had by law prior to the admission of said state into the union.

§ 23. That in respect to all cases, proceedings, and matters now pending in the Supreme or district Courts of either of the territories mentioned in this act at the time of the admission into the union of either of the states mentioned in this act, and arising within the limits of any such state, whereof the circuit or district courts by this act established might have had jurisdiction under the laws of the United States had such courts existed at the time of the commencement of such cases, the said circuit and district courts, respectively, shall be the successors of said Supreme and district Courts of said territory; and in respect to all other cases, proceedings and matters pending in the Supreme or district Courts of any of the territories mentioned in this act at the time of the admission of such territory into the union, arising within the limits of said proposed state, the courts established by such state shall, respectively, be the successors of said Supreme and district territorial Courts; and all the files, records, indictments, and proceedings relating to any such cases, shall be transferred to such circuit, district, and state courts, respectively, and the same shall be proceeded with therein in due courts of law; but no writ, action, indictment, cause, or proceeding now pending, or that prior to the admission of any of the states mentioned in this act, shall be pending in any territorial court in any of the territories mentioned in this act, shall abate by the admission of any such state into the union, but the same shall be transferred and proceeded with, in the proper United States circuit, district, or state court, as the case may be; provided, however, that in all civil actions, causes, and proceedings, in which the United States is not a party, transfers shall not be made to the circuit and district courts of the United States except upon written request of one of the parties to such action or proceeding filed in the proper court; and in the absence of such request, such cases shall be proceeded with in the proper state courts.

§ 24. That the constitutional conventions may, by ordinance, provide for the election of officers for full state governments, including members of the Legislatures and representatives in the fifty-first Congress; and said state governments shall remain in abeyance until the states shall be admitted into the union, respectively, as provided in this act. In case the Constitution of any of said proposed states shall be ratified by the people, but not otherwise, the Legislature thereof may assemble, organize, and elect two senators of the United States, and the Governor and secretary of state of such proposed state shall certify the election of the senators and representatives in the manner required by law; and when such state is admitted

into the union, the senators and representatives shall be entitled to be admitted to seats in Congress, and to all the rights and privileges of senators and representatives of other states in the Congress of the United States; and the officers of the state governments formed in pursuance of said Constitutions, as provided by the constitutional conventions, shall proceed to exercise all the functions of such state officers; and all laws in force made by said territories, at the time of their admission into the union, shall be in force in said states, except as modified or changed by this act, or by the Constitutions of the states, respectively.

§ 25. That all acts or parts of acts in conflict with the provisions of this act, whether passed by the Legislatures of said territories or by Congress, are hereby repealed.

§ 26. North Dakota Trust Funds.

(a) DISPOSITION. - Notwithstanding section 11, the State of North Dakota shall, with respect to any trust fund in which proceeds from the sale of public land are deposited under this Act (referred to in this section as the 'trust fund') -

(1) deposit all revenues earned by a trust fund into the trust fund;

(2) deduct the costs of administering a trust fund from each trust fund; and

(3) manage each trust fund to -

(A) preserve the purchasing power of the trust fund; and

(B) maintain stable distributions to trust fund beneficiaries.

(b) DISTRIBUTIONS. - Notwithstanding section 11, any distributions from trust funds in the State of North Dakota shall be made in accordance with section 2 of article IX of the Constitution of the State of North Dakota.

(c) MANAGEMENT OF PROCEEDS. - Notwithstanding section 13, the State of North Dakota shall manage the proceeds referred to in that section in accordance with subsections (a) and (b).

(d) MANAGEMENT OF LAND AND PROCEEDS. - Notwithstanding sections 14 and 16, the State of North Dakota shall manage the land granted under that section, including any proceeds from the land, and make distributions in accordance with subsections (a) and (b)."