Public Land in Minnesota: Should It Pay Its Fair Share of Compensation in Lieu of Taxation?

I. INTRODUCTION

More than one-third of the land area in the United States is owned by federal and state governments.\textsuperscript{1} The uneven distribution of this tax-exempt public land\textsuperscript{2} throughout the country has resulted in public land concentrations in some states and counties. Since \textit{ad valorem} real property taxation is the primary source of revenue for local government,\textsuperscript{3} it is generally thought that the presence of a tax-exempt public land concentration places a financial burden on the local government.\textsuperscript{4}

\begin{enumerate}
\item In the federal context, McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316 (1819), is cited for the proposition that states in the absence of congressional authority may not tax the United States. \textbf{Minn. Const.} art. IX, § 1 and \textbf{Minn. Stat.} § 272.02 (1967) exempt all public property used exclusively for public purposes. \textit{See also} \textit{Sanborn v. Minneapolis}, 35 Minn. 314, 29 N.W. 126 (1886).
\item Local government as used hereinafter refers generally to local taxing districts, e.g., county, town, village, or city and to the school district in which the public land lies.

\item Absent some reason for preferential treatment, it would seem that every constituent of a local governmental unit ought to be taxed in proportion to the value received from local government. Applying this principle to the government agency owning a public land concentration, the financial burden would equal the value of local governmental goods and services used by public land concentrations, minus the value of goods and services received by the local governmental unit from the public land concentration. Such an analytical formula might contain adjustments for other factors such as the increase in value of property surrounding a public land concentration.

However, as a practical matter it is almost impossible to make accurate determinations. Hence theory gives way to practice, and, as in
While no empirical data has been found to support or deny this contention, it seems well-founded. The clearest example exists where the government acquires land from a taxpaying party, because the land is removed from the tax roll and the local government suffers a corresponding loss. Where the state or federal government holds land that has never been owned by a taxpayer, the financial burden is more difficult to identify. However, even in such a case, the local tax base is likely to be precluded from expanding, particularly where the land is valuable, thereby resulting in an ultimate burden. A further burden may arise when the local government provides extraordinary services to the public land agency. However, measurement of the net burden associated with a public land concentration is difficult because the public agency owner often ameliorates these burdens by providing services not forthcoming from a taxpaying owner.

the case of private land owners who are taxed according to value, financial burden caused by a public land concentration must be determined on the basis of the value of the public land.

5. See U.S. COMMISSION ON INTERGOVERNMENTAL RELATIONS, A STUDY COMMITTEE REPORT ON PAYMENTS IN LIEU OF TAXES AND SHARED REVENUES 21 (1955) [hereinafter cited as 1955 COMMISSION REPORT]. J. EICHSTEDT, PAYMENTS IN LIEU OF TAXES ON PUBLIC LANDS UNDER THE JURISDICTION OF THE MICHIGAN DEPARTMENT OF CONSERVATION 33-39 (Univ. of Mich. Papers in Pub. Ad. No. 16, 1956) analyzed the burden in terms of comparative tax rates for counties with and without concentrations of public land. The analysis revealed that some counties with public land concentrations had lower tax rates, contrary to what might be anticipated. This may, however, be misleading because, as pointed out by D. KING, A STUDY OF FOREST LAND CLASSIFICATION FOR PROPERTY TAX ASSESSMENT PURPOSES IN THREE COUNTIES IN WISCONSIN 2-3 (Univ. of Minn. Forestry Research Problem 205, 1961), forest land, such as that studied by Eichstedt, is frequently assessed at a higher proportion to market value than agricultural land. Therefore, a burden could exist notwithstanding a lower tax rate. See also STATE OF NEW YORK, REPORT OF THE JOINT LEGISLATIVE COMMITTEE TO STUDY ASSESSMENTS AND TAXATION OF STATE LANDS 21-23 (Legis. Doc. No. 40, 1959) [hereinafter cited as 1959 NEW YORK REPORT].

6. Public land, like other land, requires the usual public services such as law enforcement and road maintenance and occasionally extraordinary services such as road building or drainage. See MINN. STAT. § 97.484 (1967) providing for payment of extraordinary services on some public land.

7. In Minnesota the Department of Conservation supplies fire protection without direct charge for all private and public land. Since the counties would probably provide this service if the state did not, the state is providing a service in kind, thereby reducing the amount of money which must be expended by the counties to obtain required public services. There is a clear exception to the generalization that such benefits are not forthcoming from taxpaying landowners: large corporate landowners usually supply all necessary fire protection for
In response to the alleged net burden, the federal government and many state governments have passed statutes providing for various forms of compensation in lieu of taxation.\footnote{E.g., 16 U.S.C. § 715s (Supp. III, 1967) (local governments share revenue from U.S. game refuges); MINN. STAT. § 89.036 (1967) (local governments share 50 percent of the revenue from state forests located within their respective geographical boundaries).} However, compensation statutes have been enacted in piecemeal fashion,\footnote{In 1927 a compensation in lieu of taxation measure was passed by the Minnesota Legislature but vetoed by the Governor. See R. Chase, The Trust Fund Policy of Minnesota (1927). The Governor claimed that this measure embodied a "new and dangerous principle" which seeks to subject the property of the state to taxation for the support of lesser units of government. He argued that the bill would bring repeated demands for increased payment benefits and wider coverage. MINN. JOUR. OF THE HOUSE 1373-74 (1927). When a compensation statute was first passed in 1933, an Executive Committee on Land Utilization asserted that the act implied either that the state was obligated to pay taxes to the counties, or that the counties were entitled to a share of state land income merely because the state land lies within the county boundary. The Committee concluded that both propositions were highly debatable. COMMITTEE ON LAND UTILIZATION, LAND UTILIZATION IN MINNESOTA—A STATE PROGRAM FOR THE CUT-OVER LANDS 212 (1934). A recent act pertaining to a federal grant to Minnesota (43 U.S.C. § 1029 (1964)), accepted, ch. 472, [1961] Minn. Laws 758) resembles a compensation in lieu of taxation statute in form, but was enacted for the purpose of compensating local government for the cancellation of certain liens against the granted land. See S. DANA, J. ALLISON & R. CUNNINGHAM, MINNESOTA LANDS 25 (1960) [hereinafter cited as DANA].} with the result that both federal and state compensation schemes are plagued with inconsistencies. The federal compensation statutes are currently being studied by the Public Land Law Review Commission.\footnote{See 43 U.S.C. §§ 1391-1400 (1964); see also Pearl, Historical View of Public Land Disposal and the American Land Use Pattern, 4 CALIF. W.L. REV. 65, 75 (1966), which notes the necessity of federal-state coordination; Pearl, The Public Land Law Review Commission: Its Purposes, Objective, and Program, 2 CALIF. W.L. REV. 92 (1966).} This Note will analyze Minnesota’s compensation statutes in relation to the most common uses of Minnesota public land. The objective is to derive statutory improvements which would place all local govern-

their own land and often extend gratuitous protection to other landowners, private and public.

A public land concentration may increase local economic activity; however, such an increase does not directly reduce the burden associated with a public land concentration. At best the increased economic activity makes the burden easier to bear. For example, Camp Ripley Military Reservation in Morrison County, Minnesota, both ameliorates the land concentration burden by supplying its own road maintenance and law enforcement, and increases economic activity by expending an estimated $3 million annually in the local economy.

8. E.g., 16 U.S.C. § 715s (Supp. III, 1967) (local governments share revenue from U.S. game refuges); MINN. STAT. § 89.036 (1967) (local governments share 50 percent of the revenue from state forests located within their respective geographical boundaries).

9. In 1927 a compensation in lieu of taxation measure was passed by the Minnesota Legislature but vetoed by the Governor. See R. Chase, The Trust Fund Policy of Minnesota (1927). The Governor claimed that this measure embodied a "new and dangerous principle" which seeks to subject the property of the state to taxation for the support of lesser units of government. He argued that the bill would bring repeated demands for increased payment benefits and wider coverage. MINN. JOUR. OF THE HOUSE 1373-74 (1927). When a compensation statute was first passed in 1933, an Executive Committee on Land Utilization asserted that the act implied either that the state was obligated to pay taxes to the counties, or that the counties were entitled to a share of state land income merely because the state land lies within the county boundary. The Committee concluded that both propositions were highly debatable. COMMITTEE ON LAND UTILIZATION, LAND UTILIZATION IN MINNESOTA—A STATE PROGRAM FOR THE CUT-OVER LANDS 212 (1934). A recent act pertaining to a federal grant to Minnesota (43 U.S.C. § 1029 (1964)), accepted, ch. 472, [1961] Minn. Laws 758) resembles a compensation in lieu of taxation statute in form, but was enacted for the purpose of compensating local government for the cancellation of certain liens against the granted land. See S. DANA, J. ALLISON & R. CUNNINGHAM, MINNESOTA LANDS 25 (1960) [hereinafter cited as DANA].

mental units in Minnesota in a position of financial neutrality with respect to public land concentrations.\textsuperscript{11}

II. BACKGROUND

A. METHODS USED TO NEUTRALIZE THE FINANCIAL BURDEN OF PUBLIC LAND CONCENTRATION

A number of techniques are used to neutralize the financial burdens associated with public land concentrations.\textsuperscript{12} Some states solve the problem by allowing local taxation of state-owned land,\textsuperscript{13} thus removing the condition that caused the problem, namely tax-exemption. However, when allowed, restrictions are usually placed on taxation by local government,\textsuperscript{14} to prevent a nondiscriminatory tax from being rendered discriminatory in fact by the overvaluing of public land by local taxing units. A method used to achieve the same result, but to avoid the precedent of actual taxation, is providing for the payment of a sum measured by the liability a taxpayer owning that tract of land would incur.\textsuperscript{15}

In contradistinction to actual taxation, most techniques used to neutralize financial burdens involve some form of compensatory payment in lieu of taxation. The first type of compensatory payment, the \emph{per acre payment}, has two variations: fixed and determined. In the fixed type,\textsuperscript{16} a statutorily designated sum is paid to local government by the state government for each acre of public land owned. The determined type of payment\textsuperscript{17} is recomputed annually by dividing a fixed sum of money by the number of acres of tax-exempt land; hence the size of the payment varies inversely with the amount of tax-

\textsuperscript{11} Consideration is not given herein to the issue of whether tax exemption of state property which is equally distributed in all local governmental units (e.g., state highways) presents a burden.

\textsuperscript{12} Theories of operation can be attributed to most of these statutes. However, it is doubtful that these theories were clearly in mind when the measures were enacted.

\textsuperscript{13} In 1950, ten states allowed local taxation of certain classes of state land: Massachusetts, Michigan, New Jersey, New York, North Dakota, Oregon, South Dakota, Texas, Vermont and Wisconsin. \textsc{Federation of Tax Administrators, Taxation of Publicly Owned Real Estate} 2-4 (1950).

\textsuperscript{14} For example, in Vermont an upper limit is placed on assessed valuation. \textsc{Vt. Stat. Ann. tit. 32, § 3656} (1959).

\textsuperscript{15} See, \textit{e.g.}, \textsc{Minn. Stat.} § 97.49(7)(a) (1967).


\textsuperscript{17} See, \textit{e.g.}, \textsc{Minn. Stat.} § 124.30 (1967).
exempt acreage in the state. It is apparently thought that notwithstanding the differences in financial burden associated with the various tracts of public land, a per acre payment, whether fixed or determined, sufficiently compensates for the total public land burden. While the obvious advantage of per acre payments is the simplicity of administration, both variants of per acre payments are arbitrary measures with the result that some local governmental units may be overcompensated while others are undercompensated.

A second type of compensation, revenue sharing, requires that a percentage of the revenue generated on public land be returned to local government. Revenue sharing measures are frequently used for land which produces a readily identifiable economic value, such as timber or minerals, in contrast to land which produces essentially noneconomic values such as wildlife or recreation. The apparent theory is that revenue sharing adequately compensates for the financial burden. Since property value is a function of the land's capacity to generate revenue and since property taxation is a function of property value, the revenue to be returned to local government could conceivably be measured by the liability a taxpayer would incur on the public land. However, all revenue sharing statutes appear to return

18. There is no apparent economic relationship between the existing burden and compensation payment.
19. Consider hypothetical counties A and B where public land has recently been acquired: The land in A is 1000 acres of prime forest land with a potential for recreational use, hence the taxes formerly paid were high. In contrast the 1000 acres of public land in B lies in a desolate swamp and generated almost no taxes. The result is a greater burden on county A. If fixed or determined payment compensation is used both counties will receive the same amounts of compensation. The conclusion is that such compensation bears no economic relationship to the burden.
20. See, e.g., MINN. STAT. § 89.036 (1967).
21. Perhaps an even more fundamental theory is involved: that when revenue is generated on public land, local government acquires an interest in it because of the burden incurred even if it has no rights in the land itself.
22. Per acre revenue might be capitalized to determine the gross public land value: gross revenue per acre divided by the rate of return for forest land equals the gross public land value per acre.

Multiplying this amount by the prevailing local tax rate would approximate the tax payable by a nonexempt owner.

This amount divided by the gross revenue per acre would yield the percentage of total land revenue which would approximate a tax payment to local government. Conceivably such a calculation could be made for individual units of land (e.g., 40 acres) within a jurisdiction. However, to overcome difficulties associated with infrequent or irregular
an arbitrary fixed percentage of the generated revenue to local
government. An advantage of revenue sharing is its simplicity
of administration since all land agencies have records of revenue
and its source. However, a clear disadvantage to local govern-
ment is the fact that compensation receipts may vary substan-
tially with both market conditions and public management de-
cisions. Such fluctuations might be dampened by requiring a
payment measured by the average generated revenue over the
past several years.\textsuperscript{23}

A third type of compensation is the \textit{percentage of value}
method, which requires a payment to local government by the
state government measured by a percentage of the public land
value. It is often used for land which produces no revenue. The
underlying theory of the method may be similar to that of value
based ad valorem taxation, but with the required payment re-
duced to adjust for services rendered by the public land agency or
benefits conferred by the particular land use.\textsuperscript{24} However, this
method retains most of the infirmities of actual taxation—if land
is valued by local governments, public land is subject to prejudi-
cial treatment, and valuation by the public land agency is costly.
The percentage of value statutes have a further disadvantage also
present in per acre payments statutes, namely that the per-
centages used bear no apparent relationship to the financial bur-
den.\textsuperscript{25}

\begin{footnotesize}
\begin{itemize}
\item\textsuperscript{23} harvest on particular units of land (a tract of forest land may be
harvested as infrequently as every 50 years) a single calculation for
total revenue and total acreage in a county would be the most appro-
\item\textsuperscript{24} E.g., the payment could be measured by averaging the public
land revenue for the current year with the revenue from several pre-
ceding years. Thus if public land revenue increased or decreased for
several years, the change would be reflected in the size of the payment,
while the effect of occasional fluctuations would be diminished.
\item\textsuperscript{25} This theory would appear to be applicable to the Boundary
Waters Canoe Area of the Superior National Forest in Minnesota where a
percentage of value payment is used. 16 U.S.C. §§ 577(g), 577(g-1)
(1964). There, the restricted, recreational land use would seem to de-
crease the burden on local government. \textit{See also} Ohio Rev. Code Ann.
§ 1531.27 (Page 1964).
\end{itemize}
\end{footnotesize}
The last type of compensation, *negotiated payment*, allows an administrator to determine the amount of the payment to be made to local government. The apparent rationale is that an administrator can adequately measure the burden to local government on an ad hoc basis. This flexibility is advantageous in some instances where the public land agency has accurate information about the burden placed on local government, particularly where extraordinary services such as road building are needed. However, a negotiated payment measure would seem most appropriate only as a measure supplementary to other compensation techniques.

B. Sources of Funds

The foregoing methods of compensation in lieu of taxation must be carefully distinguished from sources of funds. A compensation payment measured by any of the foregoing techniques could be appropriated from the general tax revenue, from the public land revenue or from both sources. Thus, apart from the problem of selection and consistent application of the compensation measures best suited to the various uses of public land in the state, there is the distinct problem of obtaining funds. In Minnesota, except where a school district is the specific recipient of the compensation, only revenue generated on public land is used as a source of compensation in lieu of taxation. Furthermore, certain broad Minnesota constitutional provisions and restrictions in early federal land grants to Minnesota have apparently persuaded the Minnesota Legislature that revenue generated on state land received by federal land grants may not be used as a source for com-
pensation in lieu of taxation. Since there are about 2.6 million acres of land in Minnesota subject to this conceived restriction, the source of funds for compensation in lieu of taxation is severely limited. Consequently, improvement of Minnesota's scheme of compensation in lieu of taxation requires a different interpretation of, or an amendment to, the state constitutional and federal statutory provisions which are thought to prohibit the use of receipts from state land received by federal grant as a source for compensation in lieu of taxation.

1. Federal Limitations

Federal land grants conveyed large tracts of land to most of the midwestern and western states for public purposes such as internal improvement, schools and universities. The prevailing thought at that time was that the states would sell the land, using the proceeds for the purposes specified in the grant. In Minnesota approximately one-third of the total land area of the state was conveyed from the United States public domain by several land grants. However, in Minnesota as elsewhere, large portions of land received by federal grant have not been sold, largely because the state has incorporated the land into parks, forests

---

30. As of June 30, 1964, the following amounts of grant land remained unsold and in state ownership.

<table>
<thead>
<tr>
<th>Grant</th>
<th>Acres</th>
</tr>
</thead>
<tbody>
<tr>
<td>School</td>
<td>997,190</td>
</tr>
<tr>
<td>Swamp</td>
<td>1,600,686</td>
</tr>
<tr>
<td>University</td>
<td>25,144</td>
</tr>
<tr>
<td>Internal Improvement</td>
<td>6,958</td>
</tr>
<tr>
<td>Salt Springs</td>
<td>5,751</td>
</tr>
</tbody>
</table>

MINNESOTA LAND, supra note 1, at 53-55.

31. Analysis of the data at note 62 infra, indicates that for forest land the total amount of unrestricted land revenue (non-grant land revenue) would not be large enough to make an adequate compensation in lieu of taxation payment at present statutory rates for all grant and non-grant forest land.

32. A related problem is how the law can be changed to allow the use of grant land revenue for management expenses, and for expansion of public land facilities generally. See note 52 infra.


34. The federal land grants transferred more than one-third of the Minnesota land area from the United States public domain to state
and other land programs. The legal problem insofar as federal law is concerned is whether the various provisions in the land grants directing use of the proceeds for certain purposes prohibit the use of some grant land revenue as a source for compensation in lieu of taxation. While no cases decide this specific issue, some authority exists on the propriety of using the grant land proceeds for purposes other than those specified. *Ervien v. United States* sustained an injunction which prevented the distribution of grant land proceeds pursuant to a New Mexico statute for advertising the resources and advantages of the state. The United States Supreme Court affirmed on the basis that such expenditures were not permissible under the grant since the grant prohibited the disposition of land or anything derived therefrom for objects not specified. Subsequently the United States Court of Appeals in *United States v. Swope*

ownerships. The grants to Minnesota were made for broadly defined purposes:

<table>
<thead>
<tr>
<th>Ownership</th>
<th>Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parks &amp; Forestry</td>
<td>Act of Apr. 28, 1894, ch. 1760, 23 Stat. 526</td>
</tr>
<tr>
<td></td>
<td>Act of Mar. 3, 1903, ch. 1433, 33 Stat. 1001</td>
</tr>
<tr>
<td>Salt Spring</td>
<td>Act of June 6, 1942, ch. 380, 56 Stat. 326</td>
</tr>
<tr>
<td>University</td>
<td>Act of July 8, 1870, ch. 227, 16 Stat. 196</td>
</tr>
</tbody>
</table>

35. See note 30 supra.  
36. 251 U.S. 41 (1919). Four years earlier, Orfield had argued that the grants were not conditional in the common law sense, that actual title did pass, and that therefore it would be difficult to determine what the federal government could do if the states failed to live up to their agreements. M. Orfield, supra note 34, at 52.  
37. If *Ervien v. United States* had arisen in Minnesota, a state constitutional question would have been presented because Minn. Const. art. VIII, § 4 limits the use of grant land revenue; however, no such issue was presented in the actual case because N.M. Const. art. XIII, § 1 states that grant land shall be disposed of as may be provided by law.  
38. 16 F.2d 215 (8th Cir. 1926). See also State ex rel. Greenbaum v. Rhoades, 4 Nev. 769 (1888); Betts v. Comm'r's of the Land Office, 27 Okla. 64, 110 P. 766 (1910). In contrast, the cost of administering grant land in South Dakota insofar as it is done by the Commissioner of School and Public Lands is funded by legislative appropriation, not
upheld a New Mexico statute providing for the payment of land management expenses from grant land proceeds in the absence of express authority to do so in the federal grant. The court distinguished Ervien on the ground that management expenses are costs of administration of the specific land grant trust, whereas the Ervien expenditures were promotional, having been made for state land generally. Since local governments provide services such as road maintenance and law enforcement which are necessary for the management of land, it is arguable within the Swope rationale that compensation in lieu of taxation is indeed a cost of administration of specific land grant trusts and can properly be funded by grant land proceeds.

A further argument for deriving compensation payments from grant land proceeds is that land grant policy was never intended to financially burden local government. In fact, the original policy of unrestricted sales to taxpayers actually increased the amount of taxable property. However, land retention, the policy best suited to serve the objects of the grant in today's context, places some burden on local government by requiring services such as road maintenance and law enforcement. Hence, to maintain the early intention of benefiting the objects of the grant without placing a burden on local government, compensation in lieu of taxation should properly be funded by grant land proceeds.

It consequently appears that the Minnesota Legislature could appropriate some of the receipts from Minnesota's 2.6 million acres of grant land as a source for compensation in lieu of taxation on Minnesota grant land without transgressing the objects of the federal land grants. The Public Land Law Review Commission, which is studying this area of federal law, should recommend that Congress clarify the matter by either terminating its residual interest in the land grants or by specifically authorizing states to make compensation in lieu of taxation payments from grant land proceeds.

2. State Limitations

In addition to the restrictions presented by the federal land
grant provisions, certain Minnesota constitutional provisions have been thought to prevent the use of grant land revenue for compensation in lieu of taxation. Three constitutional provisions apply to most, but not all, of the land grants by which Minnesota has received land.\textsuperscript{42} Therefore, except where specifically mentioned in this section, the grant is controlled exclusively by its own federal provisions and not by state constitutional law.

The first constitutional provision, article VIII, section 3, applies to land granted for the support of the University of Minnesota\textsuperscript{43} and perpetuates rights previously granted to the University. One of the rights perpetuated, the University Charter,\textsuperscript{44} provides:

\begin{quote}
The proceeds of all land that may hereafter be granted by the United States . . . for the support of a University, shall be and remain a perpetual fund.\textsuperscript{45}
\end{quote}

However, the charter does authorize the Regents to expend money for the management and control of all land granted by Congress for the endowment of the University.\textsuperscript{46} Thus, if compensation is viewed as a cost of administration and preservation of grant land, proceeds from the University grant land could be used as a source of funds for compensation in lieu of taxation.

The second constitutional provision pertains to land granted to Minnesota for internal improvements such as bridges and roads.\textsuperscript{47} Article IV, section 32(b) specifies:

\begin{quote}
The principal sum from all sales of internal improvement lands shall not be reduced by any charges . . . or by any other means whatever . . . .
\end{quote}

If compensation in lieu of taxation is viewed as a "charge," the use of proceeds from the sale of this land would clearly be unconstitutional. However, this provision could be interpreted to allow payments of compensation since the provision refers only to sale proceeds, not to other revenue such as receipts of forest products sold while the land is being retained and managed.

\textsuperscript{42} See note 34 supra.
\textsuperscript{43} Specifically this constitutional provision affects: the university grants of 1857 and 1870, and, by operation of MINN. STAT. § 92.05 (1967), the salt spring grant of 1857, tabulated at note 34 supra. In total about 30,000 acres from these grants have not been sold. MINNESOTA LAND, supra note 1, at 53-55.
\textsuperscript{44} Ch. 3, [1851] Minn. Laws 9-12.
\textsuperscript{45} Id. at § 2.
\textsuperscript{46} Id. at § 15.
\textsuperscript{47} Specifically this constitutional provision affects the internal improvement grant tabulated at note 34 supra. At this time about 7000 acres remain unsold. MINNESOTA LAND, supra note 1, at 53-55.
by the state. Hence the language of the provision would not
prohibit the use of some proceeds received in advance of the
actual sale of internal improvement grant land to be used as a
source of funds for compensation in lieu of taxation.

The third constitutional provision, article VIII, section 6,
applies to land granted to Minnesota for public schools:

All funds . . . or income accruing in any way before the sale
or disposition of [school land] shall be credited to the per-
manent school fund . . . . The principal of the permanent
school fund shall be perpetual and inviolate forever . . . .
The net interest and dividends arising from the investment
[of the fund] shall be distributed to the different school dis-
tricts of the state . . . .

Arguably this provision requires that all proceeds from school
grant land be used exclusively for schools. However, there is
support for a contrary conclusion. Some of the dividends from
the permanent school fund seemingly could be used for com-
ensation payments because, although the provision specifies
that net interest and dividends shall be distributed to the schools,
the provision does not prohibit the use of the funds for other
purposes. Furthermore, the phrase “all funds . . . or income
accruing” could be construed to mean that only the net funds
or net income, after deduction has been made for compensation
in lieu of taxation, accrue to the fund, thus allowing grant

48. Specifically this constitutional provision affects the school grant
of 1857, and by operation of MINN. CONST., art. VIII, § 6, the swamp
grant of 1850, both tabulated at note 34 supra. In total about 2.6 million
acres from these grants have not been sold. MINNESOTA LAND, supra
note 1, at 53-55.

49. A similar constitutional restriction of grant land proceeds is
found in South Dakota where S.D. CONST. art. VIII, § 2, requires that
all proceeds be preserved in a perpetual fund. For an account of
fastidious grant land management, see 1962 S.D. COMM’R OF
SCHOOL AND PUB. LANDS BIENNIAL REP. The commissioner regarded the in-
clusion and use of 22,800 acres of grant land in Custer State Park as a
flagrant violation of the federal grant and the South Dakota Constitu-
tion, and urged the state as a park-operating entity to purchase the
land from the state as trustee of grant lands.

The South Dakota Commissioner’s theory that the use of grant land
for non-grant objects was illegal is supported by Lassen v. Arizona
Highway Dept’, 385 U.S. 458 (1967), where the Arizona Highway De-
partment sued the Arizona Land Commissioner to prohibit enforcement
of rules requiring, inter alia, payment of appraised value for rights of
way and material sites on grant land. The United States Supreme
Court held that notwithstanding general enhancement due to the new
roads, the grant at issue required compensation in money for the full
appraised value of such rights acquired on grant lands. Id. at 469.

For examples of similar provisions in other states, see MONT. CONST.
art. XVII, § 1; NEB. CONST. art. VII, §§ 4, 9; NEV. CONST. art. XI, § 3;
N.D. CONST. art IX, § 153.
land proceeds to be used as a source of funds for compensation in lieu of taxation.

Consequently, it appears that the first constitutional provision\(^\text{50}\) relating to University land would allow University grant land proceeds to be used as a source of funds for compensation in lieu of taxation. The last two constitutional provisions\(^\text{51}\) relating to internal improvement and school grant land are at best ambiguous. While these provisions do reflect a policy of preventing grant land proceeds from being used indiscriminately, there is no reason to believe that the constitution prohibits use of grant land proceeds for expenditures related to the administration of grant land.\(^\text{52}\) Hence, if compensation in lieu of taxation is viewed as a cost of administration of grant land, namely payment for the costs of such items as road maintenance and law enforcement, then grant land proceeds could justifiably be used as a source of funds for compensation payments.

The apparent policy underlying these constitutional provisions is to preserve certain funds for use in the important areas of education and public transportation. When these provisions were first enacted,\(^\text{53}\) it was thought that if the various funds were carefully managed, education and public transportation in the state might be nearly self-supporting. In fact, section 1 of the 1851 University Charter\(^\text{54}\) suggests that the University fund might some day support the whole institution. Today it is clear that the University and all schools need direct support from legislative appropriations; hence the relative importance of these specific funds is diminished. Furthermore, since these provisions were originally enacted, increasing pressure on real property taxation has accentuated the burden caused by tax exempt public land concentrations. Therefore, allowing compensation would reestablish the no-burden relationship between local government and Minnesota grant land while having little effect on the financial support of education and public transportation.

50. See text accompanying note 45 supra.
51. See text accompanying notes 47 & 48 supra.
52. Minnesota has evidenced support for the proposition that the costs of grant land administration may be deducted from grant land revenue. Minn. Op. ATT'Y GEN. 454-E (Oct. 11, 1955) upheld that part of Minn. Stat. § 16.20(5) (1967) allowing deduction of administration expenses on certain forest land on the basis that Minn. Const. art. VII, § 6, which authorizes forestry management of grant land, contemplates the deduction of administration expenses.
53. For example, the school grant provision, note 48 supra, appeared in Minnesota's first constitution. Minn. Const., art. VIII, § 2 (1857).
3. Conclusion

If Minnesota amended its constitution, and if Congress terminated its interest in the land grants, some of the receipts from grant land could be used as a source of funds for compensation in lieu of taxation. Such action by Congress and Minnesota would be a progressive step in public land policy. However, even in the absence of such action, a good case presently exists for the enactment, within constitutional limitations, of legislation using grant land proceeds as a source of revenue for compensation in lieu of taxation.

III. ANALYSIS OF MINNESOTA'S COMPENSATION STATUTES

A. INTRODUCTION

The scheme of Minnesota's compensation statutes is based upon a classification of land according to the means by which the state obtained title to the land. The four types of land are the following: (1) Tax forfeited land remains subject to certain tax district claims, and unlike other state land, is administered by the county and is regarded as land of the county.55 (2) Grant land, as noted earlier, was received from the federal government by early land grants.56 (3) Conservation land is tax forfeited land in which the respective tax districts have relinquished all claims.57 (4) Acquired land refers to property more recently purchased from diverse owners to connect scattered parcels or to develop existing facilities.

Unlike direct taxation, the effectiveness of some of the aforementioned methods for compensation in lieu of taxation depend upon the use, not the means of accession, of the land. For example, a revenue sharing measure would not be a suitable measure of compensation for a land use which produces no revenue. The means by which the state obtained title is obviously wholly irrelevant. Thus, the scheme of Minnesota's compensation statutes should not be based upon the means of accession, but rather upon land use.

55. MINN. STAT. § 280.25 (1967). See MINNESOTA LAND, supra note 1, at 74 for a description of the operation of the tax forfeiture procedure.
56. See note 34 supra.
57. Conservation areas are the product of early state action to prevent default in certain drainage bonds. Prior legislation had allowed small numbers of people to initiate drainage projects which resulted in extensive tax forfeiture. DANA, supra note 9, at 156-57. For area designations, see MINN. STAT. §§ 84A.01, 84A.20, 84A.31 (1967).
B. Forest Use Statutes

In Minnesota, forest land is the largest public land use category. It contains all state land suitable for multiple use forest purposes, which span the continuum of activities from timber production to recreation. Two methods of compensation are presently applied to forest land: revenue sharing and determined per acre payments. The first method, revenue sharing, is implemented in part by three statutes which allow revenue sharing in three land accession categories: acquired, conservation and tax forfeited lands. Fifty percent of all receipts from conservation and acquired lands are distributed to the respective counties, while 90 percent of the revenue from tax forfeited land is received by local government. As noted earlier, the above percentages appear to have been determined arbitrarily, without reference to economic data. However, relative to each other, they are in proportion to the probable burden of each type of land. Since there is no reason to believe that the burdens of acquired and conservation lands are dissimilar, it is reasonable that both should be assessed the same compensation—50 percent of receipts. Since local government bears the expenses of managing tax forfeited land, unlike other state land which is managed by the Minnesota Department of Conservation, it is reasonable that more compensation—ninety percent—is allowed. Unfortunately, no compensation whatever is made for grant land, since the disposition of grant land pro-

58. No compilation has been found which tabulates the amount of forest use land in all land accession categories. However, MINNESOTA LAND, supra note 1, at 51-53, 77-79 suggests that the acreage may be as high as five million acres.

59. MINN. STAT. § 280.04 (1967) (tax forfeited land); MINN. STAT. § 84A.51 (1967) (conservation land); MINN. STAT. § 89.036 (1967) (acquired land). But see MINN. STAT. § 92.28 (1967), directing that the proceeds of grant lands be credited to several permanent funds without diminution by fees, costs or charges.

60. Most of the proceeds from the forest use of tax forfeited land are retained by local government. However, the priority of claims against the proceeds at that level is complex. Under MINN. STAT. § 282.08 (1967), the proceeds (after deduction of expenses of administration apparently authorized by MINN. STAT. § 282.09 (1967)) are apportioned in the following manner:

1. Payment of public improvements which have increased the value of the land.
2. Payment of special drainage assessments.
3. Payment of local school bonds.
4. Balance distributed pro rata to: (a) State, 10 percent; (b) County, 30 percent; (c) Town, village or city, 20 percent; (d) School district, 40 percent.

ceeds is apparently restricted or prohibited by the Minnesota Constitution.\textsuperscript{62} This demonstrates the importance of distinguishing the measure from the source of funds for compensation in lieu of taxation.\textsuperscript{63} While the constitution might prohibit the use of grant land revenue as a source of funds, a compensation payment measured by grant land revenue and funded by other sources would be legally permissible. Moreover, such a payment is logically required because there is no reason to believe that grant land creates any less burden than acquired or conservation land. Hence the Minnesota revenue sharing statutes as applied to public forest land produce an inequitable scheme of compensation.\textsuperscript{64}

A fourth statute is an indirect revenue sharing measure.\textsuperscript{65}

\textsuperscript{62} See notes 45, 47 & 48 supra, and accompanying quotations in text.

The following data indicate that the policy of not distributing grant land proceeds severely limits compensation in lieu of taxation on forest land:

\begin{tabular}{|l|l|}
\hline
Fiscal Year 1966 - Forest Land Use Revenue & \\
\hline
Grant land & $400,000 \\
Conservation & 107,000 \\
Acquired & 70,000 \\
Tax forfeited (data unavailable) & \\
\hline
\end{tabular}

In fact, during fiscal year 1966 only $88,000 of $577,000 was distributed to Minnesota counties. Adapted from M\textsc{inn.} D\textsc{ep't} of C\textsc{o}nservation, L\textsc{and} M\textsc{anagement} R\textsc{ep}t. 1 (1966).

Most forest use grant land is subject to Minnesota constitutional limitations. See text accompanying notes 45, 47 & 48 supra. However, 20,000 acres in Burntside State Forest received by federal grant (Act of April 28, 1904, ch. 1780, 33 Stat. 538, accepted, ch. 83, [1905] M\textsc{inn.} L\textsc{aws} 99) is apparently not subject to these provisions. Therefore, if compensation in lieu of taxation is viewed as a cost of forest land management, some of the proceeds from this land might properly be used for compensation within the scope of the federal grant purpose of forestry. At present it appears that the funds are used for general development of the Burntside Forest. See generally D\textsc{ana}, supra note 9, at 95, 154, 254, 255.

\textsuperscript{63} See text accompanying notes 28-32 supra.

\textsuperscript{64} The irregularities of the revenue sharing statutes are apparent from the viewpoint of the local government. Cass County, Minnesota, receives the following revenues per acre:

\begin{tabular}{l|l|}
Private Forest Land & $.48 \\
Federal payment in lieu of taxation & .16 \\
Tax forfeited land & .37 \\
Acquired & conservation land & .06 \\
\end{tabular}


\textsuperscript{65} M\textsc{inn.} S\textsc{tat.} § 90.50 (1967).
It provides that where certain leases are granted for cultivating and harvesting decorative trees, the lessee is required to pay the respective county an amount equivalent to his lease payment. While this is economically equivalent to a 50 percent revenue sharing measure, it appears to circumvent the constitutional question of whether grant land revenue can be used for compensation in lieu of taxation because no part of any payment to the state is in fact diverted. However, the significance of this statute is likely to be limited because, as discussed earlier,\(^6\) the direct use of some grant land revenue for compensation is probably constitutional. However, if it were otherwise, the indirect technique of compensation used by this statute would, if contested, probably fail because there would be no substantive difference between this indirect method of compensation and a prohibited use of grant land revenue for compensation. A further disadvantage would be the additional administrative step necessary to be certain that lessees actually make the required payments to local government, but since there is little decorative tree activity in Minnesota, this has not presented a problem.\(^7\)

The second method of compensation presently in use, determined per acre payments to school districts in forest and other land use areas, is implemented by two statutes. The first statute\(^8\) provides for a payment to school districts having more than two sections of grant land, and thus may be an attempt to compensate for the fact that local government does not receive compensation for grant land under the three forest revenue sharing statutes. The fact that the grant land statute was enacted after the revenue sharing provisions supports this contention. This rationale, however, is a faulty one because the statutory compensation is based on a flat rate per acre, not on a revenue sharing theory. A consistent scheme would have been a compensatory payment measured by a percentage of grant land revenue, but funded, like the instant statute, by appro-
appropriations from the general revenue fund or from other public land revenue, thereby avoiding the criticism that grant land proceeds were being improperly used.

The other statute provides for per acre payments to school districts which, subject to certain limitations, consist of more than 40 percent tax-exempt land. This measure, like the preceding grant land statute, is not limited in operation to any land use category, but is applicable to any school district having the qualifying percentage of tax-exempt land. A major criticism is that since the statute does not exclude federal land from consideration, a particular school district can qualify and include in its measure of state compensation federal land for which local government is otherwise compensated by federal payments in lieu of taxation. Another unfavorable aspect of this statute is that a district with 39 percent tax-exempt land will receive no payment whatsoever, but a qualifying district receives compensation for every acre of tax-exempt land, not just those acres in excess of 40 percent. Furthermore, one of the statute’s limitations totally disqualifies a school district for compensation if it has a tax base greater than $1300 per pupil, the apparent rationale being that, if the district has a sufficient tax base, compensation is unnecessary, notwithstanding the presence of a large amount of tax-exempt land. Assuming that the 40 percent threshold for qualification and the taxable value per pupil limitation are sound, this statute could be improved by defining the compensation measure in such a way that small changes in tax-exempt acreage, school enrollment, or property value do not result in abrupt changes in the amount of compensation.

69. Minn. Stat. § 124.30 (1967) provides for a payment to school districts, subject to certain limitations, of 10 cents per acre for each acre of nontaxable land.
70. Minnesota receives federal payments in lieu of taxation under the following statutes:
   1. 16 U.S.C. § 715s (1964) (Fish & Wildlife Service—Dep’t of Interior);
   2. 33 U.S.C. § 701c-3 (1964) (Corps of Engineers—Dep’t of Defense);
   3. 16 U.S.C. §§ 577g, g-1 (1964) (Forest Service—Dep’t of Agriculture).

Minnesota Land, supra note 1, at 89-91.
71. Unpublished data from the Minnesota Department of Education indicate that one school district in Cass County, Minnesota, received $14,000 in 1967 under Minn. Stat. § 124.30 (1967), but by the abrupt disqualification it received nothing in 1968. Conversely, school districts in Pine and other Minnesota counties, unaided by the above statute in 1967, qualified for assistance in 1968.
Finally, the statute presents administrative problems. Officials of about 20 counties are required to make detailed documents of qualification and thus, the possibility of error is high. Furthermore, since determination of the size of the payment per acre under both the statutes requires that all eligible counties report before a distribution can be made, a single county can delay distribution to all counties.

Viewed in the abstract and on the basis of the limited facts available, Minnesota's existing compensation in lieu of taxation statutes operate inequitably in regard to state forest land. Actual taxation of public forest land, which is permitted by some states, would eliminate any public land concentration burden. However, unlike other states which permit such taxation, Minnesota has a constitutional provision which exempts public property used for public purposes from taxation. This raises the question of whether legislatively approved taxation of public land by local government would be constitutional. While the constitution purports to exempt public property from taxation, it does not state that taxation of public property is prohibited. The Supreme Court of Minnesota in Foster v. City of Duluth suggested that one reason for the exemption of public property is that the state and its subdivisions are a single entity and therefore, taxation of public property would be a useless manipulation of funds. However, for purposes of determining the public land concentration burden, state and local governments are distinct financial entities since if they were in fact a single financial entity, there would be no burden. Taxation of public property provides a good method for neutralizing the financial burden of public land concentrations between local governments,

---

72. The Office of the Minnesota State Auditor indicates that several districts have asserted claims for prior years upon subsequent discovery of clerical errors. In at least one case the error had resulted in complete disqualification in prior years.

73. See, e.g., VT. STAT. ANN. tit. 32, § 3656 (1959). In Michigan, grant land is probably subject to actual taxation under Mich. Comp. Laws § 211.581 (1967). Michigan, like Minnesota, received large amounts of land by federal land grants, and Michigan, too, enacted several constitutional provisions to protect the proceeds from grant land. Mich. Const. XI, §§ 11, 12, 13 (1908). However, these provisions were deleted by a 1963 constitutional revision. Therefore, even a tax paid by grant land revenue would be permissible under Michigan law. See also note 13 supra.

74. MINN. CONST. art. IX, § 1. The scope of tax exemption has been legislatively expanded by MINN. STAT. § 272.02 (1967). See generally 2 T. COOLEY, THE LAW OF TAXATION §§ 561 et seq. (4th ed. 1924).

75. 120 Minn. 484, 486, 140 N.W. 129, 130 (1913). See also State v. City of Hudson, 231 Minn. 127, 131, 42 N.W.2d 546, 549 (1950).
and thus, there is reason to construe the constitutional exemption to permit legislatively-approved taxation. While admittedly the Foster court was not determining whether taxation with legislative consent would be proper, it did suggest, in dictum, that public property could be rendered subject to taxation by constitutional or statutory provision. However, even if actual taxation were regarded as unconstitutional, a payment equivalent to the actual tax payment might be allowed.\(^76\)

Revenue sharing is probably the most feasible method of compensation for forest land at the present time, because it is simple and well established. However, the existing scheme could be improved in several ways. One improvement would be to extend compensation payments to grant land\(^77\) and to provide for the administrative determination of the percentage of revenue to be shared in accordance with economic principles which result in a payment on parity with actual taxation.\(^78\)

Since local government bears the cost of management of tax forfeited land,\(^79\) local government should seemingly receive a compensation payment equivalent in size to that received on acquired and conservation land plus reimbursement for the cost of managing tax forfeited land. Retention of any excess by local government would cause an unwarranted bias in favor of tax forfeited land. Furthermore, a compensation payment based upon the average revenue over a number of years would dampen the fluctuations in revenue sharing payments caused by the market and management.

If revenue sharing is extended to grant land, and if the share percentage is calculated in a manner approximating an equivalent tax payment,\(^80\) additional per acre payments\(^81\) would in principle be unnecessary for purposes of eliminating the burden associated with public land concentrations. However, if these payments are retained as a type of subsidy to school districts, then the statutes should be amended to eliminate problems discussed earlier.\(^82\)

C. MINERAL USE STATUTES

Open pit mining, as distinguished from the underground

---

76. See text accompanying note 109 infra.
77. See note 62 supra.
78. See text accompanying note 22 supra.
79. See text accompanying note 55 supra.
80. See note 22 supra.
81. Notes 68 & 69 supra.
82. See text accompanying notes 68 & 69 supra.
method, is another major use of Minnesota land. Due to original
grants and tax forfeiture of mineral rich land, and Minnesota's
policy of reserving all mineral rights when tax forfeited land is
subsequently resold to taxpayers, the state has a very large in-
terest, present and potential, in mineral land. Generally, min-
eral land goes through four operational phases: prospecting,
reserve, mineral removal and exhaustion. For purposes of
compensation in lieu of taxation, mineral land is defined as land
which is currently leased and in one of the above stages of oper-
ation or land which is no longer leased due to exhaustion. A
fortiori, this area is smaller than the total areas of state mineral
interest.

Mineral land may be classified into three land accession
categories: tax forfeited, conservation and grant land. Unlike
most forest land, mineral land is typically leased for terms of
up to 50 years. By statute such possessory interests in tax-
exempt land held for terms of three years or longer may actually
be taxed as if the lessee were the owner. Therefore, it would
seem unnecessary to have compensation in lieu of taxation be-
cause there should be no burden. Nevertheless, statutes return
varying amounts of rents and royalties from such leased min-
eral land to local government. In fact, 80 percent of all rents
and royalties on tax forfeited land, and 50 percent on con-
servation land are returned to the governmental units in which
generated. However, no part of the rents and royalties from
grant land is returned to local government.

Although these revenue sharing measures resemble compen-
sation in lieu of taxation, the underlying rationale may be

83. This is the interim period between a successful prospect analysis
and commencement of mineral removal, and in Minnesota may be a sub-
stantial period of time.
84. The land use definition is meant to extend to corollary activities,
for example, the storage of overburden or waste disposal. The analysis
of compensation in lieu of taxation directed to the principal land uses
is generally applicable to the corollary activities which should, therefore,
receive similar legislative treatment.
85. In Minnesota unleased land with a mineral potential can
physically be used as forest land; hence for compensation purposes it is
treated as such.
86. MNN. STAT. § 273.19 (1967). See also DePonti Aviation, Inc. v.
State, 280 Minn. 30, 157 N.W.2d 742 (1968); State v. Rhude & Fryberger,
266 Minn. 16, 123 N.W.2d 196 (1963) (suit involving taxation of mineral
lease on state land); Chun King Sales, Inc. v. County of St. Louis,
256 Minn. 375, 98 N.W.2d 194 (1959).
87. MNN. STAT. § 93.283(7) (1967).
88. MNN. STAT. § 89.036 (1967).
89. Summary data indicating composite remuneration to local gov-
to balance the fact that open pit mining is a destructive process which renders land generally unfit for other uses. If this is the rationale, it misses the objective because such payments are not required to be preserved for use when the mining property is totally exhausted and no longer leased. Whatever the purpose of the return of rents and royalties may be, the fact that different percentages are returned to local government for different land accession categories seems unjustifiable. Assuming that the return of 50 percent of the rents and royalties on conservation land is proper, it is difficult to see why 30 percent more should be returned on tax forfeited land. While a greater return on tax forfeited land was justified in the forest land context because there the counties administered the land, the state provides a large portion of the management of mineral land. Nevertheless, whatever the reason for giving local government a larger share of rents and royalties on tax forfeited land, there seems to be no sound public land policy for denying a return of rents and royalties from grant land.

In theory, any compensation in lieu of taxation on leased public mineral land seems unnecessary because in effect that land can be taxed, eliminating any potential public land concentration burden. However, when the taxable lease has lapsed, and due to mineral exhaustion or related destruction such as overburden storage, the land is rendered unleaseable for any purpose, the property will no longer generate tax revenue. Hence a burden requiring compensation in lieu of taxation will arise. A suitable scheme for compensation in lieu of taxation on mineral land would be to retain and invest some of the revenue while the land is productive. Then when the taxable lease lapses, a compensation payment equal to the net annual income of the invested fund could be made to local government.

Payments for mineral lands are not available. However 1968 payments under Minn. Stat. § 93.283(7) (1967) (return of 80 percent rents and royalties on tax forfeited land) do not represent an even distribution among counties:

<table>
<thead>
<tr>
<th>County</th>
<th>Payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cook</td>
<td>$75.29</td>
</tr>
<tr>
<td>Itasca</td>
<td>28,860.22</td>
</tr>
<tr>
<td>Lake</td>
<td>387.62</td>
</tr>
<tr>
<td>St. Louis</td>
<td>342,030.14</td>
</tr>
</tbody>
</table>

See also Minnesota Land, supra note 1, at 87.


91. Notwithstanding lavish distributions of mining tax revenue to all Minnesota school districts and to local government in mining areas, none of the $1,484,965,122 collected in various taxes from mining activity
D. Parks

In Minnesota, only a small amount of state land is used for parks, and, unlike forest and mineral land, the means of accession is not a matter of concern. While a large portion of park land could be used for general forest purposes, state parks are exclusively used for recreational purposes. Minnesota, like the federal government, makes no compensation in lieu of taxation for park land except possibly for school district appropriation. This policy can be traced to several factors. Generally park land is evenly distributed throughout the state; hence, burdens, if any, are evenly distributed. The amount of park land is small and tourist activity sufficiently stimulates area economy to compensate for its tax-exempt status. While the economic stimulus consideration may have some validity, much of the economic benefit inures to businessmen and resort owners outside the governmental unit in which the park is located. Even if the economic benefit does inure to the governmental unit of the park, it is doubtful that the benefit is so widely distributed that it warrants the additional burden placed on the taxpayers. In the federal context, the suggestion has been made that compensation be paid for recently

between 1914 and 1965 has been retained for the purpose of alleviating tax burden or public land concentration burden when mining activity wanes. Id. at 258. This classic improvidence has recently manifested a painful shift of tax burden from mining interests to homeowners. Tax liabilities as high as $800 to $1000 on mining area homes valued at about $15,000 are not uncommon, while the maximum tax liability on a $20,000 home in the Minneapolis- St. Paul metropolitan area would be $593. Minneapolis Tribune, March 23, 1969, at 1, cols. 1-2. See also Minneapolis Star, April 7, 1969, at 13 A, cols. 1-4.

92. There are about 117,000 acres of park land compared to more than 5 million acres of forest land. MINNESOTA LAND, supra note 1, at 51-53.

93. Land accession is irrelevant because park land receives no compensation in lieu of taxation. However, even if park land received compensation from receipts generated on park land (as is the case with forest land) there would be no problem because most of the land is acquired land free from Minnesota Constitutional restrictions, or has been received by federal grants free from federal or state financial restriction. See Acts of Congress, Aug. 3, 1892, ch. 362, 27 Stat. 347 (Itasca Park), and June 6, 1942, ch. 380, 56 Stat. 326 (St. Croix Park).

94. Grand Teton National Park is an exception to the rule; 16 U.S.C. § 406d-3 (1964) provides compensation.

95. See text accompanying notes 68 & 69 supra.

96. E.g., although Itasca State Park, most of which lies in Clearwater County, may be heavily utilized, a large portion of park visitor expenditures are made in Park Rapids (Hubbard County) or in Bemidji (Beltrami County).
acquired land because of the visible diminution in tax revenue. At a very minimum, Minnesota should provide for as much compensation as would be received if the land was used for forest purposes.

The fixed payment and revenue sharing methods of compensation for forest land are not readily applicable to park land. The fixed payment theory is simple, but as applied to park land it would not take into consideration the fact that land used for parks in some parts of the state may have a greater value than park land in other parts of the state, and therefore local governmental units might be over- or under-compensated. A partial solution might be a schedule of acreage rates proportional to broad land value categories.

The other method of compensation, revenue sharing, is likely to be inapplicable to park land because unlike forest land revenue, park land revenue does not bear a reasonable relationship to land value. In the forest use context, the products such as timber and pulpwood which measure the land's productive capacity are derived from the land itself and thus the total market value of the land may be inferred. In contrast to this, a substantial portion of receipts from parks are, in reality, payments for goods and services sold by the state on park land, and not a measure of the value of the pleasant recreational environment provided by the land. Therefore, the same inference as to land value cannot be drawn. The element of revenue from park land which most closely represents the value of the pleasant environment of the land is the amount of receipts from park permit sales. However, even this is unreliable because the price of permits is determined by law not by the market. Furthermore, such permits may be used for admission to all state parks; hence permit receipts at a given park would not accurately reflect the value of that particular park. At best, total sales of permits in the state could only be a measure of the value of the entire system of state parks.

99. See note 19 supra.
In view of the difficulty of applying the foregoing compensation methods, it would seemingly be appropriate to impose some form of limited park land taxation related to the actual tax which would be imposed if the land was not tax-exempt.\(^\text{100}\) A number of factors favor this approach. First, the amount of park land in Minnesota is relatively small;\(^\text{101}\) hence it would be a small experiment. Furthermore, county officials have already valued park land,\(^\text{102}\) so administration costs would be lessened. Further, the valuations could be verified by the value of adjacent land in the case of small parks,\(^\text{103}\) and by specialized techniques of economic analysis for the larger parks.\(^\text{104}\)

E. WILDLIFE

In Minnesota, some public land, primarily lowland, is managed for wildlife production and hunting purposes. This type of land generates very little measurable revenue. While wildlife production and recreational hunting are unquestionably valuable, under the present system these items do not receive economic valuation. Furthermore, the large amounts of revenue generated from the sale of hunting and fishing licenses\(^\text{105}\) cannot be traced to public wildlife land since the privilege extends to any available land, public or private. The result is that while wildlife land, like park land, can be valued by various means,\(^\text{106}\) this value cannot be accurately traced to or determined by revenue analysis; hence revenue sharing as a measure of compensation in lieu of taxation is inapplicable.

Presently, compensation in lieu of taxation payments are required for wildlife land under two statutes, both of which

---

\(^{100}\) See text accompanying notes 73-76 supra.

\(^{101}\) See MINNESOTA LAND, supra note 1, at 51.

\(^{102}\) MINN. STAT. § 273.18 (1967) requires county auditors to list the description and valuation of tax exempt property. However, Op. MINN. ATT’Y GEN. 21f (June 5, 1962) indicates that auditors are not required to determine the ownership of exempt property; hence park lands would have to be identified before determining their present value.

\(^{103}\) This technique is discussed in 1955 COMMISSION REPORT, supra note 5, at 138.


\(^{105}\) During fiscal year 1967-68, sales of various hunting licenses generated $2,032,908.46, and total fishing, hunting, trapping and commercial license sales generated $5,350,225.84. Minn. DEP’T OF CONSERVATION, unpublished Game & Fish Data. See generally [1964-66] MINN. DEP’T OF CONSERVATION BIENNIAL REP. 26-46.

\(^{106}\) E.g., text accompanying notes 102-04 supra.
apply only to land purchased under the "Save Minnesota Wetlands" program. The first statute provides for payments to counties in the amount of 25 cents per acre or 35 percent of the receipts, whichever is greater. The second requires payments for tax-exempt cropland in an amount equal to the tax which would be assessed if the land were not tax-exempt, provided more than 1000 acres of tillable land in the county is used in wildlife management.

The latter statute, like actual taxation, eliminates the financial burden associated with public land. Its significance, however, is diminished because of limited applicability. The first statute requires basically a fixed per acre payment because the alternative of 35 percent of receipts was greater than 25 cents per acre in only five of 77 Minnesota counties in 1967. The usual criticism applies to the 25 cents per acre concept: the same payment is required for all wildlife land regardless of differences in value. The payment may be overly high for land in the northern part of the state, yet insufficient to meet the burden for the more expensive land in southern Minnesota.

Therefore, it would appear that a scheme of actual taxation or some variation thereof would provide the best means of compensation in lieu of taxation. Valuation of the wildlife land could be made by comparison with similar land in the vicinity.

IV. CONCLUSION

A financial burden presently rests on Minnesota local governmental units which contain public land concentrations. While Minnesota has several statutes which attempt to compensate for this burden, piecemeal enactment, paucity of general tax revenue funds, and apparent concern that a large portion of public land revenue is unavailable for compensation because of federal land grant terms and certain provisions of the Minnesota constitution have rendered these compensation statutes inequitable. The federal government by the Public Land Law Review Commission is currently reviewing the federal land law which

110. According to 1967 data this compensation measure was in use in only one county, Chippewa. In that year $3,631.86 was paid to the county. Minn. Dept’t of Conservation, unpublished Game & Fish Data.
111. See text accompanying notes 100-04 supra.
112. Minn. Dept’t of Conservation, unpublished Game & Fish Data.
113. Note 10, supra.
affects the Minnesota compensation program, and therefore, Minnesota legislators would be well advised to investigate and propose changes in the compensation in lieu of taxation statutes.

Substantial improvement in Minnesota's compensation scheme could be made by the following changes: (1) The federal government should be requested to terminate residual interest in all land grants or at least to authorize the use of grant land revenue to pay for costs of administering grant land including compensation payments.¹¹⁴ (2) A single statute should be enacted which provides for compensation uniformly on the basis of land use rather than on the present basis of the means of land accession.¹¹⁵ (3) A portion of grant land revenue should be used for compensation payments on that land, whether or not the federal interest or Minnesota constitutional provisions are modified or terminated.¹¹⁶ (4) Proper administration of the statute should be carefully considered.

At present, the various statutes are not administered by a single agency at the state level; in fact, there is substantial involvement of officials in about 20 counties.¹¹⁷ Hence, there is no central monitor of effectiveness and no way to analyze the entire compensation in lieu of the taxation system. Similarly, it is impossible to know whether the present statutes are being interpreted consistently by all local officials involved, or to otherwise oversee their administration. Therefore any changes made in the present system should gravitate toward a central monitor.¹¹⁸ The principle of a central monitor of compensation in lieu of taxation would also be of substantial value in coordinating the compensation paid by state and federal governments¹¹⁹ for their respective public land holdings in Minnesota.

---

¹¹⁴. See text accompanying note 41 supra.
¹¹⁵. See text accompanying notes 55-57 supra.
¹¹⁶. See text accompanying note 52 supra.
¹¹⁷. Minn. Stat. § 134.30(3) (1967) [discussed at text accompanying note 57 supra] requires each county auditor to forward acreage information to the state auditor. In 1967 more than 20 auditors filed these reports. Minn. Dep't of Conservation, unpublished data.
¹¹⁸. Some state land management agencies are developing computer systems to manage land records. Such a system would doubtless be an excellent starting point for recording and analyzing compensation in lieu of taxation statutes.
¹¹⁹. Land exchange programs which involve trading small, peripheral tracts of land to form contiguous ownership blocks are a fertile source of objection when the compensation paid by the exchanging agencies is not equal. A local taxing district might receive land of lesser compensation in exchange for land of greater compensation resulting in a net financial loss. See generally Div. of Lands and Minerals, Minn. Dep't of Conservation, Land Exchange Study Report 44 (1969).