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A SUMMARY OF STATE LEGISLATION AFFECTING AGRICULTURE
AND RURAL LAND USE IN ARIZONA

By

Paul W. Westerlund

and

Ralph B. Wertheimer
Associate Legislative Planning Analyst

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1/ Mr. Westerlund at the time of beginning the study was a third-year law student at the Law School of the University of Arizona and is now a member of the State Bars of Arizona and California. He digested the statutes and cases and wrote the great bulk of the report. Mr. Wertheimer, an Associate Legislative Planning Analyst of the Bureau of Agricultural Economics, helped initiate the project and guide Mr. Westerlund's research, checked the citations, and rewrote and recast sections of the report.

FOREWORD

This report, a summary of existing Arizona rural land use legislation, was prepared to acquaint laymen, particularly farmers participating in the county agricultural planning program of the U. S. Department of Agriculture, with a body of related statutes concerned with State land and water use policy. It is patterned, to a large extent, after a similar report entitled, "Summary of Existing Rural Land Use Legislation in Minnesota", published in 1937 as Land Use Planning Publication No. 13, by the Land Utilization Division of the U. S. Resettlement Administration.

Any selection of statutes having to do with policy respecting land or water use must necessarily omit some statutes which might be considered of equal or perhaps greater significance than those included. Few statutes are passed by the State legislature that do not in some way affect land use. It is believed, however, on the basis of experience in other States, that the sections here included on Public Land and Minerals; Water, Irrigation and Drainage; Agricultural Landlord-Tenant Relationships; Roads and Schools; Parks and Recreation Areas; Game and Fish; and Police Power Regulations Affecting Agriculture and Use of Land and Water summarize a body of statutory material of unquestionable pertinence to the State's land policy, and that the report will be of use to officials concerned with the land use program.

The statutes of Arizona are codified in the Arizona Code of 1939. Provisions of the Code and amendments enacted up to and including acts passed by the 1941 session of the Arizona State Legislature have been summarized. Relevant provisions of the State constitution and a few other statutes amending or adding to the Code have been summarized, as have a few relevant Federal statutes. No attempt has been made to include all court decisions citing the statutes, but some of the more significant decisions interpreting sections of the Code have been summarized. No serious attempt was made to examine administration of the statutes, which is often as significant as the statutory declaration of policy. Particular effort has been made to summarize the statutes and decisions in a form intelligible to laymen, omitting the least important details.

PUBLIC LANDS AND MINERALS

Four flags have flown over the land which is now Arizona -- those of Spain, Mexico, the Confederacy, and the United States. Land titles in the State may still be traced from the land grants of the king of Spain, although today almost all of the land is held under patent from the United States Government.

The Territory which is now the State of Arizona was in the past a part of the Mexican State of Sonora. By the treaty of Guadalupe Hidalgo, February 2, 1848, which ended the Mexican War, the United States gained huge land holdings which were a part of Mexico before that time. Fifteen million dollars were paid for a huge tract of land whose southern boundary became fixed from the mouth of the Rio Grande River up to the middle of the stream of El Paso, west to the western boundary of New Mexico, north to the Gila River, down it to the Colorado, and westward to the sea along the boundary of upper and Lower California. 2/ The land titles of Mexican citizens were protected by this treaty. 3/

On December 30, 1853, by the Gadsden Treaty, another tract of land was added, thus fixing the southern boundary of the present State of Arizona (fig. 1). This additional territory was acquired for 10 million dollars. 4/

Arizona was made a part of the territory of New Mexico in 1850, became a separate territory in 1863, and was admitted into the Union on February 14, 1912.

The laws relating to land and minerals are not entirely new but are usually the amended reenactments of territorial laws. Congress provided for the authentication of all foreign records relating to land titles claimed by or under the United States, 5/ and the first State Legislature in 1913 provided for legalizing and recording all instruments affecting real property in the office of the proper county recorder. 6/ Statutes having to do with the acquisition, management, and disposition of State lands are discussed below.

Acquisition of Lands by the State

Grants, Gifts, Devises

The State of Arizona owns 9,061,634 acres of land, or 12.2 percent of the total area of the State (table 1).

Most of this land has been granted to the State by the Federal Government under the State Enabling Act which was passed by Congress June 20, 1910. 7/ This Act provided for the grant of public lands to the State and its public institutions from the nonmineral public lands of the United States. It provided that the people of the State should "disclaim all rights to the unappropriated and ungranted public lands or those held by the Indian tribes," and that

2/ Guadalupe Hidalgo Treaty, (Feb. 2, 1848) Articles 5 and 12.

3/ Ibid., Article 8.

4/ Gadsden Treaty, December 30, 1853.

5/ U. S. C. A. Title 28, Sec. 689.

6/ Arizona Code of 1939, Sec. 71-427.

7/ 36 Stat. 574.

Table 1.- Ownership of Lands in Arizona - October 1934

Classification	Acres	Percentage
Private lands	13,225,630	17.9
State lands	9,061,364	12.2
National forests	11,388,800	15.5
Indian reservations	19,539,972	26.5
Public domain and withdrawals	19,166,258	26.0
Parks and military reservations	1,379,290	1.9
Total	73,761,314	100.0

Compiled from State Land Department, October 1934.

Congress should have absolute control and jurisdiction over them. 8/ In every township, sections 2, 16, 32, and 36, with a total acreage estimated at between 6,600,000 and 8,200,000 acres, were granted to the State for the support of common schools. 9/ If any such sections were in National forests, it was provided that the income from them should go to the common school fund. Additional grants were made to the State and its institutions in the following amounts: 10/

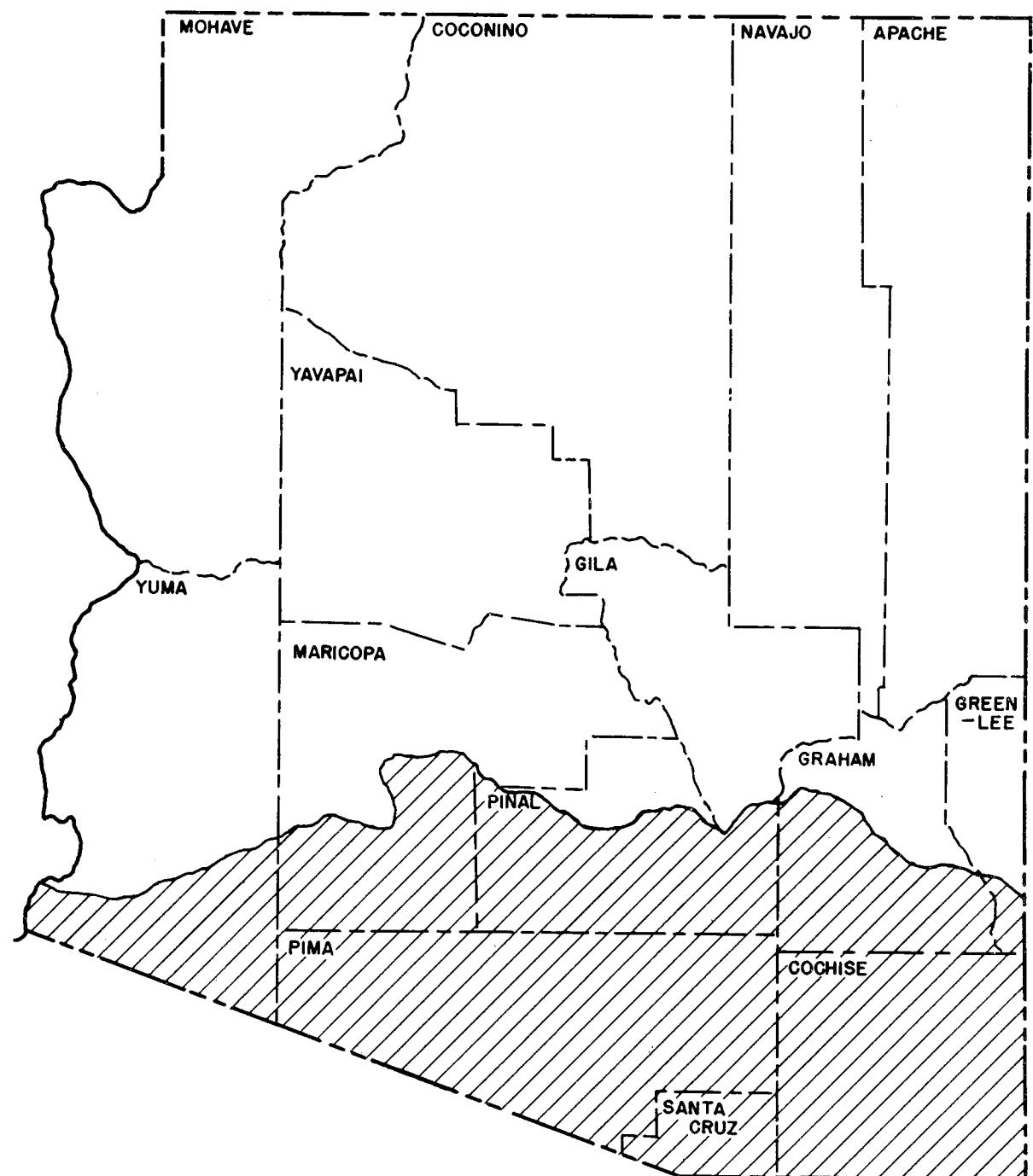
University of Arizona	200,000 acres
Judicial, Executive and Legislative land and buildings	100,000 "
State penitentiary	100,000 "
School for Deaf, Dumb, and Blind	100,000 "
Agricultural and Mechanical College	150,000 "
State insane asylum	100,000 "
Disabled Miners' Hospital	50,000 "
Normal schools	200,000 "
Charitable, penal, and reformatory institutions	100,000 "
School of Mines	150,000 "
Military institutes	100,000 "
For payment of bonds of the Counties of Maricopa, Pima, Yavapai, and Coconino	1,000,000 "

8/ Enabling Act, Sec. 20, 36 Stat. 574, Const. of Arizona Art. XX.

9/ Ibid., Secs. 24, 29, provided that if land in these sections was in Indian reservations or otherwise reserved to the United States and in other specified circumstances, they could be exchanged for other sections from the surveyed, unreserved, unappropriated, and nonmineral lands held by the United States. Exchange was made by the Selection Board composed of the Governor, State Land Commissioner, and the State Attorney General.

10/ Ibid., Sec. 25, 36 Stat. 574.

Figure 1— Territory of Arizona



[Unshaded Box] Territory Acquired from Mexico
by Treaty of Guadalupe Hidalgo,
February 2, 1848.

[Hatched Box] Additional Territory Acquired
from Mexico by Gadsden Treaty,
December 30, 1853.

The constitution of the State of Arizona 11/ provides that all lands transferred and confirmed to the State by the Enabling Act and all lands previously granted to the territory and otherwise shall be accepted and held in trust. 12/ Lands must be disposed of in whole or in part only in the manner provided by the Enabling Act and constitution. Natural products and money proceeds are subject to the same trusts as the land producing them. Disposition of lands or funds in contravention of the Enabling Act constitutes a breach of trust. 13/ Limitations on public lands are binding on the State unless Congress consents to their disposition in another manner. 14/

In addition to the land granted to the State by the organic law, 15/ the State has acquired considerable land under the Carey desert land grants. 16/ These lands were accepted by the State and were subject to the certain imposed conditions relating to their use and disposal. The selection of these lands, as well as their management and disposal, was vested in the State land department. 17/

The public lands granted to the State by the Federal Government may not be mortgaged or encumbered for any purpose, but may be sold or leased to the highest bidder at public auction. 18/ These restrictions are not imposed upon purchasers of these lands who may sell, mortgage, or encumber them in any manner. 19/

The State has acquired title to some land through gifts and devises of private individuals. In most instances these gifts have been for specific purposes, such as roads, parks, or schools. Lands acquired in this way are held in trust for the purposes for which they are given. 20/

Forfeiture for Tax Delinquency

A considerable acreage of land belonging to individuals has been acquired by the State through forfeiture for tax delinquency. This was particularly true in the years 1932 through 1935. The statutes declare that all real property upon which taxes are unpaid and delinquent is subject to sale. The procedure by which property is sold for taxes or reverts to the State for non-payment is complicated and is set out in great detail in the statutes. All

11/ Const. of Ariz., Art. X, Sec. 1.

12/ Campbell v. Caldwell (1919), 20 Ariz. 377, 181 Pac. 181.

13/ Const. of Ariz., Art. 10, Sec. 2; Rowlands v. State Loan Board (1922), 24 Ariz. 116, 207 Pac. 359.

14/ Boise v. Campbell, (1926), 30 Ariz. 424, 248 Pac. 34.

15/ 36 Stat. 574.

16/ U. S. C. A. Title 43, Sec. 641. To aid the public-land States in the reclamation of desert lands, Congress passed the Carey Act, Aug. 18, 1894, which provided for grants to these States of public lands "...not exceeding one million acres...as the State may cause to be reclaimed and irrigated."

17/ Arizona Code of 1939, Sec. 11-1201.

18/ Const. of Ariz., Art. 10, Sec. 3.

19/ Union Oil Co., v. Norton-Morgan Com. Co., (1922), 23 Ariz. 236, 202 Pac. 1077.

20/ Arizona Code of 1939, Secs. 54-1403, 11-1101.

real property upon which taxes are unpaid and delinquent must be sold by the county treasurer at public auction for cash to the bidder who pays the whole amount of the taxes, interest, and penalty due and agrees to accept the lowest rates of interest upon the amount so paid for redemption. Land which is not sold to private persons is struck off to the State of Arizona and a certificate of purchase is issued to the State. Three years after the sale for taxes, the State or an individual may bring an action in the superior court to foreclose the right of redemption. After a judgment in such an action the county treasurer delivers a deed which vests absolute title in the State or the person having the certificate of purchase upon which the action was brought. An alternate method of securing a tax deed is for the holder of the certificate of purchase to wait 5 years and, if the property has not been redeemed, to apply to the county treasurer for a deed which after notice by publication of the application is given without suit. 21/

Forfeiture of State Land Sales Contracts

A great deal of State land is sold on contract, payment to be made over a number of years. These contracts provide that if a purchaser fails to comply with the terms and conditions set forth in the contract, the State Land Commissioner may declare the land forfeited. In this event the land reverts to the State.

Purchase and Exchange

Land may be purchased by the State or its political subdivisions. The highway department may purchase land for rights-of-way, camp sites, and other necessary purposes, 23/ the game and fish commission is empowered to buy land 24/, and the Arizona land settlement commission may acquire land suitable for settlement. 25/

Some doubt has existed as to whether lands held in trust by the State could be exchanged. This doubt has been dispelled by an act of Congress authorizing the State to exchange State-owned lands for other lands, public or private, under such regulations as the legislature might prescribe, provided, however, that exchanges involving Federal lands must be made only as authorized by Congress. 26/

Eminent Domain

The right of eminent domain may be exercised by the State, county, city, or any political subdivision when the owner of property refuses to sell at a

21/ Arizona Code of 1939, Secs. 73-801 to 73-843. For methods of sale by the State of tax-forfeited lands, see Sale of State Lands, infra.

22/ Ibid., Sec. 11-417. On June 30, 1936, 832,877.95 acres were being sold under certificate of purchase contracts.

23/ Ibid., Sec. 59-204.

24/ Ibid., Sec. 57-104.

25/ Ibid., Sec. 11-1502.

26/ 49 Stat. 1477. (June 5, 1936).

price that the State or political subdivision is willing to pay, and the use to which the property is to be applied is one authorized by law. 27/ Condemnation proceedings must be brought in the superior court of the county in which the property is situated. 28/

Escheat

The property of a person dying without heirs who has made no disposition by will escheats to the State. Where an owner of property, who has no heirs, has been absent for 7 years and is not known to exist, his estate escheats to and vests in the State. 29/ It is the duty of the attorney general of the State to make investigations to determine whether property has escheated to the State. 30/ Any county attorney may institute proceedings in the superior court when he has reason to believe that any property or estate has escheated to the State. 31/

Management of State Lands

The following definitions have been adopted by the Legislature for the purpose of administering State lands: 32/

1. "State lands" are any lands owned or held in trust or in fee by the State, including leased school and university land.
2. "Improvements" are anything of a permanent nature, the result of labor and capital expended, and include reclamation or water development which has enhanced the value of the land.
3. "Agricultural lands" are those used principally for raising crops, fruits, grains, and similar ranch products.
4. "Grazing lands" are those which may be used only for the ranging of animals.

The State auditor must keep a continuing inventory showing classification, appraisement, situation, and use of all State property, and must submit a condensed form of the inventory to the legislature at each regular session.

The secretary of state is charged with the duty of keeping a record of all conveyances made to the State except those of land sold to the State for taxes.

27/ Arizona Code of 1939, Sec. 27-907. Nichols in Eminent Domain, 2nd ed., says, "Eminent domain is the power inherent in a sovereign state, of taking or of authorizing the taking of any property within its jurisdiction for the public use" upon the payment of just compensation.

28/ Ibid., Sec. 27-909.

29/ Ibid., Sec. 27-1101.

30/ Ibid., Sec. 4-502.

31/ Ibid., Sec. 27-1102.

32/ Ibid., Sec. 11-101.

The attorney general represents the State in all legal proceedings which affect the title to any land owned by the State. When directed by the governor he may purchase in the name of the State any property offered for sale under execution issued upon judgments for the State. 33/

Selection Board

The selection board is composed of the governor, State land commissioners and the attorney general. 34/ This board is charged with the duty of selecting the lands granted to the State by the Federal Government from the public lands of the United States. 35/

State Land Department

The State Land Department, composed of the governor, secretary of State, attorney general, State treasurer, and State auditor, 36/ appoints the State land commissioner, and may sell and lease lands owned or held in trust by the State, but the sale of such lands is subject to the limitations of the Enabling Act and the constitution of Arizona. 37/ Members of the department hold monthly meetings at which all disputes and grievances or other matters pertaining to the administration of State land are heard. No member or employee of this department may acquire, directly or indirectly, any interest in State lands or in any irrigation project affecting State lands. 38/

State land commissioner

The State land commissioner, under the direction of the State land department, has charge and control of all lands owned by the State and of the timber, stone, gravel, and other products thereof. 39/ He does not have control of lands for the use of and under the control of State institutions. He may prosecute and defend all actions to protect the interests of the State. The attorney general (or under his direction), a county attorney, or special counsel may bring actions in behalf of the State at the request of the commissioner. 40/

33/ Arizona Code of 1939, Secs. 4-317, 4-201, 4-101, 4-502.

34/ Ibid., Sec. 11-101.

35/ The selection board was provided for in the Enabling Act, Sec. 29, 36 Stat. 574.

36/ Arizona Code of 1939, Sec. 11-102.

37/ Ibid., Sec. 11-401, Campbell v. Flying V Cattle Co., (1923), 25 Ariz. 577; 220 Pac. 417.

38/ Ibid., Secs. 11-102 and 11-103.

39/ Enabling Act, Sec. 29. The State land commissioner's duties in regard to State lands are comparable to those of the Surveyor General of the United States with respect to Federal lands. Arizona Code of 1939, Sec. 11-106.

40/ Ibid., 1941 Code Supplement, Sec. 11-108 gives the State land commissioner power to accept real property for airports and to enter into agreements, leases, and conveyances of State lands for airport and incidental uses.

The commissioner's duties include the maintenance of records and the performance of all other duties necessary to protect the rights and interests of the State in its lands.^{41/} Plats and maps are kept in his office where the lands are classified to show those suitable for agriculture and grazing, those containing timber, stone, or other products that may be valuable, and those which may become agricultural by the expenditure of a reasonable amount for water development.^{42/} His powers are subject to the limitations of the Enabling Act. Any sales, leases, or conveyances of land or products not in substantial conformity with the Act are void.^{43/}

The commissioner may conduct investigations and experiments on the lands of the State to ascertain whether they are suitable for agricultural purposes or grazing and which lands may be made suitable by the development of water. He may change erroneously classified lands in order to aid in leasing, sale, and administration. He may cooperate with the United States and make preliminary investigations of projects for the reclamation of lands by storage of flood waters, for discovery and developments of subterranean water, for irrigation and domestic purposes, or for the diversion of running streams adapted to development, either in cooperation with the United States or by the State independently, and shall report his recommendations to the legislature.^{44/} The commissioner, in the name of the State, may make and file water locations and appropriations, reservoir sites, dam sites, and power sites whenever it may be deemed advisable for the irrigation of State lands, and may acquire title in behalf of the State and rights of way necessary or advisable for reclamation and irrigation in the same manner as such rights are required by private citizens.^{45/}

State loan board

In February 1939, the attorney general of the State, in an opinion to the governor, declared that the so-called State loan board was nonexistent. However, the State treasurer, the governor, and the secretary of State have in fact been exercising the functions of such a board from the beginning of Arizona's Statehood. The Enabling Act provides that separate funds be created for the investment of the money proceeds realized from the several land grants.^{46/} The State treasurer is charged with the duty of keeping these funds and investing them with the approval of the governor and the secretary of State.^{47/} The constitution requires that these moneys be handled in accordance with the

41/ Arizona Code of 1939, Sec. 11-201.

42/ Ibid., Sec. 11-204.

43/ Const. of Ariz., Art. X, Sec. 8.

44/ Arizona Code of 1939, Sec. 11-801.

45/ Ibid., Sec. 11-802.

46/ Enabling Act, Sec. 28, 36 Stat. 574.

47/ Const. of Ariz., Art. X, Sec. 7. This section carries out the mandate of the Enabling Act and authorizes the State treasurer, with the consent of the governor and secretary of State, to invest the money derived from the Federal land grants. The Enabling Act, Sec. 28, provides that the State treasurer shall keep all such moneys invested in safe, interest-bearing securities, which securities shall be approved by the governor and secretary of State.

limitations of the Enabling Act. 48/ The statutes of the State allow investments in bonds of the United States, of the State of Arizona, in county, municipal, and school-district bonds, and in first mortgages on farm lands. 49/ The legislature in 1915 provided for investment of the permanent funds of the State in bonds bearing at least 4 percent interest and in farm mortgages bearing not less than 6 percent interest where the land was valued at not less than 10 dollars per acre. Since May 16, 1923 no farm loans have been made by the State treasurer; and in 1933, the legislature, in providing for the investment of State funds, omitted farm mortgages. 50/ The lands recovered through mortgage foreclosure are administered by the governor, secretary of State, and treasurer (State Loan Board). 51/

From time to time the State treasurer has loaned money secured by mortgages on farm lands. A considerable number of these loans was made in the Lyman Dam Project; and when, because of failure to complete the Lyman Dam and irrigation system, the mortgagors in 1921 were unable to pay either interest or principal, the legislature passed a bill authorizing the "State Loan Board" to ascertain the amount of interest due on the mortgages in the project and to remit the interest until 1925, and provided that the interest be paid from the general funds of the State. 52/ The supreme court held that the relinquishment of interest on loans from institutional funds was unconstitutional. 53/ In 1925 the legislature authorized a renewal of the Lyman mortgages not to exceed their original life and appropriated \$10,000 to the State loan board. 54/ The 1927 legislature 55/ appropriated \$93,734.83 to pay into the permanent school fund to take care of the loss resulting from the compromise and settlement of certain loans from this fund. The reduction of some of the loans in the Lyman Dam Project was question in Udell v. The State Loan Board 56/, but it was held that this was not contrary to the provisions of the Enabling Act or to the constitution. 57/

The legislature has not specifically created a State loan board, yet in the statutes noted above it has specifically spoken of the three named officers the State treasurer, the governor, and the secretary of State -- as the State loan board and has authorized the State treasurer to invest the funds created by the Federal land grants with the approval and consent of the governor and secretary of State. Money has been specifically appropriated for the use of the State loan board. However, because of the adverse opinion of the attorney general, the first regular session of the 1939 legislature transferred funds from the so-called State loan board to the State treasurer. 58/

48/ Const. of Ariz., Art. X, Sec. 2.

49/ Laws of 1915, 2d Sess. ch. 94, Sec. 109.

50/ Laws of 1933, ch. 33. On June 14, 1940, the outstanding farm loans amounted to approximately \$830,000, of which \$296,600 were active loans and \$533,400 were foreclosed or inactive loans.

51/ Laws of 1929, 2d Sess., ch. 94.

52/ Laws of 1921, ch. 49.

53/ Rowlands v. State Loan Board, (1922) 24 Ariz. 116; 207 Pac. 359.

54/ Laws of 1925, ch. 66.

55/ Laws of 1927, ch. 40.

56/ (1929) 35 Ariz. 1: 273 Pac. 721.

57/ Enabling Act, Sec. 28, 36 Stat. 574.

58/ Laws of 1939, ch. 29.

Sale of State Lands

All State lands except those expressly excepted by law may be sold, including improvements thereon. 59/ Any person over 18 years of age who is a citizen of the United States, or has declared his intention of becoming a citizen, is entitled to buy lands from the State. The following lands may not be sold: the land set aside for a hospital for disabled miners; State lands known to contain valuable metals, minerals, petroleum, or natural gas in paying quantities; State land adjoining private lands upon which there are producing mines, oil wells, or gas wells or which are known to contain valuable minerals, petroleum, or natural gas in paying quantities; and lands which are chiefly valuable for the production of saw-lumber. 60/

The legislature may provide for the sale or lease of State lands; 61/ but no individual, corporation, or association may purchase more than 160 acres of agricultural land or more than 640 acres of grazing land. 62/ Lands may not be sold to corporations or associations not qualified to transact business in the State nor to aliens who have not declared their intention of becoming citizens. 63/

Method of sale

State lands, not excepted from sale by law, are sold to purchasers by two methods: First, persons desiring to buy State lands may make application to the State land commissioner, who in his discretion under the rules of the department may in compliance with the minimum requirements of law sell the land and deliver a certificate of purchase; and second, agricultural land may be sold without application. 64/ When this method is followed, the commissioner must give notice to the board of appraisers, who must take appraisals on all except unimproved lands which the State land department may appraise. Whenever lands are sold without application, notice of sale by advertising must be made stating the description, time, place, and terms of sale. In addition, the commissioner must hold a public auction at which the land is sold to the highest bidder, subject, however, to the minimum price as regulated by law. 65/

Lands containing timber which, in the opinion of the State land commissioner, should be sold separate from the land are not subject to sale until the timber is sold. 66/ The constitution and Enabling Act provide that no State

59/ Provisions regarding the sale of tax-forfeited lands to which the State has gained title may be found in Arizona Code of 1939, Secs. 11-401 to 11-412. These provisions apply to all salable State lands including tax-forfeited lands.

60/ Ibid., Sec. 11-401.

61/ Const. of Ariz., Art. X, Sec. 10.

62/ Ibid., Art. X, Sec. 11; Arizona Code of 1939, Sec. 11-411.

63/ Ibid., Sec. 11-411.

64/ Ibid., Secs. 11-402, 11-415, 11-404.

65/ Ibid., Secs. 11-405, 11-408 to 11-410.

66/ Ibid., Sec. 11-403.

land may be sold for less than \$3.00 per acre, and if susceptible to irrigation for not less than \$25.00 per acre. 67/ Congress, however, has amended the Enabling Act so as to remove this restriction insofar as land granted to the State and not susceptible of irrigation is concerned. 68/ It now remains for the State to change its constitution to take advantage of this modification. Public lands granted to the State by the Federal Government may be sold or leased only at public auction to the highest bidder. 69/

Lands, leaseholds, timber, and products of State lands must be appraised at true value before being offered for sale. Sales on credit may be made only when ample security is given, and the legal title does not pass until the consideration is paid in full. 70/

Purchasers of lands who comply with the requirements of the State land department are furnished with certificates of purchase which contain the name of the purchaser, a description of the land, the sum paid, the amount paid for improvements, the amount due, terms of payment, an agreement to pay taxes, water assessments and charges, and a covenant not to permit loss or waste and to protect the water rights from loss by forfeiture or abandonment. 71/

In the event a purchaser should default in principal or interest payment or fail to comply with the conditions or covenants, his certificate is subject to forfeiture and all payments are deemed to have been paid as rent. The commissioner may extend the time of payments not to exceed 2 years. If any lands are unlawfully withheld, the commissioner may bring action to recover them. Upon payment in full of the amount due and the filing of the certificate with the department, a patent to the land is issued to the purchaser or his assigns or to his heirs if he is deceased. 72/

Should the purchaser become delinquent in the payment of irrigation charges, the State treasurer may pay them, whereupon they become a charge upon the land which, if not paid at the next annual payment of principal and interest shall work a forfeiture of the land. 73/

The commissioner, in selling or administering the timber products, stone, gravel, and other products and property upon the lands belonging to the State, must do so in a manner not in conflict with the provisions of the Enabling Act and must conform as nearly as possible to the rules and regulations of the U. S. Forest Service. Contracts for the sale of timber may not exceed 5 years in term. Not more than 50 million feet of timber may be sold to any one person at

67/ Const. of Ariz., Art. X, Sec. 5; Enabling Act, Sec. 28, 36 Stat. 574.

68/ 49 Stat. 1477, June 5, 1936. This act modifies the Enabling Act by providing that the lands granted the State other than that susceptible of irrigation may be sold at their "appraised value."

69/ Enabling Act, Sec. 28, 36 Stat. 574. The State may lease in any manner that the legislature may direct such lands for grazing and agricultural purposes for a term of 10 years or less, or for mineral purposes, for 20 years or less (49 Stat. 1477).

70/ Const. of Ariz., Art. X, Sec. 4.

71/ Arizona Code of 1939, Sec. 11-415.

72/ Ibid., Sec. 11-417, as am. by 1941 S.L. ch. 117, and Sec. 11-421.

73/ Ibid., Sec. 11-423.

any one sale, nor shall sale be made to any person having at the time a contract of sale for more than 5 million feet. The proceeds of timber or timber products sold from the land granted for university purposes must be kept in a separate account and the expenses of such sales charged to this fund. 74/

Sale of land under the Carey Act

The State land department is vested with the power of selection, management, and disposal of lands withdrawn under the Carey Act. 75/ Applicants who desire to construct irrigation works for these lands must satisfy the State land department that they can be reclaimed by means of the irrigation system proposed, that the applicant has sufficient vested water rights, and that there is sufficient unappropriated water at the source of supply. The department may approve or disapprove any application, giving its reasons.

If the application is approved, the contract price of land and water is fixed. The State land commissioner then files in the local land office a request for the withdrawal from entry of the lands described in the application. Upon withdrawal by the U. S. Department of the Interior, the State land department may enter into a contract with the applicant. The contract must contain complete maps and specifications of the proposed irrigation works, the maximum price per acre at which water rights will be sold to settlers, the maximum annual maintenance charges, and the price and terms upon which the State is to dispose of the land to settlers. These must all be reasonable. The contract also includes rules and regulations for the use and distribution of water. Work on the project must be commenced within 6 months and must be prosecuted diligently and continuously to completion. Cessation of work for a period of 6 months will result in forfeiture of the contract. 76/

Any United States citizen over 21 years of age, or one who has declared his intention of becoming a citizen, may make application for entry on these lands, not exceeding 160 acres, under the regulations of the Department of the Interior and of the State land department. If a contractor fails to furnish water to any settler, the State must refund all payments made to it. The sale price of these lands must not exceed 50 cents per acre, 25 cents of which must be paid at the time of entry and the remainder at the time of making final proof of entry. Settlers must further pay any additional sum per acre which the State may be required to pay to the United States for the land entered.

Upon completion of the works, the contractor notifies the State that he is ready to furnish the water. The State then requests the Department of the Interior to issue a patent for the land to the State. When the settler makes his final payment to the State, he may obtain a patent for the land entered.

74/ Arizona Code of 1939, Secs. 11-501 and 11-502. This fund is known as the university timber land fund. The income from this account varies from year to year. In 1935, it was \$200; in 1936, \$4,026.44.

75/ Ibid., Sec. 11-1201.

76/ Ibid., Secs. 11-1203 to 11-1205.

Water rights attach and become appurtenant to the land when the title passes from the United States to the State. Any person furnishing water to any of the tracts of land is entitled to receive payment on water contracts, and has lien upon the land for charges. The contractor has a like lien on the separate subdivisions of the land reclaimed for the actual cost and necessary expenses of reclamation. 77/

Land settlement commission

The land settlement commission is composed of the members and officers of the State land department and is authorized to acquire land for homes and farms for ex-service men, workers, and other deserving citizens. 78/ It may acquire water rights and in other ways make the land acquired suitable for agricultural settlement. State lands may be utilized for this purpose, if the terms of sale are not inconsistent with the provisions of the Enabling Act. The statute requires that the commission satisfy itself as to the practicability of each undertaking. 79/

Whenever the commission desires to acquire lands for settlement purposes it may give notice of such intention by publication and may investigate the offers made both as to the lands themselves and the appurtenances. Before purchase the legal titles must be approved by the attorney general. The commission may make an agreement with the owners of such lands offered for sale, fixing the terms for payment to be made either by the commission or the settlers. 80/

The lands purchased may be subdivided into farms, each having a value unimproved, not to exceed \$7,500; or into workers' allotments, each having a value when unimproved of not to exceed \$1,000. On these lands the commission may make the necessary improvements, contracting with the settler

77/ Arizona Code of 1939, Secs. 11-1206 to 11-1208.

78/ Ibid., Sec. 11-1501.

79/ Ibid., Sec. 11-1502. An amendment to the original statute authorized the land settlement commission to extend the time for first payment under settlement contracts to January 1, 1938. It also provided that the commission in its discretion could reform all contracts then in existence, and reduce the purchase price of land. Arizona Code of 1939, Secs. 11-1502 to 11-1509. According to the records of the Arizona Land Settlement Commission from 1921-22 to 1939-40, the total amount appropriated by the legislature was \$209,679.02, and that specifically appropriated by the State land department was \$2,236.15 for the purchase of 954.32 acres of land in Graham, Maricopa, and Yuma Counties. Of the total expended, \$153,250 was for land; \$57,092.83 for improvements; and \$572.34 for travel. During the period 1923-24 to June 13, 1940, receipts amounted to \$12,779.37 of which \$5,212.91 was received from the sale of produce, \$500 from fire insurance, \$2,576.07 from undesignated sources, \$3,025.20 principal and \$1,465.19 interest payments from 39 settlers.

80/ Ibid., Sec. 11-1503.

or with some other person. To make the farms available for use the commission may contract for the construction of irrigation and drainage work, flood protection, general sanitation, subdivision, clearing, leveling, and other necessary work. 81/

Necessary funds may be advanced to settlers for improvements and for the purchase of farm implements, stock, and other necessary equipment. Such advances are to be secured by mortgage or effective liens on the lands or upon property purchased with such loans. The total loan to any one farm must not exceed \$3,000 and to any workers' allotment, \$1,000. It is the duty of the commission to collect all sums due for principal and interest on the lands, reclamation costs, farm improvements, and loans and to repay all sums advanced by the United States.

Whenever desirable, the commission may take over from the United States and operate and maintain any irrigation, drainage, or other system of improvements constructed by the U. S. Reclamation Service on the lands owned by the commission. It shall then be responsible for the proper care and repayment of the cost of such improvements. Purchasers of the lands are required to pay the reasonable charges for the operation, maintenance, and preservation of such works. 82/

The lands acquired by the commission may be sold only after public notice giving information about the farms and allotments for sale and the prices thereof. Equal opportunity shall be offered to qualified persons to purchase, except that ex-service men shall have preference. Those desiring to purchase must have a capital of at least 5 percent of the value of the lands and improvements. If the commission is not satisfied that the applicant is qualified, it may reject the application and readvertise the tracts to be sold. Applicants must further satisfy the commission that they are not the owners of agricultural lands which would, together with the land to be purchased and their improvements, exceed the value of \$10,000. Only one farm or allotment may be purchased by one person, and he must show his fitness to cultivate and develop the same successfully.

Contracts with purchasers create mortgages for the payment of the purchase price of the land, improvements, and reclamation costs and require the purchaser actually to occupy the land within 6 months after water is available, and to reside upon the land for 8 months of every year for 5 years, unless prevented by illness or other satisfactory cause. An absence in excess of 4 months constitutes a breach of contract. Payments for the lands may be arranged over a period of years, but payment of 1/30th of the price of the land and the full price of improvements must be made within 5 years and the balance in 29 equal annual payments with interest at 2 percent. 83/ Title to the land does not

81/ Arizona Code of 1939, Sec. 11-1504.

82/ Ibid., Secs. 11-1505 and 11-1506.

83/ Ibid., Secs. 11-1507 to 11-1509.

pass until full payment is made, and no transfer, assignment, lease, sublease, or mortgage may be made without the written consent of the commission.

The purchaser is required to cultivate in a manner approved by the commission, to keep the land in good order, and to pay assessments and carry insurance to protect the interests of the State and the United States in all the buildings, improvements, and equipment. If a purchaser fails to comply with any of the terms of the contract, it may be cancelled by the commission. Failure of the commission to cancel for any default is not a waiver of the right to cancel at any subsequent time. In 1933 the legislature provided for reform of existing contracts by extension of the time of payment and reduction of the purchase price to not less than \$100 per acre. 84/ In 1939 the legislature again authorized the commission to reform contracts and authorized the reduction of the purchase price to not less than \$25 per acre. 85/

In December of each year the commission reports to the governor detailing its operations, the results of its investigations, and recommendations for legislation that it deems proper. A copy of this report must be furnished the U. S. Secretary of the Interior. Appropriations for the work of the commission are made in the general appropriation bill; any money received by the commission must be paid to the general fund of the State without deductions. 86/

Leasing of State Lands

State agricultural and grazing lands may not be leased for a period longer than 10 years. Leases must comply with the provisions of the constitution, the statutes, and the regulations of the State land department. All applications for leases must be made to the State land commissioner. 87/

Persons residing on contiguous land tracts upon which they have made a homestead entry or have a fee by patent from the United States have a preferential right to the lease of so much contiguous State land as is necessary for their personal use. 88/

The minimum rental 89/ for grazing land is 1 cent per acre and for agricultural land, 5 cents per acre, to be paid in advance annually or for such other period not exceeding 2 years as the commissioner may fix; but leases at a higher rate contracted before the enactment of this section are not affected.

84/ Arizona Code of 1939, Secs. 11-1509 and 11-1510.

85/ Laws of 1939, ch. 86, amending Sec. 3, ch. 43, Session Laws of 1929.

86/ Arizona Code of 1939, Secs. 11-1513 and 11-1514.

87/ Ibid., Sec. 11-301. This section was added in 1941, and reduced the lease period from 20 to 10 years, and made applications necessary. Agricultural and grazing leases may be granted for 10 years upon application to the department and without advertising such leases.

88/ Ibid., Sec. 11-302.

89/ Revised Code of Arizona, 1928, Sec. 2967, set the minimum annual rental at 3 cents per acre for grazing lands and $2\frac{1}{2}$ percent of the value of agricultural lands. This provision was amended in 1933 to 1 cent per acre for grazing lands and 5 cents per acre for agricultural lands, Laws of 1933, ch. 98; Arizona Code of 1939, Sec. 11-304.

Leases must contain covenants by the lessee not to permit loss or cause any waste upon the land. The written consent of the State land commissioner must be obtained before a lessee may cut or waste any timber or standing trees except for fuel or domestic use or for necessary improvements on the land. Saw-lumber may not be cut for any purpose without the commissioner's written consent. 90/

Lessees are not free to assign their leases without the consent of the commissioner and no lease may be assigned where the lessee has not performed all the conditions of the lease and paid the rental to date.

Every lease must expressly reserve to the State all oils, gases, coal, ore, minerals, fertilizers, and fossils, and any legal claim existing under the mineral land laws of the United States or the State as well as the right to go upon the land for the purpose of prospecting for or extracting such minerals. The right to relinquish the lands to the United States for irrigation works in connection with Government irrigation projects and the right to rent or dispose of rights-of-way, sites for canals, reservoirs, dams, power or irrigation plants or works, railroads, tramways, transmission lines, or any other purpose or use on or over such land are also expressly reserved to the State.

If the conditions of the lease are broken, the lessee forfeits his rights thereunder, and the commissioner may by action cancel his lease and take possession, or may take such other steps as the interests of the State may require. A lessee who merely fails to pay the rent when due may have the time of payment extended for a period of 90 days, but this may not be done more than three times. If the lessee is in arrears for more than a year, the lease is automatically canceled. To any delinquent payments, a 5-percent penalty may be added with interest at 10 percent; and the penalty is a lien upon the improvement, crops, and property on the land. 91/ Before canceling a lease, the land department must hold a public hearing and must give notice to the lessee or his assigns. If a lease is canceled for fraud, deceit, or willful misrepresentation, the lessee forfeits the improvements, but if it is canceled for any other reason, he may within 60 days remove such improvements.

A lessee who is a bona fide resident has the preferred right of renewal for a period not longer than 5 years at a reappraised rental, but he must give notice not less than 30 nor more than 60 days before the expiration of the lease. If the commissioner deems it in the best interest of the State, the lease shall not be renewed. 92/ Lessees have no enforceable interest in the property giving them preferential rights of renewal. 93/

Money received for leases or grants of any land designated as belonging to any institution, department, or purpose and all penalties for forfeiture shall belong to the fund of such institution, department, or purpose. 94/

90/ Arizona Code of 1939, Secs. 11-304 and 11-305.

91/ Ibid., Secs. 11-305 to 11-307.

92/ Ibid., Secs. 11-312 and 11-313.

93/ Boise v. Campbell (1926) 30 Ariz. 424, 284 Pac. 34.

94/ Arizona Code of 1939, Sec. 11-203.

Whenever necessary for the use of the State departments or institutions, the State may take over any State lands and the improvements thereon by reimbursing the owners for the improvements. The department or institution using such lands must pay a rental fixed by the commissioner. 95/ Existence of a lease or permit is no bar to the State taking the land, but the occupant is entitled to reasonable compensation for damages sustained by reason of the cancellation of the permit or lease, and damages are to be appraised and drawn from the general funds of the State. 96/

Extractional leases

Any citizen or corporation organized under the laws of the United States who discovers valuable mineral deposits on any State lands may locate a mineral claim not embracing more than 20 acres. 97/ The location has a preferred right to a mineral lease for 20 years upon payment to the State a rental of \$15 per year and royalties of 5 percent. Manner of locating and requirements for working the claim are prescribed by statute. Placer deposits upon State lands are subject to location and lease upon the same terms as deposits in place except that no discovery work is required.

Oil-and gas-prospecting permits may be issued by the department for a 5-year period at a rental of 10¢ per acre per year and for a renewal permit at 20¢ per acre per year. No permit may be given for more than 5,120 acres confined to an area of 10 square miles. The department must cancel any permit if drilling has not been begun within 2 years and diligently pursued. If oil or gas is discovered in paying quantities, the department must cancel the permit and issue an operating lease on the same lands for a period not to exceed 5 years. The lease is renewable upon application made not more than 90 days nor less than 30 days before expiration where the equities in the lessee are superior to those of other applicants. The lease must provide for the drilling of a well within a year and thereafter at the rate of one well for every 160 acres leased. The annual rental is not less than 50 cents per acre which may be credited on the royalty charge of $12\frac{1}{2}$ percent of all oil and gas produced and saved. 99/

Minerals

On the discovery of minerals in place on the public domain of the United States, a mining claim may be located by the discoverer. Procedure prescribed by State laws must be followed in perfecting mineral rights. 100/ In this matter the laws of the United States are paramount, but State laws relating to mineral locations must also be complied with. 101/

95/ Arizona Code of 1939, Sec. 11-1001.

96/ Ibid., Sec. 11-1002.

97/ Ibid., 1941 Code Supplement, Sec. 11-1601. 1941 S.L. ch. 78 added Secs. 11-1601 to 11-1609 to the Arizona Code of 1939 and repealed Sec. 11-314.

98/ Ibid., 1941 Code Supplement, Secs. 11-1604 to 11-1606.

99/ Ibid., Secs. 11-1301 to 11-1323.

100/ Ibid., Secs. 65-101 to 65-112.

101/ Johnson v. McLaughlin (1884), 1 Ariz. 493; 4 Pac. 130.

Department of mineral resources

The first regular session of the 1939 legislature created a department of mineral resources to aid in the promotion and development of the mineral resources of the State. 102/ Its purpose is to study the economic problems of prospectors and operators of small mines and to assist in their solution. A mineral resource survey and investigation will be conducted to discover sources of mineral supplies and available mining properties and for publication of the information for the benefit of prospective purchasers of mineral supplies and mining property. The department of mineral resources operates as a bureau of mining information in conjunction with the Arizona Bureau of Mines and cooperates with the various State and Federal agencies to assist in a more extensive exploration and development of mining within the State.

The department is administered by a board of governors of five members and a director appointed by the board who is a qualified mining engineer. This director has charge and control of all the work of the department and of the field offices. It is the duty of the director to make an annual report to the governor, giving a comprehensive picture of the activities of the department. It is unlawful for any of the members of the board of governors or any employees of the department to acquire any interest in mining property or to act as agent or broker for any purchaser or to make any individual confidential reports of investigations or evaluations of mining property.

WATER, IRRIGATION, DRAINAGE, AND IMPROVEMENT DISTRICTS

In this section statutes having to do with the acquisition and administration of water rights are considered, together with the laws governing the organization and powers of such joint improvement districts as irrigation, drainage, and electrical districts which play an important part in the utilization of water in Arizona.

State Water Code

The common law doctrine of riparian water rights, never in effect in Arizona, has been expressly repudiated by statute and by constitutional provision. 103/ In many of the arid Western States the doctrine of prior appropriation of water prevails and Arizona follows this doctrine. 104/ Water rights under this doctrine depend on prior appropriation and beneficial use.105/

102/ Laws of 1939, ch. 27; Arizona Code of 1939, Secs. 65-301 to 65-311.

103/ R.S. Ariz. 1887, Sec. 3198; Chandler v. Austin (1895) 4 Ariz. 346, 42 Pac. 483. Const. of Ariz., Art. XVII, Sec. 1.

104/ Boquillas Land & Cattle Co. v. Curtis, (1908) 11 Ariz. 128, 89 Pac. 504; 213 U. S. 339, 29 Sup. Ct. 493.

105/ Clough v. Wing (1888), 2 Ariz. 371, 17 Pac. 453, holding that an appropriator is entitled only to the amount of water he puts to beneficial use.

Water Subject to Appropriation

The waters of the State are declared to belong to the public and are subject to appropriation. "Water of all sources, flowing in streams, canyons, ravines or other natural channels, or in definite underground channels, whether perennial or intermittent, flood, waste or surplus water, and of lakes, ponds, and springs on the surface, belongs to the public, and is subject to appropriation for beneficial use" as provided in the water code. 106/ If the owner of the water right abandons or ceases to use the water for 5 successive years, he loses his right and it again becomes subject to appropriation. Water may be appropriated for the following uses: domestic, municipal, irrigation, stock watering, water power, wild life, mining, or personal use or delivery to consumer. 107/ In the event that it becomes necessary for the commissioner to determine the relative values of proposed uses to the public, wildlife uses are deemed inferior to domestic and municipal, irrigation and stock material, and water power and mining. 108/

Underground Water

There is some question as to ownership of underground percolating waters as distinguished from underground streams. Several decisions have stated the common-law or English doctrine of absolute ownership by the owner of overlying land. 109/ In Maricopa County M. Water Conservation Dist. No. 1 v. Southwest Cotton Co. 110/ judgment was reserved as to whether the English rule or the American rule of reasonable use, also known as the correlative rights doctrine should apply as between overlying owners. 111/

Water Commissioner

A water commissioner, who is familiar with water law, hydraulics, and irrigation, is appointed by the governor for a period of 6 years to have general control and supervision of the waters of the State, and of the appropriation and distribution thereof. 112/ The water commissioner makes surveys, investigations, and compilations of the water resources of the State, and formulates and prescribes rules and regulations governing appropriations and distribution of water. 113/

How Water is Appropriated

Before the adoption of the State water code, water could be appropriated

106/ Arizona Code of 1939, Sec. 75-101.

107/ Ibid., Secs. 75-101, and 75-102 of 1941 Code Supplement.

108/ Ibid., Sec. 75-102, as am. by 1941 S.L. ch. 84.

109/ Howard v. Perrin (1904) 8 Ariz. 347, 76 Pac. 460; McKenzie-Moore (1918) 20 Ariz. 1, 176 Pac. 568; Campbell v. Willard (1935) 45 Ariz. 221, 42 P (2d) 403.

110/ (1931) 39 Ariz. 65, 4 P (2d) 369.

111/ See Hutchins, Wells A., "Protection in Means of Diversion of Groundwater Supplies," 29 Calif. L. Rev. 1. Hutchins adds that "a dictum favoring reasonable use appears in Fourzan v. Curtis (1934) 43 Ariz. 140, 29 P (2d) 722; but it cannot be said that the English rule has yet been squarely rejected." Ibid., at 7, N. 16.

112/ Arizona Code of 1939, Sec. 75-103.

113/ Ibid., Sec. 75-104.

by the intent to appropriate accompanied by some physical demonstration of the intent, and the putting of the water to a beneficial use. 114/ Since 1919 water may be appropriated only upon compliance with the State water code. 115/ Any person, municipality, the State, or the United States, may appropriate water. In order to do this, it is necessary to make application to the water commissioner, giving full information as to the nature and amount of the proposed use, source of supply, the location of diversion and other relevant information, accompanied by any maps and drawings required by the water commissioner. Upon receipt of an application, the commissioner makes an investigation and either grants or rejects the application. The time of the filing of the application establishes the priority of the applicant. In deciding between conflicting applications for a limited water supply, consideration is given to the relative value of the use to which the water is to be put. The statute prescribes the highest public values in the following order: (1) domestic and municipal uses; (2) irrigation and stock watering; and (3) water power and mining uses. 116/ A permit to appropriate water may be assigned, subject to the conditions of the permit. Construction work for appropriation of water must be commenced within a year after the granting of the permit, except in the cases of cities and towns for municipal uses, and must be completed within 5 years, unless extended time is granted by the commissioner for good cause. Two types of permits are granted, primary permits and secondary permits.

When it appears to the satisfaction of the water commissioner that an appropriation has been perfected, he issues to the applicant a certificate which may be recorded and which establishes the water right. In the case of certificates for water power, these are limited to a period of 40 years from the date of the application. The date of the water right relates back to the date of the filing of the application. 117/

Change in Place of Use

Water used for irrigation purposes remains appurtenant to the land upon which it is used. A water right may be transferred to other land only where it becomes impracticable to use the water for irrigation on the land to which it is appurtenant and this can only be done with the approval of the water commissioner. In times of scarcity of water, the appropriators prior in time have precedence. 118/

Determination of Conflicting Rights

Upon petition of one or more water users of any water supply, the water commissioner may proceed to determine the relative rights of claimants to the

114/ Clough v. Wing (1888), 2 Ariz. 371, 17 Pac. 453.

115/ Tattersfield v. Putnam, (1935), 45 Ariz. 156, 41 Pac. (2d) 228.

116/ Arizona Code of 1939, Secs. 105 and 75-106.

117/ Ibid., Secs. 75-108 to 75-711. Primary permits are granted for reservoirs while secondary water permits are those granted to individuals who wish to put to a beneficial use the water stored in the reservoir.

118/ Ibid., Secs. 75-135 and 75-141.

use of the water. Notice is given and a hearing held, in which testimony is taken to determine the relative rights. 119/ In proceedings to establish conflicting rights, the commissioner acts in a manner similar to a master of chancery or a referee, and his findings of fact are not conclusive. 120/ In the case of the applications for water, appeal from the commissioner's decision may be had in the superior court and may be modified if the commission has abused his discretion. 121/ In determining conflicting rights, the proceeding in effect originates in the superior court and appeal will lie in the supreme court. 122/ The water code provides in detail for the methods of establishing water rights and the determination of conflicting water rights, and for the establishment of water districts for purposes of supervision. 123/

Improvement Districts

Irrigation districts

When the majority of the owners of land susceptible of irrigation from the same system of water works desire to irrigate their lands, they may organize an irrigation district for that purpose. 124/ The procedure for forming a district is by petition to the board of supervisors of the county in which the largest acreage of the proposed district is situated, describing the boundaries, acreage, and means proposed to supply water to the district. 125/ Powers of drainage may be requested in the petition. A petition may be signed by the majority of the resident owners of land in the district, and a bond in double the amount of the cost of organizing the district must be filed. Notice is given, and a hearing is held to determine whether the petition should be granted. If the petition to organize an irrigation district is granted, the board of supervisors orders an election for the purpose of determining whether a district shall be organized and to choose directors. Persons who object to the order of the board may obtain a writ of mandamus from the superior court. 126/ The procedure for establishing an irrigation district, the internal organization, the limits of indebtedness, including bonds, and powers, including power to tax, are prescribed in great detail in the statutes. 127/ The State certification board, consisting of the State (highway) engineer, the attorney general and the superintendent of banks, upon investigation may certify bonds of irrigation or water-conservation districts as legal investments for savings banks. 128/

119/ Arizona Code of 1939, Sec. 75-114.

120/ Salt River Water Users' Assn. v. Norviel, (1926), 29 Ariz. 499, 242, Pac. 1013.

121/ Arizona Code of 1939, Sec. 75-113.

122/ Smith v. Trott (1930), 36 Ariz. 166, 283 Pac. 726.

123/ Arizona Code of 1939, Secs. 75-114 to 75-144; also, Laws of 1929, ch. 102; Laws of 1931, ch. 47; Laws of 1934, 3rd S.S. ch. 10.

124/ Ibid., Sec. 75-201; In re Auxiliary Eastern Canal Irrigation District (1922), 24 Ariz. 163, 207 Pac. 614.

125/ Ibid., Sec. 75-202.

126/ Ibid., Secs. 75-203 to 205; 75-208 and 209.

127/ Ibid., Secs. 75-201 to 75-461.

128/ Ibid., Secs. 75-447 to 75-454.

Irrigation Water Delivery Districts

Owners of lots or tracts in a subdivision outside existing irrigation, electrical, or agricultural improvement districts, but capable of receiving irrigation water, may form a water-delivery district for the purpose of supplying or delivering water to their land. 129/ The procedure for forming such a district is by petition of the majority of the land holders of legal title to the board of supervisors of the county, setting out the description and approximate acreage of each owner, the boundaries, the proposed purpose of the district, and the methods or means to be used in obtaining water. The board of supervisors of the county examines the petition, gives notice of hearing, requires bond, and sets a time for hearing on the petition. If upon conclusion of the hearing the board of supervisors decides that a water-delivery district should be formed, it declares a district to be organized and appoints three trustees. Any owner may object to the formation of the district by protesting to the supervisors of the county; but if the objection is found insufficient, the district may be organized notwithstanding his objection. If all of the owners in a district sign the petition, the district may be declared organized immediately.

Irrigation water-delivery districts are bodies corporate and may exercise eminent domain and hold real or personal property in the corporate name. Water charges must be paid before water is delivered to the lands in the district and the lands in the district may be taxed for maintenance of the district.

The governing body of a water-delivery district is a board of trustees, consisting of three landowners of the district. This board may borrow money, issue warrants, purchase equipment, and otherwise manage the business of the district. 130/

Electrical Districts

Electrical districts may be organized by resident freeholders of land within a proposed district for the primary purpose of obtaining power for irrigation pumping uses. To form an electrical district at least 25 freeholders of land must petition the board of supervisors in the county wherein the greater part of the land is situated to form an assessment district. The petition must describe the land to be included and the purpose of the organization. A hearing to determine feasibility is held by the supervisors and they have full power to determine the public use of the proposed district. If the petition is granted, the board of supervisors holds an organization election; if they refuse to grant the petition, appeal may be taken to the superior court, with final appeal to the Supreme Court.

A board of directors, consisting of 7 members, manages and controls the business of the district. Each district is a body corporate and has the power of eminent domain and such other powers as are necessary to carry out the objectives of its organization. The directors are charged with the duty of

129/ Arizona Code of 1939, Sec. 75-501.

130/ Ibid., Secs. 75-502 to 75-504; 75-508; 75-513 and 75-514.

investigating the various ways of bringing power to the district, and bonds may be issued for this purpose when authorized by a special election. 131/ The district has the power of taxing the lands included therein to meet the expenses of the district, and lands are taxed on a per acre basis. 132/ In the collection of assessments, any delinquencies may be made liens on the land so delinquent. Electrical districts may cooperate with the United States Government under the "Reclamation Act." 133/

Supervision of Irrigation and Electrical Districts

All engineering determinations and supervision provided for by law respecting irrigation districts or electrical districts are made under the direction of the State engineer and are binding on the water commissioner or State certification board. His duties in this respect include the right to inspect and approve proposed construction work and to order changes in existing works. This act confers on the State engineer supervision over irrigation and electrical district construction to the extent that he has power over dam construction and repair. 134/

Power Districts

The organization of power districts was authorized by statute in 1919 and a number of districts were formed under this law. 135/ In compiling the Revised Code of Arizona 1928, this law was omitted. As doubt arose as to whether such districts had a right to continue to operate, the legislature in 1931 passed an act validating the power districts organized under the 1919 act. 136/

Agricultural Improvement Districts

For the purpose of irrigating or draining lands lying within the boundaries of any United States reclamation project, an agricultural improvement district may be formed. A petition of five or more owners of lands within the proposed district is presented to the board of supervisors of the county wherein the land is located; and after hearing on such petition, the board of supervisors may determine the extent of the boundaries of the proposed district. If the petition is approved, the district is divided into three or five divisions; an election is held to authorize the organization 137/ in which only persons qualified to vote in State elections, and who own property within the district on which they have paid taxes, may vote.

131/ Arizona Code of 1939, Secs. 75-601; 75-606; 75-610-11; 75-614; 75-617.

132/ Ibid., Secs. 75-625, 75-626. See also 75-619, 75-621.

133/ 39 Stat. 506 (Aug. 11, 1916).

134/ Arizona Code of 1939, Sec. 75-1314.

135/ Laws of 1919, ch. 173.

136/ Laws of 1931, ch. 96; Arizona Code of 1939, Sec. 75-636.

137/ Arizona Code of 1939, Secs. 75-701; 75-703; and 75-705 and 706.

Directors, one from each division of the district, are elected. This board has the power and duty of managing and conducting the business of the district, and makes and executes all contracts, makes surveys, plans, locates, and provides for the acquisition of water, lands, or property needed to operate and maintain the district. Bonds may be issued upon approval at an election for that purpose, and the money realized therefrom may be used for the purpose of acquiring property, or constructing or improving water development, power or drainage. Bonds issued by an agricultural improvement district are a lien upon the real property in the district.

Agricultural improvement taxes may be levied by the board of supervisors. These taxes are collected at the same time and in the same way as State and county taxes, and the treasurer of the county in which the district is located is charged with their collection and disbursement. 138/ The board of directors of an agricultural improvement district may not authorize an indebtedness of over 5,000 in any one year, and may not issue warrants in excess of that amount. 139/ Property owned by the district is not taxable for State, county, or municipal purposes. 140/

Whenever a drainage district is included within the boundaries of an agricultural improvement district, the two may cooperate in every way, and the drainage district may surrender to the agricultural improvement district the complete control of its drainage works. 141/

Drainage Districts

Drainage districts, for the purpose of draining agricultural lands, are organized in practically the same manner as agricultural improvement districts. 142/ The procedure is by petition, notice, hearing, approval, and election. The organization of a drainage district provides for a board of directors with power to survey, plan, locate, and operate drainage works for the lands embraced in the district. 143/

Flood-Control Districts

A flood-control district may be formed by five or more holders of title, or of evidence of title, to improved lands which are subject to overflow or flooding, provided such lands are capable of being protected by the same general system of works. Five or more owners may petition the board of supervisors

138/ Arizona Code of 1939, Secs. 75-705; 75-707; 75-714; 75-725; 75-728; 75-732-33; and 75-735.

139/ Ibid., Sec. 75-743.

140/ Ibid., Sec. 75-744. On March 5, 1940, the Supreme Court of Arizona held unconstitutional the statute exempting from taxation property owned by irrigation districts. State v. Yuma Irrigation District (1940) 55 Ariz. 178, 99 Pac. (2d) 704.

141/ Ibid., Sec. 75-747.

142/ Ibid., Secs. 75-801 to 75-812.

143/ Ibid., Sec. 75-814. See also: Wattson v. United States (1919) 260 Fed. 506.

to establish a flood-control system. A district may be organized in the same manner as drainage districts. 144/ Flood-control districts are authorized to cooperate with and to receive donations from the State of Arizona, or any county, city, town, or other municipality, as well as responsible private corporations, associations, or individuals desiring to assist in such flood control. 145/

Sanitary Districts

Sanitary districts for the disposal of sewage may be established in unincorporated towns or settlements by the board of supervisors of the county upon petition of 51 percent of the owners of real property within a proposed district. Upon notice and a public hearing, the district may be organized as a body corporate. A sanitary district may acquire property in order to operate its sewage system. Tax-exempt bonds may be issued and sold for the purpose of construction, and taxes may be levied to pay the principal and interest thereon and to pay current operating expenses. The district may charge sewer rental and service charges, and the revenue obtained may be used for operations. The district may compel all persons living within the district to connect with the sewage system. 146/

District Enabling Act of 1934

This legislation authorizes irrigation districts, drainage districts, flood-control districts, electrical districts, power districts, and other districts to enter into contracts or agreements with the Federal Government to secure loans for repairs, construction work, improvements, or for refinancing existing indebtedness; and for these purposes extensive additional powers are conferred upon the districts. 147/ Under the Act the district may issue bonds and the Federal Government may acquire them as security for loans. 148/ Both contract and bond issue must be approved by the State certification board and a majority of real property taxpayers. 149/

Soil Conservation Districts

A soil conservation district law to provide for the restoration and conservation of agricultural lands and soil resources of the State and to control and prevent soil erosion was enacted by the legislature in 1941. Its provisions apply only to "agricultural" lands which are defined as "irrigated farming land or dry farming lands, devoted to the purposes of agriculture on the date 180 days prior to the date the act takes effect." 150/

144/ Arizona Code of 1939, Secs. 75-901 and 75-801 to 75-891.

145/ Ibid., Sec. 75-902.

146/ Ibid., 1941 Code Supplement, Secs. 68-1001 to 68-1027.

147/ Ibid., Secs. 75-1102 to 75-1105.

148/ Ibid., Sec. 75-1102.

149/ Ibid., 1941 Code Supplement, Secs. 68-1001 to 68-1027.

150/ Ibid., 1941 Code Supplement, Secs. 75-1702 to 75-1705.

The State soil conservation committee is composed of the governor, State land commissioner, State water commissioner, and the director of the State agricultural extension service. Provision is made for the appointment by the United States Secretary of Agriculture of one person to serve on the committee in an advisory capacity. Committee functions include, among other powers conferred by the Act, dissemination of information, coordination of the programs of the various soil conservation districts, and securing cooperation and assistance of the various State and Federal agencies in the work of soil conservation. A secretary, an administrator, and other employees may be employed by the State committee.

Any 25 owners of agricultural land, but in no event fewer than 20 percent of the owners of land within the boundaries of a proposed district, may file a petition with the State committee for organization of a district. The petition must contain the name of the proposed district, the need for the same, its proposed boundaries, and a request for a referendum election to be held in the territory described. Within 90 days of the filing and after due notice is given, a hearing is held before the State committee to determine whether the district should be created. If, at the hearing, it appears that a district is desirable and necessary, a finding to that effect is filed, and the boundaries of the district are fixed. If, on the other hand, it is determined that there is no need for a conservation district, the petition must be denied.

Upon the granting of the petition, a referendum election is held by the State committee in which only the landowners of the proposed district may vote for or against the creation of the district. A vote of approval of 65 percent of the landowners voting, owning at least 50 percent of the land in the proposed districts, is necessary before the State committee may declare the district organized. The State committee then appoints two temporary supervisors who make application to the secretary of State for the issuance of a certificate of organization. Upon approval and recording by the secretary of State and issuance of a certificate of organization, the soil conservation district becomes a body corporate. 151/

Thirty days after the district is declared organized, nominating petitions to elect three supervisors must be filed with the State committee. A nominating petition must contain the signatures of at least 25 percent of the qualified electors of the district. Upon the filing of the nominating petitions, the State committee holds an election and the three candidates receiving the largest number of votes are elected for 6-year terms. 152/ The duly elected supervisors constitute the governing body of the district.

Soil conservation districts are empowered to conduct survey investigations, and research relating to soil erosion and the control measures needed, conduct demonstrational projects, carry out preventive control measures but only with the consent of the landowners, enter into agreements with landowners,

151/ Arizona Code of 1939, 1941 Code Supplement, Sec. 75-1706.

152/ Ibid., 1941 Code Supplement, Sec. 75-1707. At the first election of supervisors, the one receiving the largest number of votes is elected for a term of 6 years, the next highest for 4 years, and the last for 2 years.

obtain land or other property by gift, lease, purchase, or otherwise, 153/ for the purpose of carrying out its program of soil conservation, etc. No power is granted to the districts to pass land use regulations or ordinances.

The legislature may make such appropriations as it sees fit for the expenses of the State committee and the districts.

Supervision of Dams and Reservoirs

Dams

All dams in the State of Arizona, heretofore built or to be constructed, 15 feet high or impounding more than 10 acre-feet of water are under the jurisdiction of the State highway engineer. Dams or reservoirs used exclusively for stock-watering purposes are not included. No dams except those expressly excluded may be constructed without the approval of the State engineer, who is charged with the duty of examining all existing dams within the State, and of passing on the applications for dam construction. He may order existing dams to be modified in the interest of safety, and require proposed dams to meet his approval by complying with the requirements prescribed. 154/

Board of Reservoir Control and Supervision

The Board of Reservoir Control and Supervision is composed of the governor, State highway engineer, State water commissioner, a member of the State tax commission, and a member of the State industrial commission. 155/ It is the duty of this board to investigate and determine the condition of reservoirs or dams in the State that are or that may become a menace to life or property within the State of Arizona. If the board should determine that a dam or reservoir is a menace, it may order its abatement, and proceed to remedy the condition. The cost of repairs or improvements may be paid by the State and charged to the owners of the reservoir or dam, and this cost is a lien upon the dam or reservoir. If the dam is owned by an electrical or irrigation district, the district must bear the cost. Should the cost of abatement not be paid, the State may proceed to enforce its lien and on execution, the State may purchase the land and improvements. 156/

Resources Board

The Arizona Resources Board consists of 5 members appointed by the governor for 5-year terms. Not more than one member may be appointed from any county. It is the duty of this board to gather information and to prepare plans for the development, conservation, control, and utilization of all waterways,

153/ Arizona Code of 1939, 1941 Code Supplement, Sec. 75-1709. Engineering operations, methods of cultivation, the growing of vegetation, changes in the use of land, etc. See also Laws of 1941, ch. 43, Sec. 9, Subsec. (b).

154/ Ibid., Secs. 75-1301, 75-1303, and 75-1305.

155/ Ibid., Sec. 75-1201.

156/ Ibid., Secs. 75-1202 to 75-1204; and 75-1206 and 75-1207.

watersheds, and water resources in the State, and to gather information on all matters of irrigation, drainage, regulation of flow, flood control, utilization of water power, prevention of soil wasteage, and water utilization. The board makes an annual report to the governor and is authorized to maintain an office in the capitol. 157/

Colorado River Commission

The problem of the Colorado River has been considered by nearly every Arizona Legislature since 1919, and although a number of commissions have been appointed to further the interests of this State in the development of the river, Arizona's water rights have not yet been determined.

The Colorado River Compact is an agreement between the 7 Colorado River Basin States 158/ as to the apportionment of the water of the Colorado River and its tributaries. 159/ Commissioners were appointed by the various States 160/ and Congress appointed a representative to act for the United States. 161/ These commissioners and the Federal representative signed an agreement to become effective when ratified by Congress and the legislatures of the States. The compact was ratified, with some modifications, by 6 of the States. 162/ Arizona did not ratify, and as a result her rights in the unappropriated waters of the river were not affected 163/ by the compact or the Boulder Canyon Project Act. 164/

The Arizona Legislature in 1927 authorized the governor to appoint a committee to confer with representatives of California and Nevada regarding the development of the Colorado River. 165/ The same legislature created an 8-man Colorado River Commission, and appropriated \$100,000 for its use in promoting

157/ Arizona Code of 1939, Secs. 11-901 to 11-903.

158/ Signed November 24, 1922, at Santa Fe, New Mexico, by Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming. See Arizona Code of 1939, Sec. 17-1601.

159/ One of the important tributaries of the Colorado is the Gila, which for most of its length flows through central Arizona. The question of whether the Gila was included in the Colorado River Compact is still undecided. It is the view of the Federal Government that the compact did not apportion the waters of the Gila River; however, Arizona has not been sure. This is one of the main objections to ratification of the compact. See: Message of the Governor, page viii, Session Laws of 1929.

160/ The legislature authorized the governor to appoint the State water commissioner to represent the State in negotiating the settlement of water rights in the Colorado River; Laws of 1921, ch. 46.

161/ 42 Stat. 171.

162/ 46 Stat. 201.

163/ State of Arizona v. State of California (1931) 263 U. S. 423, 51 S. Ct. 522.

164/ 45 Stat. 1057 (Dec. 21, 1928).

165/ Laws of 1927, ch. 3.

Arizona's interest. 166/ In 1929, another Colorado River Commission was created, this time with 3 members and the governor as an ex-officio member. The purpose of this commission was to negotiate with the other 6 basin States with regard to water allocation. 167/ A permanent Colorado River Commission was created in 1939. It consists of three members appointed by the governor for 6-year terms, with the governor an ex-officio member. It is the duty of this commission to represent the State of Arizona in all civil and legal matters pertaining to the Colorado River. 168/

A succinct statement of Arizona's Colorado River problem may be found in the message of Governor John C. Phillips to the ninth legislature. 169/ In this message he recommended that the legislature authorize a tri-State compact between Arizona, California, and Nevada pertaining to the water of the Colorado River. Ten years later, in 1939, the legislature authorized such a compact, to become binding when approved by Congress and the legislatures of Arizona, California and Nevada. 170/ In the same Act, subject to approval of the proposed tri-State agreement by California, Nevada, and Congress, Arizona ratifies the Colorado River Compact (Nov. 24, 1922).

AGRICULTURAL LANDLORD-TENANT RELATIONSHIPS

The number of tenants and sharecroppers in Arizona increased from 2,331 in 1930 to 3,334 in 1935 but declined to 2,140 in 1940. This represents an 8.2 percent decrease from 1930 to 1940. In the United States as a whole for the same period there was a decrease of 11.4 percent. Of the total number of farm operators in Arizona 11.6 percent were tenants or croppers as compared with 38.7 percent for the United States as a whole. 171/ Statutory provisions governing the creation and incidents of the relationship between tenant or cropper and landlord are meager in Arizona. They are outlined here, but as in other sections of the report, no attempt has been made to explore fully court decisions or the practical day-to-day aspects of the relationship.

Creation of Landlord-Tenant Relationship

The relationship of landlord and tenant is established by a lease which may be written or oral. A lease or an agreement to lease for more than one year must be written. 172/ A lease must be delivered and delivery may be manual or "constructive," that is, deemed delivered in legal effect. Although no particular form of lease is necessary, the parties should be identified, the premises described, and the rent, term, and conditions of the lease fixed.

166/ Laws of 1927, ch. 37.

167/ Laws of 1929, ch. 3; See also: H.R. No. 4, 5, Laws of 1933, p. 578.

168/ Arizona Code of 1939, Secs. 75-1501 to 75-1505.

169/ Laws of 1929, p. viii. See also Laws of 1935, ch. 6.

170/ Arizona Code of 1939, Sec. 75-1603. The proposed tri-State compact would allocate to California 4,400,000 acre-feet of water; to Nevada, 300,000 acre-feet; and to Arizona, 2,800,000 acre-feet and one-half of any excess or surplus water unapportioned by the Colorado River Compact. An express provision grants to Arizona the exclusive beneficial use of the Gila River.

171/ U. S. Census, 1940.

172/ Arizona Code of 1939, Secs. 58-101, 71-401.

Leases may be for a term, for a year, from year to year, month to month, at will, etc. They may be extended or modified in the same manner as created.

Arrangements made between the landowner and another for the planting or cultivating of land may create a cropper contract rather than a lease. 173/ Whether a lease or a cropper contract is created depends upon the terms of the agreement and the intent of the parties. The basic distinction between a lease and a cropper contract is that a lessee is given interest in the land, while the cropper has no interest in the land but only a share in the crop produced for his labor. 174/

Performance of the Lease

Rents

The amount and time and condition of payment of rent may be fixed in the lease. Failure to pay rent is a breach of the lease and gives a right of action to the landlord. 175/ A landlord has a statutory lien for his rent on the crops and on any other personal property of the tenant not exempt from execution which may be found on the premises. In the event the premises are sublet or if a lease is assigned, the landlord has a like lien against the sublessee or assignee. 176/

In 1941, the Arizona statutes were amended to confer upon any person furnishing labor of the use of machinery to prepare agricultural land for crops, and to whom wages are due, a lien upon the whole for any part of the crop. 177/ A verified claim must be filed with the county recorder of the county in which the agricultural land is located. While a shipper or dealer who moves farm products before the lien is filed is not liable unless he has received notice of the claim, he is under obligation to demand a written statement under oath from the vendor of the names and amounts due to persons entitled to liens. 178/

Fixtures and Improvements

The general rule is that property affixed by the tenant to the land with intent that it become a part of the land is not removable. This is the law in Arizona. 179/ At common law an exception to the rule was that, regardless of intent, trade fixtures could be removed, if removal would not injure the premises, but the general rule was that agricultural fixtures were not removable. The landlord and tenant may by agreement, however, provide for removal

173/ Gray vs. Robinson (1893) 4 Ariz. 24, 33 Pac. 712.

174/ S. A. Gerrard Co. vs. Cannon (1933) 43 Ariz. 14, 28 Pac. (2d) 1016.

175/ Arizona Code of 1939, Sec. 27-1214.

176/ Ibid., Secs. 27-1215 and 71-306. The lien is limited to the amount of the claim for rent. Scottsdale Ginning Co. vs. Longan (1922) 24 Ariz. 356, 209 Pac. 876.

177/ 1941 S. L., ch. 67.

178/ Ibid., Sec. 3.

179/ Nigro v. Hatch (1886) 2 Ariz. 144, 11 Pac. 177.

of fixtures by the tenant. In the absence of agreement, the tenant has no right to compensation for improvements remaining on the land at the expiration of his term.

The landlord's statutory obligation to repair is derived from and limited by a section of the code which provides that if the buildings on the property are rendered untenable or unfit for occupancy, liability for rent ceases. 180/

Termination of the Relationship

The tenancy may be terminated by expiration of the term fixed by the lease; the happening of some event provided for in the lease; surrender, that is voluntary relinquishment to the landlord; notice, forfeiture for breach of the lease; or by operation of law. 181/ A year-to-year tenancy terminates at the end of the year unless written permission is given to the tenant to stay longer and no notice of termination need be given by the landlord. A month-to-month tenancy may be terminated upon 10 days' notice, except that if rent is due and unpaid, no notice of termination need be given. A tenant on a month-to-month lease must give 10 days' notice of termination to the landlord or be liable for 10 days' rent. 182/

Upon failure of the tenant to pay his rent when due or upon any other breach of the lease, the landlord may recover possession by several alternative remedies. The landlord may bring a possessory action and have a writ of possession issued at its conclusion. 183/ Where the tenant has been growing crops, he may, upon posting a bond, stay execution for possession until the first day of February of the following year. 184/ The landlord may enter and take possession without commencing legal action or bring a summary proceeding to recover possession. In the summary proceeding the landlord may seize such personal property of his tenant as is not exempt from execution and is found on the premises, as security for the payment of rent. 185/

ROADS AND SCHOOLS

Public services such as roads and schools have an important influence upon land use and are in turn affected by land use because of their relationship to patterns of settlement, tax burdens on lands, and need for and supply of marketing outlets. In this section are considered the statutes setting up the State highway system and providing for its financial support; provisions for opening, maintaining and financing county roads; and statutory provisions

180/ Arizona Code of 1939, Sec. 71-303.

181/ Examples of forfeiture by operation of law are illegality or destruction of the buildings. At common law, destruction of the premises did not terminate the obligation to pay rent. In Arizona, however, destruction of the buildings would terminate the tenancy. Arizona Code of 1939, Sec. 71-303; De Mund vs. Oro Grande Consolidated Mines (1941) 108 Pac. (2d) 770.

182/ Arizona Code of 1939, Sec. 71-304.

183/ Ibid., Sec. 27-1501.

184/ Ibid., Sec. 27-1508.

185/ Ibid., Secs. 27-1203 and 27-1215.

for financial support of the public school system.

Roads and Highways

The highways and roads of the State are classified as State highways or State routes, 186/ secondary State routes, 187/ and county roads. Federal aid highways are designated as U. S. highways. The majority of the State routes and the U. S. highways are hard surfaced and are usually known as paved roads. Secondary State routes and country roads may be variously surfaced although the former are usually covered with gravel.

State Highway Department

The highways of the State are administered by the Arizona Highway Department, the control of which is vested in a State highway commission of 5 members. The State is divided into 5 highway districts as follows: (1) Maricopa and Yuma Counties; (2) Pima, Pinal, and Santa Cruz Counties; (3) Cochise, Graham, and Greenlee Counties; (4) Yavapai and Gila Counties; and (5) Coconino, Mojave, Navajo, and Apache Counties. Members of the commission are appointed by the governor with the consent of the State senate. He selects one committeeman from each of the districts. At the present time, their terms of office are 1, 2, 3, 4, and 5 years, but at the expiration of the terms of the present appointees, members will be appointed for 5-year terms. Since a member may not be appointed from the same county for two terms in succession, the appointment of members is rotated so that each county in a district will have a new member in turn. 188/

Primary State routes are constructed and maintained by the State highway department. In the case of secondary State routes, one-third of the cost of construction, improvement, repair, and maintenance is borne by the State. The counties pay a pro rata share of the cost of secondary routes based on the number of miles of secondary route within the county out of the revenues accruing from the motor-vehicle fuel tax apportioned to them. 189/

Where streets of incorporated cities and towns form necessary and convenient links in the highway system, the State highway department or the board of supervisors, if the highway be a county one, may agree with the governing body of the city or town that such streets be deemed a State or county highway. The agreement must provide for State or county maintenance of the highway streets. 190/

State Highway Commission

The State highway commission has the power to lay out and establish a complete system of State routes and to direct the State engineer to establish,

186/ Arizona Code of 1939, Sec. 59-201.

187/ Laws of 1935, ch. 89.

188/ Arizona Code of 1939, Sec. 59-101 to 59-103.

189/ Ibid., Secs. 59-201 and 59-209.

190/ Ibid., Sec. 59-205.

open, relocate, alter, widen, change, vacate, or abandon any portion of a State route or State highway. All projects submitted by the State engineer must be presented to the commission for approval. The State cooperates with the United States in the construction and maintenance of Federal-aid highways. The highway commission may authorize the State engineer to enter into agreements with the counties, cities, or road districts of the State for the improvement or maintenance of State routes or for the joint improvement of such roads. Exclusive jurisdiction and control of State highways as to expenditures, plans, and use is vested in the commission. Thus the commission makes rules and regulations deemed necessary for public safety and convenience in the use of the highways. In addition to the powers and duties enumerated above, the commission is charged with the responsibility for collection of license fees for motor vehicles, for establishing the policies of the highway department, and for the control of its financial affairs. 191/

The highway commission is empowered to buy, sell, and condemn land; or to acquire (by purchase, donation, dedication, or condemnation) rights-of-way, camp sites, and water or material needed for State highways; and may exercise the right of eminent domain. When lands, rights, or materials are no longer needed, they may be sold or otherwise disposed of. 192/

State Highway Fund

A state highway fund, kept in custody of the State treasurer, consists of all money received from the sale of licenses and from taxes on motor vehicle and motor-vehicle common carriers, part of the motor vehicle fuel tax, money appropriated by the legislature, donations, money from the counties, including proceeds from bond issues under cooperative agreements with the State highway commission, and all money received from the United States for the construction of regular post roads. 193/

Motor vehicle fuel taxes of 5 cents per gallon are collected by all distributors. Seven-tenths of this amount goes to the State treasurer, who deposits the money in the State highway fund; three-tenths is returned to the county treasurers, the apportionment depending upon the ratio of motor fuel sales in their county to the total sales in the State. This money may be used by the counties for new construction, maintenance, and improvement of highways and bridges, or to retire outstanding county highway bonds. 194/

Registration fees 195/, licenses, and other motor vehicle fees required by the statutes become a part of the State highway fund. Counties receive 50

191/ Arizona Code of 1939, Sec. 59-105.

192/ Ibid., Sec. 59-204.

193/ Ibid., Secs. 59-301 and 59-302. According to a letter dated June 7, 1940, from W. R. Hutchins, State highway engineer, during the calendar year 1939 the net income of the State highway department was \$6,698,911.

194/ Ibid., Sec. 66-301.

195/ Ibid., Sec. 66-201 (f).

cents of each original registration fee. This sum is used by the assessor to defray his expense of registering motor vehicles, and the balance of the fee may be used by the board of supervisors for the maintenance and construction of county highways. 196/

State Highway Engineer

The State highway engineer, a qualified civil engineer experienced in highway construction and maintenance, and appointed by the governor, is the chief executive and administrative officer of the department and has charge of all highway work authorized by the State highway commission. His duties involve the direction and organization of the department, the making of rules and regulations, preparation of plans and specifications for highway work, awarding of contracts, and supervision of all highway construction and maintenance work. 197/

County Highways and Roads

In any county the board of supervisors may establish, alter, or abandon highways for counties and other legal subdivisions, and may condemn and appropriate public or private property for road purposes. Highways may be altered, established, or abandoned upon the presentation of a petition signed by 10 or more resident taxpayers of the county or by petition from the governing body of a legal subdivision. The county supervisors may reject or act on the petition after public hearing. If a petition is granted, a board of appraisers is appointed to assess damages and award compensation to the landowners affected. 198/ The only legal method of establishing public ways is in accordance with the statutes. 199/

Road Taxes

Counties may levy real and personal property taxes for highway improvement purposes but not in excess of 25 cents per 100 dollars' valuation. 200/ Streets in unincorporated towns are considered as public highways and are therefore subject to the control of the board of supervisors. A county may issue

196/ Arizona Code of 1939, 1941 Code Supplement, Sec. 66-901 provides for distribution of motor vehicle license taxes as follows: In counties without incorporated cities or towns, 25 percent to the State treasurer, $37\frac{1}{2}$ percent to the board of supervisors for the use of 1 and 2 room schools. In all other counties, 25 percent to the State treasurer, 25 percent to the general fund of the county, 25 percent to the board of supervisors for 1 and 2 room schools and 25 percent to incorporated towns and cities apportioned according to population.

197/ Ibid., Sec. 59-107.

198/ Ibid., Sec. 59-601.

199/ Champie v. Castle Hot Springs (1925), 27 Ariz. 463; 233 Pac. 1107; Graham County v. Dowell (1937), 50 Ariz. 221; 71 Pac.(2d)1019.

200/ Arizona Code of 1939, Sec. 59-604.

bonds for highway construction; but if such bonds exceed 2 million dollars, the county board of supervisors must appoint a county highway commission of three resident freeholders; if for less than 2 million dollars, the board of supervisors acts ex-officio as the highway commission. Whenever it is necessary to issue bonds for construction or improvement, a road-bond election must be held to authorize the issuance of the bonds. 201/

County Highway Commission

It is the duty of the county highway commission to investigate the condition of county highways; and if, in their judgment, public necessity and convenience require it, the commission may provide construction or improvement from the funds arising from the sale of bonds. When the commission decides that there is need for construction or improvement of county roads, it publishes a report of the findings with a map of the proposed improvements. 202/ County highway commissions may enter into cooperative road-building agreements with the United States Secretary of Agriculture. 203/ Streets in unincorporate cities and towns are considered public highways, and are under the control of the board of supervisors of the county in which they are located. 204/

County Engineer

The board of supervisors appoints a competent civil engineer and road builder as county engineer. He is the custodian of the records and property of the county relating to surveying, engineering, and road construction, except where highways are being constructed under the direction of a highway commission. All other county highways, engineering construction and improvements, and alterations and repairs of county property are made under his direction. 205/

Special Road Districts

Whenever 25 taxpayers within a proposed district desire to form a special road district, they may petition the board of supervisors for approval. An election is held, and if two-thirds of the qualified electors of the proposed district approve, the board of supervisors appoints three trustees 206/ who have exclusive charge and control of the establishment, maintenance, and repair of all roads, driveways, and bridges within the special road district except State and county highways. The trustees are empowered to hold and convey property in the name of the district, to sue and be sued, contract for repairs, and control the funds of the district. 207/ A special road tax may be levied on all taxable lands within the district, but not in excess of 75 cents per 100 dollars' valuation. Whenever it is necessary to expend more money than can be

201/ Arizona Code of 1939, Secs. 59-610 to 59-612.

202/ Ibid., Sec. 59-613.

203/ Ibid., Sec. 59-616.

204/ Ibid., Sec. 59-610.

205/ Ibid., Sec. 17-1001.

206/ Ibid., Secs. 59-621 and 59-622. A special road district is limited to an area of not more than 10 miles long and 1 mile wide. There are three special road districts in Arizona -- No. 4, 5, and 6-- located in Maricopa County.

207/ Ibid., Sec. 59-624.

raised by this special road tax, a bond issue in lieu thereof may be authorized by an election. 208/

Poll Taxes for Streets

Every able-bodied male inhabitant of the State over the age of 21 and under 50, residing in incorporated cities or towns, must pay a street tax of 2 dollars per year. 209/

Toll Roads, Ferries, and Bridges

Individuals who desire to construct and operate toll roads, ferries, and bridges must first petition and obtain the approval of the board of supervisors of the county wherein the project is contemplated. If the petition is approved, the individual or company is granted a franchise and the rates of toll are fixed by the board of supervisors. 210/

Prison Labor on Highways

State prisoners may be employed on the highways of the State to do construction, repair, and maintenance work. Prison labor is obtained for highway work by agreement between the board of directors of State institutions and the State highway commission. However, when the board of supervisors of any county objects, the prisoners may not be used on any highway within that county. The State engineer has control and charge of the men assigned to highway work. It is his duty to maintain the camps and enclosures used by the prisoners when working on roads. The cost of using the prison labor is divided between the State prison and the highway department. The State prison provides funds equal to the amount necessary for maintenance in the prison, and the State highway department supplies the balance. 211/

Schools

Arizona has a uniform public school system which includes kindergarten schools, common schools, high schools, normal schools, industrial schools, and a university. Financial support for the school system is derived from five principal sources--the permanent school fund, special funds, gifts and grants-in-aid, State appropriations, county taxes and school district taxes.

Permanent School Fund

The permanent school fund 212/ consists of the proceeds of and profits from all the lands granted to the State by the United States for the support of common schools; 213/ all property accruing to the State by escheat or

208/ Arizona Code of 1939, Secs. 59-625 and 59-626.

209/ Ibid., Sec. 16-215.

210/ Ibid., Secs. 59-501 and 59-504.

211/ Ibid., Secs. 47-125 and 47-127.

212/ Ariz. Const. Art. 11, Secs. 1 and 8.

213/ The Enabling Act, Sec. 24, granted to the common school fund Secs. 2, 16, 32, and 36, in any township where such sections had not previously been sold, reserved, appropriated, or were mineral in character.

forfeiture; gifts to the common school funds; all unclaimed shares and dividends of corporations incorporated in Arizona; the residue of lands granted by the United States to retire county bonds; 214/ and 5 percent of the proceeds of the sale of public lands within the State. 215/

Special Funds, Gifts, and Grants-in-aid

A number of special funds 216/ were created and authorized by the Enabling Act 217/ for educational purposes. Among these special funds are: The university land fund 218/, the university timber fund 219/, teachers' colleges land fund, agricultural and mechanical college and school of mines fund, the deaf, dumb, and blind school land fund, military institutes land fund, and the county bonds land fund. The funds are perpetual and the proceeds, interest, and rentals may be used only for the support of the educational institutions named. 220/

Money received by the State from the United States from forest reserves 221/ is apportioned to the individual counties on the basis of forest reserve acreage. The board of supervisors of the counties may use this money for public schools and roads. 222/

214/ Enabling Act, June 20, 1910, Sec. 25 Congress granted one million acres of land to be used for the purpose of retiring railroad bonds issued by the counties of Maricopa, Pima, Yavapai, and Coconino. Upon payment of the bonds, the remainder was placed to the credit of the common school funds.

215/ Arizona Code of 1939, Sec. 11-1101; Enabling Act, Sec. 27.

216/ Enabling Act, June 20, 1910, Sec. 25. By this Act, the United States granted lands to the various educational institutions in the following amounts: University of Arizona, 200,000 acres; School for the Deaf, Dumb, and Blind, 100,000 acres; Agricultural and Mechanical College, 150,000 acres; normal schools, 200,000 acres; School of Mines, 150,000 acres; Military Institutes, 100,000 acres; for payment of the railroad bonds of the counties of Maricopa, Pima, Yavapai, and Coconino, the residue to go to the common school fund, 1 million acres.

217/ Ibid., Secs. 20 to 28.

218/ Arizona Code of 1939, Sec. 11-1102.

219/ Ibid., Sec. 10-202.

220/ Ibid., Secs. 11-1103 to 11-1106.

221/ The Forest Reserve Act, May 23, 1908, 36 Stat. 260, provides that 25 percent of all money received from forest reserves during any fiscal year shall be paid to the State treasurer for the use of the schools and roads of the county wherever the reserve is situated. This is strictly a county fund as it accrues to the individual counties on the basis of the acreage of National forest land located therein.

222/ Arizona Code of 1939, Sec. 10-306.

In addition to all other funds granted to the State for educational purposes, the United States pays to the common school fund 5 percent of the proceeds of sales of public land within the State. 223/

Gifts of property by individuals or that received by devise or bequest for common school purposes go into the permanent school fund unless the terms of the gift otherwise provide, with the exception that a gift to any specific public educational institution goes into funds of that institution or to the purpose designated by the terms of the gift. 224/

The Federal Vocational Education Act 225/ makes certain funds available to school districts that comply with its requirements to further vocational training. To the Federal funds the State adds an additional appropriation so that the total available sum will be sufficient to pay 50 percent of the expenditures for salaries of teachers of vocational subjects. 226/

School districts that maintain part-time schools for employed children are entitled to reimbursement from State and Federal funds available for vocational education in an amount not less than 75 percent of the expense of maintaining such schools. 227/

Where compulsory attendance of pupils in any school district is impracticable because some children live in inaccessible places or great distances from an established school, the school superintendent of the county may make such provision for their education as he deems best. For educating children who live in inaccessible places he is allowed 10 dollars per school month per pupil and this expense is a charge against the county school reserve fund. 228/

State Appropriation for Education

The State school fund consists of all the money appropriated by the General Appropriation Act, and all the income and money dedicated to the support of common and high-school education by the Enabling Act and Constitution. This fund is apportioned to the counties on a prorated average daily attendance basis. 229/

Junior colleges, which maintain the necessary standards and have an average daily attendance of 100 students, are entitled to receive from the State an amount of money up to one-half the cost of maintaining the college,

223/ Enabling Act, Sec. 27.

224/ Arizona Code of 1939, Secs. 11-1101 to 11-1104, 54-1403 and 54-1611.

225/ 39 Stat. 929 (Feb. 23, 1917).

226/ Arizona Code of 1939, Secs. 54-801 and 54-802.

227/ Ibid., Secs. 54-511 and 54-512.

228/ Ibid., Sec. 54-510. This section was repealed by implication, Laws of 1933, ch. 65, according to an opinion of the attorney-general, August 19, 1933.

229/ Ibid., Secs. 54-601 and 54-602.

but not to exceed \$15,000 per annum. 230/

The University of Arizona receives an appropriation for each fiscal year of not less than 85/100 of 1 mill on every dollar of assessed valuation of all taxable property in the State. 231/ Unlike other appropriations, unused money is not returned to the general fund but may be carried over and used in ensuing years. 232/ The board of regents of the university has control of the expenditure of all moneys received, including that from the university land and timber land funds and gifts by individuals, and may expend university funds for the support and maintenance of the university. 233/

The State teachers' colleges receive an annual State appropriation for their maintenance. This is in addition to all other money they receive from special funds or other sources. 234/

In Tucson the Arizona State School for the Deaf, Dumb, and Blind is maintained 235/ and supported by State funds, 236/ although it also receives income from special land-grant funds. 237/

Industrial schools for the confinement, discipline, education, employment, and reformation of juvenile offenders are maintained at the expense of the State. In cases of voluntary commitments of juveniles, the parents or guardians must bear the expense unless they are unable to do so, in which event the county from which the commitment issues pays the expense of transportation and the State all subsequent expenses. 238/

County and School-district Levies for Education

In 1941 substantial changes were made in the statutory provisions for the support of the common schools. 239/ Not later than June 1 of each year

230/ Arizona Code of 1939, Secs. 54-919 and 54-920. There are two fully accredited Junior Colleges in Arizona receiving State aid -- Phoenix Junior College and Gila Junior College at Thatcher.

231/ Ibid., Sec. 54-1620. For the fiscal years 1939-40 and 1940-41, there was appropriated for the University of Ariz. \$835,178.70 per annum. Laws of 1939, ch. 88.

232/ Ibid., Sec. 10-201. This is also true of State appropriations for buildings and roads.

233/ Ibid., Sec. 54-1608.

234/ Ibid., Secs. 54-1314, 10-202 and 10-204. The state teachers' colleges are located at Tempe in Maricopa County and Flagstaff in Coconino County.

235/ Ibid., Sec. 54-1501.

236/ Ariz. Const., Art. XI, Sec. 10.

237/ Arizona Code of 1939, Sec. 11-1105.

238/ Ibid., Sec. 47-413. The State School for Girls was located at Randolph and the boys' school at Fort Grant. The girls' school has been abandoned.

239/ 1941 S.L., ch. 79, amending Arizona Code of 1939, Secs. 54-301, 54-601 to 54-605; 54-606, and 54-608.

the governing board of each county or high school district 240/ must furnish to the county school superintendent a proposed budget. Not later than June 15, a public hearing is held. Not later than June 25 next thereafter the governing body of each district must transmit the budget adopted to the county school superintendent. It is then the duty of the county school superintendent to transmit to the board of supervisors of the county the budgets of the common school district, high school districts, and union high school districts. 241/

Not later than July 5, the county school superintendent must file with the board of supervisors his estimate of the amount of school funds needed by each district for the next year. The superintendent must determine whether the estimated amount to be received by each school district from the county school fund and the special county school reserve fund, together with any other anticipated revenue except special school district taxes, will produce the amount budgeted by the governing body of the school district; and if not, he must certify to the board of supervisors the amount needed for each district. The board of supervisors must levy annually a special school district tax in any district in which an additional amount is required. The tax is collected in the same manner as other county taxes on property within the district and the proceeds are paid into each district's school fund. No county levy may be made for common and high school education except that if the State apportionment is less than 65 dollars per capita per year for common school education or less than 95 dollars per capita per year for high school education, the county must levy whatever tax is necessary to make up the deficiency but not to exceed 40 dollars per capita. 242/

The county treasurer must transfer from the county school fund 243/ to the special county school reserve fund the amount estimated by the county school superintendent not later than July 5 to be needed for payment of necessary expenses in newly formed school districts; for the transportation of school children to and from 1- and 2- room rural schools; for the transportation of school children in unorganized territory to organized districts; the amount in excess of the estimated per capita apportionment from the county school fund to 1- and 2- room schools, which will provide each school district maintaining a 1- room

240/ There are four classes of county high schools: Those in individual school districts having an average daily attendance of 200 or more pupils; union high schools, those established by two or more adjoining school districts consolidating for school purposes only; county union high schools where there is but one high school in the county (Arizona Code of 1939, Sec. 54-910); and high schools for fourth-class counties (Arizona Code of 1939, Sec. 54-915). Pupils residing in districts without a high school may attend any high school in the county, tuition to be charged against the school district in which the pupil resides (Arizona Code of 1939, Sec. 54-908).

241/ Arizona Code of 1939, 1941 Code Supplement, Sec. 54-603.

242/ Ibid., 1941 Code Supplement, Sec. 54-605.

243/ The county school fund consists of the funds received from the State per capita apportionment, the forest reserve and school land funds, and funds from county or district levies hereinafter described. Arizona Code of 1939, 1941 Code Supplement, Sec. 54-602 (e).

school for a minimum term of 8 months not more than \$1,250, and each school district maintaining a 2- room rural school not more than \$2,500; and the amount necessary to establish schools in unorganized territory. 244/

After deducting from the amount to the credit of the county school fund the sum fixed for the special county school reserve fund, the county school superintendent must allocate the remainder for high-school and common-school education respectively. The allocation is made in the proportions which the average daily attendance in the preceding year in the high schools of the county multiplied by 95, and the average daily attendance in the common schools multiplied by 65, bear to the sum of the two products. The amount so allocated must be apportioned by the superintendent among the school districts on the basis of average daily attendance in the high schools and common schools of each district. Provision is made for increasing the allotment to schools upon petition by the governing board of the district to the county superintendent and the board of supervisors in the event that school facilities are destroyed or damaged or average daily attendance is greater than during the preceding year. 245/

Agricultural Extension

Cooperative agricultural extension work, consisting of practical demonstrations in agriculture, home economics, and the imparting of information through field demonstrations, publications, and the like is carried on by the College of Agriculture of the University of Arizona, and the county farm bureau. The State appropriates funds equal to those appropriated to the State under the provisions of the Smith-Lever Act. 246/ In addition, counties are authorized to appropriate up to \$1,000 annually for additional benefits to the county for agricultural extension work within the county. Work in the counties may be carried on by county farm bureaus which are incorporated as public corporations and are supported by direct taxation. Counties having less than 2,500 farmers may not assess taxes in excess of \$5,000; and counties having more than 2,500 farmers, not more than \$10,000 per year. All money raised by taxation must be expended in the respective counties. In addition to the above funds, the University of Arizona matches county appropriations of small counties up to \$2,000 per year, and in larger counties up to \$4,000. The expenditure of all funds secured through taxation, appropriation, or from the university fund must be approved by the board of regents of the university and expended for the use and benefit of the respective counties. The farm bureau must present annually to the board of regents a budget, a report of past work and expenditures, and a plan of future operation. County tax assessors are required to compile agricultural statistics for the United States Department of Agriculture. 247/

244/ Arizona Code of 1939, Sec. 54-604

245/ Ibid., Sec. 54-608.

246/ Ibid., Secs. 49-201 and 49-202. The Smith-Lever Act provides for cooperative agricultural extension work between the U. S. Department of Agriculture and the agricultural colleges in the several States, and provides funds to carry out the purposes of the Act. 38 Stat. 372; U.S.C.A., Title 7, Sec. 341.

247/ Ibid., Secs. 49-205 to 49-208.

PARKS AND RECREATIONAL AREAS

Various factors led to the establishment of parks and recreational areas in Arizona. Among these was the desire to set aside historic spots and to provide natural outdoor playgrounds for the benefit and enjoyment of citizens and visitors. Perhaps the most impelling motive was that of preserving places of great natural beauty. The State has a wealth of beautiful and unusual scenery, the most famous attraction being the Grand Canyon. There are, however, many other unusual and interesting places in Arizona, such as the Petrified Forest, Montezuma's Castle, the Mollogon Rim, the Chiricahuas, and Canyon DeChelly. The value of these natural scenic areas was recognized long before Arizona became a State, and most of them were developed under the auspices of the Federal Government. 248/

State Parks

There is no general system of State parks in Arizona. The nearest approach to a park system is the effort of the State highway department in establishing forest camps and roadside parks. 249/ The apparent lack of interest of the State government may be due to its inability to finance any extensive development 250/ or because of the number of Federal parks and monuments located in the State. 251/

Since 1929 the State game and fish commission has had some funds available for developing recreational areas in a small way. Funds received from the sale of hunting and fishing licenses are available for this purpose.

There is no uniform administration of State-controlled recreational areas. The State fair grounds are managed by the State fair commission; game preserves and fish hatcheries, by the fish and game commission; and the roadside parks, by the highway department.

The following is a list of forest camps and roadside parks:

Jones' Water, 12 miles north of Globe; Oak Flat, between Miami and Globe; Fort Tyson at Quartzite; Townsend, Kit Carson, 1 mile west of Flagstaff; Spitz Springs, 10 miles east of Williams; Main, 2 miles west of the town of Duncan;

248/ About 69.9 percent of the area of the State is under the control of the Federal Government. State Land Department, October 1934.

249/ Pamphlet of Travel Bureau, Arizona Highway Department, 1939.

250/ Laws of 1929, ch. 84, Sec. 4, amended 1931, ch. 98.

251/ National parks and monuments include: Grand Canyon National Park; Canyon DeChelly, Casa Grande, Chiricahua, Montezuma's Castle, Navajo, Organ Pipe Cactus, Petrified Forest, Pipe Spring, Saguaro, Sunset Crater, Tonto, Tumacacori, Tuzigoot, Walnut Canyon, Wupatki, and Grand Canyon National Monument.

Jacob Lake; Indian Creek, 6 miles south of Prescott; Willow Springs, 24 miles north of Cameron; Navajo Springs, 4 miles south of Navajo Bridge; Alpine, VT Ranch; Greer; Lakeside; Pinetop; Oak Creek (three campgrounds); Granville; Engineer Spring; Strayhorse; Hannagan Meadow; Picacho Peak, 4 miles east of Picacho; Four Mile Post, 2 miles south of Olberg; Canyon Lake; Pine; Sycamore; Mormon Lake; Lake Mary. 252/

County Parks

The counties of the State have not been active in developing recreation areas. However, at least one county has established recreational areas for the enjoyment of its citizens, and its power to do this has not been questioned. 253/ The Tucson Mountain Recreational Area was developed in conjunction with the City of Tucson, the State, and the Federal Government. It is used as a combined game refuge and recreational area. The Civilian Conservation Corps has done much in the way of creating campgrounds, trails, and other facilities in the area. 254/

The Code now authorizes counties as well as municipalities to acquire, maintain, and improve real property within their borders for public park purposes. 255/ It likewise provides for acceptance of grants of land from Federal or other governmental agencies, and for cooperative agreements with other counties and cities. 256/

In 1926 Congress passed an act authorizing the purchase or lease of public land for recreational purposes by States, counties, and municipalities, 257/ but it was not until 1939 that the legislature gave express power to the counties and municipalities to take advantage of the Federal law. 258/ It would appear that there are now no legal impediments to the development of recreational areas by counties and municipalities of lands now in Federal ownership.

GAME AND FISH

Legislative Policy

Since becoming a State in 1912, Arizona has become increasingly conscious of the desirability of conserving its game, fish, and wildlife. It has attempted to protect these natural resources by enacting game and fish laws. The first

252/ Pamphlet of Travel Bureau, Arizona Highway Department, 1939, op. cit.

253/ Sabino Canyon Recreational Area is under the management of the Pima County Board of Supervisors, Arizona. W.P.A. report, Oct. 4, 1939.

254/ Report of the Arizona State Planning Board, Dec. 1936.

255/ Arizona Code of 1939, Sec. 16-602.

256/ Ibid., Sec. 16-603. Arizona Code of 1939, Sec. 17-202, authorizes counties to purchase and hold land within their limits and to make such use of its property as the interests of their inhabitants require. Arizona Code of 1939, Sec. 17-309, Webster v. Parks (1915), 17 Ariz. 383, 153 Pac. 455, County of Santa Cruz v. Barnes (1904) 9 Ariz. 42, 76 Pac. 621.

257/ 44 Stat. 741.

258/ Laws of 1939, ch. 78.

State game and fish laws were enacted by the legislature at its first session. 259/ These laws, with various amendments, were codified in 1913 260/ and again in 1928. 261/ In 1929 an Arizona Game and Fish Commission was created by the legislature. 262/ This commission is charged with the duty of fish and game preservation.

While the State enforces laws for the conservation, preservation, and propagation of its game and fish, at the same time it allows considerable freedom to fishermen and hunters. This is accomplished by merely closing portions of, not whole, streams and lakes to fishermen, by establishing small game refuges rather than large preserves, and by moderate regulation of open seasons for the taking of game and fish. 263/

Establishment of Game Preserves, Game Farms
and Fish Hatcheries

Special Laws

Before the establishment of the Arizona Game and Fish Commission in 1929, the legislature by special acts created game refuges. 264/ The opening and closing of hunting and fishing seasons and other regulations affecting the taking of fish and game were likewise long the subject of special legislative acts. Since 1929, however, the legislature has left the establishment and administration of game refuges and regulations, as to the taking of fish and game, to the State game and fish commission.

General Laws

The Arizona Game and Fish Commission, with the approval of the governor, may acquire by purchase, gift, or condemnation, lands and water for use as fish hatcheries, game farms, and game refuges. It may purchase animals, birds, and fish for the purpose of stocking the public lands and waters of the State. 265/

259/ Laws of 1912, ch. 82.

260/ Penal Code of Ariz. 1913, title 18.

261/ Revised Code of Ariz. 1928, ch. 30; Arizona Code of 1939, ch. 57.

262/ Laws of 1929, ch. 82.

263/ Arizona Code of 1939, Sec. 57-102 to 57-146.

264/ The game refuges created by special acts of the legislature are as follows: Huachuca, Mt. Graham, Pinal Mt., Blue Range, 1917; Catalina Mountains State Game Preserve, 1919; Coconino-Yavapai State Game Preserve, 1923. Ch. 13, Laws of 1917; ch. 4, Laws of 1917; ch. 41, Laws of 1917; ch. 42, Laws of 1917; ch. 1, Laws of 1927; ch. 5, Laws of 1919; ch. 24, Laws of 1923; Revised Code of Arizona 1928, Sec. 1555. There are other game refuges which are under the joint jurisdiction of the Federal Government and the State, such as the Kaibab and Grand Canyon Preserve. At the present time there are three State fish hatcheries: Pinetop Hatchery, Papago Park State Bass Hatchery, and the Tonto Trout Hatchery. In addition, there are three rearing grounds: Indian Gardens east of Payson, Mormon Lake, and Oak Creek.

Report of the Arizona State Planning Board, Dec. 1936, p. 202.

265/ Arizona Code of 1939, Sec. 57-104.

In creating game refuges and in closing and restocking streams, the policy has been to close areas adjacent to those in need of game and fish replenishment.

Wildlife Restoration Projects

In 1939, the legislature provided for wildlife restoration projects and empowered the State game and fish commission to cooperate with the Secretary of Agriculture in establishing wildlife restoration projects. The commission may accept Federal grants and may acquire lands to further wildlife restoration. 266/

Administration of State Game and Fish Laws

Arizona Game and Fish Commission

The Arizona game and fish commission is composed of three members appointed by the governor, not more than two of whom may be of the same political party. The term of office is 6 years and the members must be well informed on the subject of wildlife and the requirements for the conservation of animals, birds, and fish. Members receive a salary of one dollar a year and expenses up to \$1,000 per year, paid out of the game and fish protection fund. The principal office of the commission is at the State Capitol in Phoenix, but meetings may be held in any part of the State. 267/

General powers and duties of the commission.— The powers of the commission include: (1) Control and management of the propagation and distribution of wild birds, wild animals, and fish; (2) control of all hatching stations and game farms; (3) issuance of permits to persons who desire to operate game farms and fish hatcheries; (4) expending of funds from appropriations, licenses, gifts or other sources; (5) acquisition of land or water by purchase, gift, or condemnation for use as fish hatcheries, game farms and game refuges, and for hunting grounds or other necessary purposes; (6) purchase of animals, birds, fish, and fish spawn or eggs; (7) stocking of lands and water with game and fish; (8) sale of fish fry and fingerlings to owners of private waters; (9) taking of animals, birds, eggs, fish, and fish eggs for propagation purposes; (10) opening, closing, and altering of open seasons; (11) fixing of bag limits on animal, birds, and fish; (12) maintenance of refuges and sanctuaries in which game, fur-bearing animals, and birds may breed and replenish adjacent areas; (13) establishment of rest grounds for migratory birds; (14) control of the planting of fish or the introduction of birds and wild animals into the State; (15) cooperation with the Federal Government in the protection of game animals; (16) in special circumstances permitting the taking of animals, regardless of open seasons or bag limits; and (17) posting of notices in closed areas. 268/

266/ Arizona Code of 1939, Secs. 57-301 to 57-306.

267/ Ibid., Secs. 57-102 and 57-103.

268/ Ibid., Sec. 57-104.

State Game and Fish Warden

The State game and fish commission appoints the State game and fish warden for a term of 4 years at a salary of \$3,600 a year. He serves as secretary to the commission. The warden must be experienced in game, fish, and bird propagation, preservation, and conservation, and must devote his entire time to the job and not engage in other business or in any political activities. 269/

Duties and powers of the State game warden.— The duties of the State game warden, in addition to the enforcement of the game laws 270/ include the appointment of deputies to help him in executing warrants and in determining whether or not there have been violations of game and fish laws and regulations. His powers include the right to search for and seize any game, birds, or fish taken or possessed in violation of law; and to seize and confiscate all devices illegally used in taking fish, game, or birds. Both the warden and his deputies have the power of peace officers in the enforcement of the game laws. 271/

State Game and Fish Protection Fund

All money obtained from licenses, fines, or penalties collected for violations of the game laws, appropriations of the legislature, and from gifts, donations, or other sources is placed in a fund known as the State game and fish protection fund, and is used by the State game and fish commission for preservation, propagation, and conservation of fish, game, and birds and to carry on the work of the commission. 272/

Restrictions on the Taking of Game and Fish

The legislature has adopted as a method of wildlife preservation restrictions on the taking of game and fish by the use of open seasons, closed areas, and bag limits. This policy of restriction and conservation in Arizona is left largely to the discretion of the State game and fish commission. 273/ The legislature, nevertheless, has by special laws made mandatory certain restrictions concerning the taking, transporting, and possessing of game, birds, and fish.

Possession of Game

It is unlawful to transport, sell, purchase, or have in posession any wild animal, bird, or fish taken within or without the State if the species is protected. Game may not be kept for more than 20 days after the season closes except that 25 pounds of dried meat may be kept indefinitely. 274/

269/ Arizona Code of 1939, Secs. 57-106 and 57-108.

270/ Ibid., Sec. 57-110.

271/ Ibid., Sec. 57-107.

272/ Ibid., Secs. 57-144 and 57-145.

273/ Ibid., Sec. 57-104.

274/ Ibid., Secs. 57-111 and 57-112.

Manner of Taking Game, Birds, and Fish

The legislature has declared how game and fish may be taken, and has specifically enumerated unlawful acts. Thus, the use of dogs is prohibited in hunting any animal except bear. Small animals and birds may be taken only between one-half hour after sunrise and one-half hour before sunset. Only devices authorized by law may be used in the taking of game, fish, or birds. No gun larger than a 12-gauge may be used, and if a rifle is used, steel and hard-point bullets are prohibited. Hunting is restricted to gun or missile; no lights, snares, or poison may be used in the taking of fish or game. Blind may be used in hunting, but it is unlawful to shoot from or across highways, or from vehicles, boats, or other devices under power or sail. Silencers on guns are prohibited; and when hunting such game as deer, bear, or javelina, the rifle ball or bullet must weigh at least 87 grains. Guns used in violation of game laws may be confiscated. Fish may be taken only by angling. 275/

Game, fish, and birds may be imported or exported only in accordance with the regulations of the State game and fish commission. This applies equally to specimens and skins. The transportation of migratory game birds must be according to the regulations of the U. S. Migratory Bird Treaty Act. Common carriers are not permitted to transport game, fish, or birds unless a license and a valid shipping permit are exhibited. It is illegal to have possession of plumage of the bird of paradise, egret, or goura pigeon except for scientific purposes when authorized by permit. 276/

Licenses

Every person desiring to hunt, fish, trap, or guide within the State is required, with certain exceptions, to obtain a license. Minors under the age of 16 do not need a license for small game when they are accompanied by a person who has a license. However, every person hunting big game must have a license. There are at least 12 types of hunting and fishing licenses. 277/ Among the numerous types of licenses is one which permits fishing only in waters which form the State boundary line. This visitor's fishing permit was designed for fishing on the Colorado River and Lake Mead. Ninety percent of all license fees collected goes to the game and fish commission, while the remaining 10 percent is retained by persons, with the exception of game wardens, issuing the license. 278/

Miscellaneous Provisions

Only one male prong-horn deer and one bear may be taken during the open season. Bear cubs may not be taken at any time. There is no open season on antelope or mountain sheep, but elk and buffalo may be hunted under special permit. Certain types of squirrels are protected. There is no open season on

275/ Arizona Code of 1939, Secs. 57-112 to 57-114.

276/ Ibid., Secs. 57-115 to 57-117.

277/ Ibid., Secs. 57-121 to 57-122, 57-125 and 57-127.

278/ Laws of 1939, ch. 3; Arizona Code of 1939, Secs. 57-123 to 57-124.

Kaibab, Chiricahua, or Arizona tree squirrels north of the Gila and Salt River base and meridian. For other types of squirrels, the bag limit is 6 per day. The bag limit on cottontail rabbits is fixed by the State game and fish commission.

There is no open season on beaver; but muskrats, raccoons, and opossums may be taken in any number during the open season. Predatory and nongame animals may be taken at any time. Game birds may be taken only during the open season, but other birds, except song or insectivorous birds, may be taken at any time when caught molesting stock, poultry, game, or other protected birds. Migratory birds may be hunted only under the regulations of the U. S. Migratory Bird Acts. Whenever necessary, permits may be obtained to capture or destroy animals injuring property or for scientific purposes.

In areas where fish streams run into irrigation canals and ditches, fish screens must be provided. It is unlawful to pollute streams in any manner.

Animals, fish, or birds illegally taken when seized are given to charitable institutions. Proceeds from the sale of guns or devices seized go to the fish and game protection fund. All county, city, and town peace officers are special game and fish wardens and are required to aid in the enforcement of the game laws. 279/

POLICE POWER REGULATIONS AFFECTING AGRICULTURE AND USE OF LAND AND WATERS

The State in its proprietary capacity controls the use of large areas of Arizona. In its policy respecting water rights, organization of joint improvement districts, and in the statutes providing for roads and schools and revenues to support them, the State exercises an important influence upon land use. In addition to these laws, there are numerous statutes in which the State, through the exercise of its police power, controls or affects private land use. Some of these statutes have already been considered in other sections. Here are discussed numerous other instances of the exercise by the State of this power in the interest of public health, safety, or general welfare.

Regulations Affecting Agricultural Products and the Use of Land for Agriculture

Eradication of Noxious Weeds

Various types of weeds and grasses are deemed noxious and detrimental to agriculture. To facilitate their destruction, the legislature has provided for the organization of antinoxious weed districts. These may be organized by a majority of the resident holders of title of a proposed district

within a county, but no such district may embrace an area of over 100,000 acre of irrigable farming land. 280/ A petition is addressed by 25 percent of such holders of title to the board of supervisors of a county for an election to determine whether or not the district is to be organized. If the board approves and the election is carried, the board of supervisors appoints the first board of three directors which are thereafter elected biennially at large to manage the district and a county tax may be imposed to carry on the work. The actual eradication work of the antinoxious weed district is carried on by an inspector appointed by the board of directors, and is his duty to examine the lands in his district to determine whether they contain noxious weeds or grasses. Whenever such weeds are found on any land, the owner, lessee, or tenant is instructed to eradicate them. Failure to do so is a misdemeanor; and if the weeds are not removed, the land may be placed under quarantine and the noxious weeds or grasses eradicated by the inspector at the expense of the owner. The cost of eradication becomes a lien upon the land. 281/

Apiary Inspection

A qualified apiary inspector, appointed by the commission of agriculture and horticulture, makes an annual inspection of all apiaries within the State. It is his duty to control, prevent, and eradicate contagious diseases among honey bees. Shipment of any bees into or within the State is prohibited unless a permit and a certificate of inspection are obtained from the inspector. 282/

Plant Pests and Diseases

The control of crop pests and disease is vested in a State entomologist appointed by the commission of agriculture and horticulture. It is his duty to enforce the rules and regulations of the commission and to prepare and amend a list of dangerous plant pests and plant diseases found in Arizona. This list is on file at the office of the commission and copies are mailed to all common carriers and to local and county farm bureaus. The entomologist may enter upon any premises or other place, train, vehicle, or other means of transportation to make inspections for pests and plant diseases. If any of the pests or diseases mentioned in the list are found, they may be abated, suppressed, or controlled by the owner or by the entomologist at the expense of the owner. 283/

Inspection of Grain and Agricultural Seed and Fertilizer

The State entomologist is charged with the duty of enforcing seed laws which provide for the correct labeling of all agricultural and vegetable seed sold by dealers. 284/ Seed is inspected by the entomologist and whenever

280/ Arizona Code of 1939, Sec. 49-301.

281/ Ibid., Secs. 49-302; 49-307 to 49-309; 49-311.

282/ Ibid., Secs. 50-1101, 50-1102; 50-1104.

283/ Ibid., Secs. 49-103 and 49-107.

284/ Laws of 1941, ch. 81. Arizona Code of 1939, 1941 Code Supplement, Sec. 49-509 to 49-524.

necessary is analyzed by the Agricultural Experiment Station. 285/ The experiment station will make free tests of seeds for citizens of the State. 286/ All dealers in agricultural or vegetable seeds are required to obtain a license from the State entomologist. 287/ The sale of commercial fertilizer is also regulated, the State chemist being charged with administration of the law. 288/

Livestock Sanitation and Inspection

The Arizona Livestock Sanitary Board and the State veterinarian are appointed by the governor with the consent of the senate 289/ and are charged with the duty of protecting the public from diseased and unwholesome meat products and the stock interests of the State from theft and contagious diseases, and of prescribing rules for the seizure of stray stock.

The board is empowered to cooperate with the U. S. Department of Agriculture in the work of eradicating tuberculosis among cattle. Cattle may be taken into custody by the State veterinarian or any cattle inspector and subjected to a tuberculin test; if the test is positive, the animal may be condemned and killed.

Inspectors appointed by the livestock sanitary board have authority to arrest for violations of livestock laws and have authority to authenticate the sale of animals. 290/ It is the duty of inspectors to examine range animals and livestock for health, brands, and marks, at all loading stations or at any place on the range, to see that the animals are healthy and are properly branded or marked. Certificates of inspection will not be issued on unbranded or unmarked animals or hides being shipped from the county unless there is clear proof of the shipper's ownership. A record of all inspections is kept by the livestock sanitary board. Common carriers may not transport livestock that has not been inspected. 291/ Owners of livestock are required to record brands, 292/ and no animal may be sold without a written and acknowledged bill of sale. 293/ Unbranded or unmarked animals running at large, except young animals with their mothers, may be seized by the inspectors. 294/ After seizure, proceedings are brought in the superior courts, or with the nearest justice of the peace to determine the ownership or disposition of the animals. 295/

285/ Arizona Code of 1939, 1941 Code Supplement, Sec. 49-514.

286/ Ibid., 1941 Code Supplement, Sec. 49-517.

287/ Ibid., 1941 Code Supplement, Sec. 49-501.

288/ Ibid., Secs. 49-601 to 49-625.

289/ Ibid., Secs. 50-101 and 50-102.

290/ Ibid., Secs. 50-201, 50-202, and 50-302.

291/ Ibid., Secs. 50-303 and 50-304.

292/ Ibid., Sec. 50-315.

293/ Ibid., Sec. 50-314.

294/ Ibid., Sec. 50-308; State v. Unknown Owners of 10 Head of Cattle (1931), 38 Ariz. 87, 296 Pac. 1073.

295/ Arizona Code of 1939, Secs. 50-310 to 50-314.

A sheep sanitary commission and the State veterinarian have general powers for the prevention of infectious and contagious diseases among sheep and goats. The rules and regulations provide for inspection and treatment of infectious diseases either by the owner or by the inspector at the expense of the owner. Any infected animals may be dipped under the supervision of inspectors and in accordance with the rules of the U. S. Department of Agriculture. Federal inspectors are given the same authority as State inspectors. Infected or exposed sheep may not be moved without a trailing permit, and the commission may make rules to insure that imported sheep are free from infection. 296/

To further protect the public from unwholesome meat, the legislature has provided that cities and towns shall, by ordinance, establish municipal slaughter houses or provide for sanitary conditions in slaughter houses. 297/

Estrays and Migratory Livestock

Any stray horse, mule, meat animal, sheep, or swine found wandering at large may be reported to the nearest justice of the peace or livestock inspector. The procedure for disposing of these animals includes the posting of notice for 30 days in an effort to find the owner, an appraisal and sale, and reimbursement of the person finding and keeping the animal. The sale of the estray in such a proceeding vests title in the purchaser, and the proceeds, after paying the expense of keeping, or the fees of the justice of the peace and the livestock inspector, go to the county school fund. 298/

Predatory Animals

The State has appropriated money for the purpose of cooperating with the United States in the destruction of predatory animals and rodents detrimental to crops. This money is expended by the United States Bureau of Biological Survey pursuant to agreements with the livestock sanitary board and the Extension Service of the University of Arizona. 299/

Erection of Fences by Railroads

Railroads must keep a record of stock killed by them, and must pay damages for cattle killed unless the right-of-way is fenced. Where the railroad has its right-of-way fenced, it must provide cattle crossings every 3 miles. The killing of any domestic animal by running a locomotive or cars against it is *prima facie* evidence of negligence for which the railroad is liable in damages. 300/

296/ Arizona Code of 1939, Secs. 50-401 and 402; 50-404 and 50-405, 50-408 and 50-409; 50-412 and 50-413.

297/ Ibid., Secs. 16-1301 to 16-1309.

298/ Ibid., Secs. 50-502 and 50-503.

299/ Ibid., Sec. 50-504.

300/ Ibid., Secs. 50-701 to 50-704..

General Fencing Regulations

A lawful fence is one which has at least 3 strands of wire, at least 50 inches above the ground, and posts not more than 30 feet apart, although any other fence of equal strength is sufficient. An owner of land is not entitled to damages resulting from trespass of animals unless he has a lawful fence, except in a no-fence district. Whenever damages occur from trespass of animals, the justice of the peace and two disinterested parties make an examination and appraise the damages. The injured party may bring an action for damages and has a lien on the animals until paid. These provisions do not apply to incorporated cities or towns or to no-fence districts. 301/

A no-fence district may be established by the board of supervisors upon petition of a majority of the taxpayers residing on land in an irrigation district containing not less than 35,000 acres of irrigable land, or residing upon a compact body of not less than 20,000 acres of which 75 percent is being irrigated, or residing upon 1,000 acres contiguous with a city of 30,000 people. Establishment of a no-fence district makes it unlawful for owners of livestock to permit livestock to run at large in such a district. Owners of animals doing damage in a no-fence district are guilty of a misdemeanor as well as being liable in damages to the land owners. 302/

Regulation of the Sale of Food Products by Producers

Sale of Citrus Fruit

No citrus fruit may be sold, purchased, or transferred, except at retail, unless such transaction is accompanied by a written memorandum showing the names of the vendor and the vendee, the date and place of sale, and the size and quality of the fruit. These memoranda must be retained as records for a period of 6 months and are open to the inspection of law-enforcement officers and purchasers. 303/ Citrus fruit must be free from decay, freezing, drying, injury, scales, scars, dirt, smudge, stain, sooty mold, rot, staining, oil spots, pitting, sunburn, and aging, and in addition must be mature and free from roughness, softness, water spot, protruding ends, sheepnose, internal decline, peteca, deformities, or red blotch. 304/

301/ Arizona Code of 1939, Secs. 50-601 to 50-606.

302/ At common law the owner of land was under no obligation to fence his land in order to keep the cattle of others from straying thereon. It was the duty of cattle owners to restrain their cattle by fences or other means. In some Western States and on the public lands of the United States, the common law rule does not apply and landowners are obliged to fence their land to keep animals out (Merritt vs. Hill, 104 Calif. 184; Buford vs. Houtz, 133 U. S. 320). This rule is applied generally in Arizona except in those sections where a "no-fence" district has been established. In such districts owners who allow stock to stray are liable for any damage done by their animals.

303/ Arizona Code of 1939, Secs. 49-908; 49-901 to 49-922.

304/ Laws of 1941, ch. 121.

Fruit and Vegetable Standardization Act

This Act was passed to promote the development of the fruit and vegetable industry in out-of-State markets. Its provisions apply only to fruit and vegetables shipped out of the State. The express purpose of the act is to standardize the grade, quality, and conditions of fruits and vegetables, and to prevent fraud and deception in shipments to Eastern markets. A supervisor of inspection is appointed by the Dean of the College of Agriculture of the University of Arizona. He is charged with the duty of inspection and of enforcing the regulations. Licenses must be obtained by commission merchants, dealers, agents, shippers, and growers before they may ship fruit and vegetables and records of sales must be kept for a period of one year. These records of commission merchants are open to inspection by the consignor or the supervisor of inspection. It is unlawful to pack or prepare for shipment out of the State fruit or vegetables which do not comply with the provisions of the act. 305/

Dairy Products

A State dairy commissioner is appointed by the governor 306/ to inspect all places where cows are kept for dairy purposes, and all cream separator stations, creameries, butter, cheese, and other dairy produce factories, stores warehouses, and other places where dairy products are made, stored, prepared, shipped, transported, or exposed for sale, to determine the conditions affecting the purity, wholesomeness, and fitness of the products for human consumption. 307/

Producers and distributors are required to obtain permits to engage in milk production and distribution, and manufacturers of milk products are licensed. Milk products must meet certain prescribed standards as to freedom from adulterant and contamination, and must conform to butterfat and other standards. Diseased milk animals may not be brought into Arizona, and owners of dairy animals must have them tested for disease at least once a year.

Cream and market milk may not be sold or distributed under designations such as "A", unless such milk meets the requirements of the United States Public Health Service Standard Milk Ordinance.

The production of milk is carefully supervised. Dairy barns must conform to standards of construction, regulations prescribed for the care of barns, and the conditions surrounding barns. The entire process from milking to retail sale is closely regulated. Dairy equipment, methods of sterilization, water supply, transportation, distribution plants, and manufacturing plants, must all conform to approved standards. 308/

305/ Arizona Code of 1939, Secs. 49-1001 to 49-1037.

306/ Ibid., Sec. 49-1003.

307/ Ibid., Sec. 50-902.

308/ Ibid., Secs. 50-901 to 50-954.

Grading and Sale of Eggs

No eggs may be offered in Arizona for retail sale as "Arizona fresh eggs" unless they conform to certain prescribed requirements as to quality and grading. 309/

Agricultural Prorate Act

This law was passed in 1939 310/ and is designed to promote economic stability in the agricultural industry by preventing overproduction. It provides for a marketing program in certain zones and districts. 311/ Such a program may be instituted by agricultural producers in a district by petition to the agricultural prorate commissioner. 312/ Upon receipt of a petition signed by two-thirds of the qualified producers, the commissioner may find that a prorate zone is necessary, and may select a program committee of five producers who, with his approval, determine the manner and extent of proration. 313/

Cooperative Marketing

Cooperative marketing associations are not commonly thought of in connection with the police power but are thought to be of interest here in connection with regulation of the sale of agricultural products. Cooperative marketing associations may be incorporated in Arizona and may engage in any activity pertaining to marketing, harvesting, processing, storing, handling, or utilizing agricultural products or byproducts. These organizations are not formed for profit, except such as will accrue to members as producers of agricultural products. Five or more agricultural producers may form a cooperative marketing association, but only persons engaged in the production of agricultural products may become members. An organization incorporated under these laws may enter into cooperative contracts with its members, for as long as 10-year periods, whereby the members agree to sell their agricultural products exclusively through the association. A contract agreement under this act may extend for a period of 30 years if it contains a provision allowing withdrawal at the end of any year. The law provides that a member may be enjoined from breaching his agreement with the association. Cooperative marketing associations are exempted from the provisions of the statutes prohibiting agreements in restraint of trade. 314/

309/ Arizona Code of 1939, 1941 Code Supplement, Secs. 68-901 to 68-905. Large eggs must weigh at least 24 ounces per dozen; medium, 20 ounces; and small, 16 ounces. The State egg inspector is charged with the enforcement of these regulations.

310/ Ibid., Secs. 49-802 to 49-823 as amended by 1941. S. L. C. 24.

311/ Marketing program may be based on a producing or marketing zone, and may include all the territory in the State necessary to render the program effective.

312/ The Dean of the College of Agriculture of the University of Arizona is the agricultural prorate commissioner. He maintains an office in Phoenix, Arizona.

313/ Arizona Code of 1939, Secs. 49-802 to 49-823.

314/ Ibid., Secs. 49-701 to 49-720.

Regulations for the Conservation of Forests and Trees

There is considerable area of forest land in Arizona, most of which is in the northern part of the State running along the Mogollon rim. The great bulk of forest land is in National forests which are under the jurisdiction of the U. S. Department of Agriculture.^{315/} As a consequence there is but little State legislation dealing with forests, the forest lands of the State being under the control of the State land department.^{316/} State laws dealing with forests are here summarized.

Fire Prevention

It is unlawful for any person to set fire to forests or brush on lands not his own or to allow any fire to escape from his own land or that of another without taking every reasonable precaution. Anyone who leaves a campfire unattended or who starts a campfire without clearing except on his own land is guilty of misdemeanor. Railway locomotives must be provided with spark arresters. Superior court judges may appoint forest fire wardens who have power to make arrests for violations of forest fire laws.^{317/}

Inspection of Nurseries and Nursery Stock

All nursery stock imported into Arizona must be properly labeled and accompanied by a certificate of inspection from a duly authorized official from the State or country where the stock was grown. Nursery stock includes ornamental or fruit-producing trees, shrubs, and perennial vines. In order to protect the trees of the State, the State entomologist has the power to refuse to allow infected shipments to remain in the State, and whenever necessary he may destroy them.^{318/}

Eradication of Tree Diseases

The Arizona Commission of Agriculture and Horticulture is charged with the duty of preventing and eradicating tree diseases. Whenever it becomes necessary, the entomologist may place tree diseases on the prohibited list and thus prevent their introduction into the State. Whenever a pest or disease is found the owner of the trees, vines, or shrubbery is notified to eradicate the disease or destroy the trees. If this is not done, the commission may order the eradication or destruction at the expense of the owner.^{319/}

Injury to Trees

The cutting down, destroying, or injuring of any timber or wood, standing or growing on land of another^{320/} or State lands, is a trespass and punishable as a misdemeanor.^{321/} It is likewise a misdemeanor to injure any

315/ 11,388,800 acres. State Land Department Report 1934.

316/ Arizona Code of 1939, Sec. 11-102.

317/ Ibid., Secs. 43-2301 to 43-2304.

318/ Ibid., Secs. 49-109, 49-112, 49-114.

319/ Ibid., Secs. 49-103 to 49-107.

320/ Ibid., Sec. 43-5806.

321/ Ibid., Sec. 11-701.

shade trees or ornamental plant growing within a city or town whether situated upon private ground or on any public place. 322/

The State land department has full powers over the care and administration of all timber products of State lands. 323/ Any person who cuts or removes timber from any of the public lands of the State for the purpose of shipping it outside of the State is guilty of a felony. 324/

Conservation of Oil and Gas

Regulations to conserve oil and gas and the prevention of waste on all lands in the State are prescribed and enforced by the State land commissioner and must conform to the rules and regulations established by the U. S. Bureau of Mines.

Regulation of the Use of Waters

In addition to the statutes considered in the section of this report concerning water, irrigation, and drainage, other statutes forbid the pollution of streams, lakes or reservoirs, and the obstruction of the free passage or use of navigable lakes, streams, rivers, bays, and canals. 325/ In times of scarcity, flowing wells must be capped to prevent waste. 326/ Any person who allows water to rise or flow on any street, road, highway, or roadway from or off of his land or any canal or irrigation device is guilty of a misdemeanor. 327/

Zoning and Platting Regulations

"For the purpose of promoting health, safety, morals, or the general welfare," incorporated cities and towns may regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be acquired, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes, and may establish set back lines; and for such purposes may divide the municipality into districts. 328/

No power has been conferred upon counties to adopt zoning ordinances for the unincorporated areas of the counties.

Plats or maps of subdivisions proposed to be established within 3 miles of the corporate limits of any city of 20,000 population must be submitted by the owner to both the city and board of supervisors of the county. The city

322/ Arizona Code of 1939, Sec. 43-5814.

323/ Ibid., Sec. 11-501.

324/ Ibid., Sec. 43-5803.

325/ Ibid., Sec. 43-4604.

326/ Ibid., Sec. 43-6001.

327/ Ibid., Sec. 43-2804.

328/ Ibid., Secs. 16-1401 to 16-1404.

has an opportunity to project the lines of streets to the subdivision and to request appropriate dedications of land or easements proposed for public use. The board of supervisors of the county must approve the plat after hearing before it may be filed with the recorder, and unless filed with the recorder, no lots may be sold by reference to the plat. 329/

Municipal Housing

Cities and towns now have the power to undertake slum-clearance project for the purpose of providing dwelling accommodations for low-income groups.330/

Miscellaneous Provisions

Mine Inspection

Mining is one of the chief industries of the State; as a consequence, there is considerable legislation concerning mine inspection. A mine inspector who is experienced in mining is charged with enforcement of the inspection law. Every mine employing more than 50 men underground must be inspected at least once every 3 months as to the condition of safety appliances, machinery, sanitation, ventilation, and other measures taken to protect the lives, health, and safety of the miners. 331/ The laws dealing with mine inspection and operation are very thorough and minute, and cover nearly every detail of regulation for the safety and health of mine employees.

Protection of Native Plants and Wild Flowers

Specified native plants and flowers and all plants and flowers growing within 200 yards of a highway are protected by law. Protected flowers and plants may not be destroyed, mutilated, or removed without the permission of the Arizona Commission of Agriculture and Horticulture. Counties also may make regulations for the preservation of flowers and plants. 332/

329/ Arizona Code of 1939, Secs. 16-708, 16-709 and 16-713.

330/ Ibid., Secs. 16-1601 to 16-1624.

331/ Ibid., Secs. 65-201 to 65-230.

332/ Ibid., Secs. 49-401 to 49-402 and 49-404.