

Texas Education and the Permanent School Fund

Education was so important to Texans, that they were willing to fight for it. In 1836, Texans declared independence from the Republic of Mexico. One of the reasons stated in the Texas Declaration of Independence was the failure of that government to provide for public education. It was one of the reasons they went to war.

When Texas won its independence at the Battle of San Jacinto, General Sam Houston, while he was still on the battlefield, sketched out the boundaries of the new republic, and within those boundaries, which were later adopted by the Republic of Texas Congress in December of that year, were more than 216 million acres of vacant land. Texas didn't have a lot of cash, but they had a lot of land--vast swaths of blackland prairies, woodlands, coastal plains, fertile river valleys and immense deserts. This store of land would become the Texas currency for progress and for investment in education.

The first education investment was the vision of the Republic's second president, Mirabeau Lamar. He advocated that three leagues of land be granted to each county for the support of education. The Texas Congress made those grants, which were later increased to four leagues. A league is 4428.4 acres, which means that each county received nearly 18,000 acres of land and in all, 238 counties received these grants, totaling more than 4.2 million acres. Land for schools wasn't a new idea. The Land Ordinance of 1785, passed by the U.S. Congress under the Articles of Confederation provided that one square mile of land in each 36 square mile township be set aside for education.

In 1845, Texas became our nation's 28th state. The new state constitution established a perpetual fund to which ten percent of all tax revenue would be devoted. This was the beginning of what we now know as the Permanent School Fund. However, there was a problem. Texas was still composed of land owned by no individual, so no taxes were paid on this vacant land. In 1853, Governor Peter Bell reported that the fund had balance of a little more than \$80,000. That would be about 2.6 million dollars in 2018.

The school fund got a big boost in 1854. In 1850, Texas reached an agreement with the United States concerning what was then known as the Texas northwest territory. Texas claimed territory all the way to the source of the Rio Grande, then due north to the 42nd parallel. In what became known as the Compromise of 1850, Texas transferred to the United States government, 67 million acres of land which later became parts of New Mexico, Colorado, Wyoming, Oklahoma and Kansas. In return, Texas received an immediate 5 million dollars in U.S. bonds and another 5 million dollars to settle debts that were a direct result of annexation by the United States. Texas used the money to settle debts incurred during its years as a republic and then had 3 million dollars leftover. In January, 1854, the Texas Legislature assigned 2 million dollars in bonds to what was called the "special school fund." The "special school fund" was simply a part of the overall school fund, but existed in the form of 5-percent U.S. bonds and enabled the fund to take advantage of the interest generated by these bonds. The fund continued to receive tax dollars and in 1858, began to receive revenue from land sales.

In 1855, the fund made its first distribution to the few schools in existence at the time. In 1857, the fund's distribution was \$1.21 per school-age child, which translates to about \$35 in 2018.

In 1856, the legislature decided to use the fund in a dual role--to support education and to expand infrastructure through investments in railroads. In the days before paved roads, automobiles and trucks, railroads were the economic lifeblood of the inland areas. Everything and everybody moved by rail. Between 1856 and 1860, loans were made to six railroads, totaling nearly one-and-a-half million dollars. Two more loans were made after 1860, making the fund's railroad investments about 1.8 million dollars. With one exception, the railroads paid their loans with interest. The exception was the Houston Tap and Brazoria Railroad which was sold at a loss of about \$345,000 in principal and interest.

The Civil War created uncertain times for Texas and for the school fund. In 1861, Texas seceded, aligned itself with the Confederacy and joined the war effort. Texas was expected to provision its own troops and then be reimbursed by the Confederate States government in Richmond. Over the duration of the Civil War, two different war boards were tasked with managing the war effort, and as one might expect, the school fund was a potential target to be raided to support the war. Judah Benjamin, who was at the time the Confederate Secretary of War, proposed that the U.S. bonds in the school fund be cashed and replaced by Confederate bonds. Fortunately, this was never done. The war boards did manage to cash in some of the school fund's bonds, but the fund emerged from the civil war with a balance of about \$1.8 million.

The next momentous development for the fund came on March 18, 1873 when Governor Edmund Davis signed into law House Bill 283, which gave to the public schools and the school fund half of all of the existing unallocated land. At the time, about 88 million acres was yet to be claimed. The 1876 Texas Constitution repeated this language and for the first time, referred to the school fund as the Permanent School Fund.

Oil was first discovered in Texas near Nacogdoches in 1866, but petroleum production didn't materialize as a large-scale commercial interest until the discovery of the Corsicana oil field in 1894, and then the famous Spindletop gusher near Beaumont in southeast Texas in 1901. This would have an enormous impact on Texas education and the Permanent School Fund. The idea that drilling for oil could be done in submerged locations came of age when California's Henry Williams drilled off of a 300-foot pier off the Pacific coast. The first offshore well in the Gulf of Mexico was drilled near Creole, Louisiana, and the first successful well drilled in Texas waters came into production in 1941.

The discovery of oil under the Gulf of Mexico would have an enormous impact on the Permanent School Fund. Unfortunately, Texas granted or sold off more than 90 percent of its land without reserving the minerals for the state. However, because the 46th Texas Legislature, in 1939, dedicated to the Permanent School Fund the mineral estate in the river beds, lakes, channels and tidelands, the Permanent School Fund now had about 14 million acres of mineral rights reserved for it. This legislation, then known as House Bill 9, also created the School Land Board to manage and oversee oil leases and land sales. This was just another chapter in the unique relationship between Texas schools and Texas land.

Things were looking up for the Permanent School Fund, but there was trouble brewing. As in 1836, Texas would have to fight for its schools. This time the opponent was none other than the United States federal government.

With the discovery of a vast store of oil beneath the nation's coastal waters, a conflict arose between states and the federal government. Who controlled the submerged lands beneath a state's navigable waters? This was thought to be a settled issue. Before Texas entered the Union in 1845, two different Supreme Court decisions held that these submerged lands,

“...were not granted by the constitution to the United States, but were reserved to the states, respectively,” and that new states have the same rights, sovereignty and jurisdiction over these submerged lands as the original thirteen states. These well-tested decisions had been the basis of 52 subsequent Supreme Court decisions and 244 district and state court rulings, yet the federal government attempted to assert ownership and preempt state oil leases in these submerged tidelands. The federal government sued the State of California in 1946 for control of the tidelands. Congress responded by passing legislation to re-assert state ownership of the tidelands, but President Truman vetoed the bill. The Supreme Court ruled against California, essentially stating that 100 years of legal precedent was in error, that control of oil and other property should not be decided by bare legal title, since oil might be necessary for national defense. Initially, President Truman stated that Texas was different, since it was never a U.S. territory and, as an independent republic, came into the union by voluntarily treaty. However, as soon as the 1948 election was over, with Truman winning Texas, the president directed his attorney general to sue Texas. The federal government filed a motion for summary judgment, meaning that Texas would not be allowed to present evidence. The Supreme ruled against Texas, acknowledging its unique status as a former republic, but that the transfer of sovereignty and admission on equal footing with other states, accomplished the transfer of this ownership to the United States. The ruling ignored the fact that Texas, as a condition of annexation, retained control and ownership of all of its public lands and its public debts.

Naturally, Texans were outraged. The United States was stealing from them and stealing from the school children of Texas. As the 1952 election approached, Texas Governor Allen Shivers reached out to both presidential candidates. Adlai Stevenson of Illinois indicated that he stood with President Truman on the issue. Dwight Eisenhower, who'd been born in Denison, Texas, said he stood with Texas and supported state ownership of the tidelands. As a result, the Democratic Party of Texas passed a resolution encouraging Texas Democrats to vote for Eisenhower, the Republican. Eisenhower won Texas and California and the general election. Congress passed the Submerged Lands Act of 1953 which returned to the states, title to the tidelands within their historic control and ownership and President Eisenhower signed it into law.

The Texans had fought for the control of the Tidelands for public schools...and won. But it wasn't over. In 1958, the United States again filed suit against Texas over the tidelands. This time, the federal government disputed the Texas claim of a seaward boundary of three marine leagues or a little more than 10.36 miles. Beginning with the original thirteen states, states historically exercised control over three miles from their shoreline. However, Texas claimed three marine leagues. This was the original seaward boundary that was first recognized by Spain and Mexico, and claimed in the Republic of Texas' boundaries described by Sam Houston and ratified by the Congress of Texas on December, 1936. In 1960, Texas again scored a victory for its public schools when the Supreme Court ruled in favor of the Texans and the lands under the waters of the Gulf of Mexico and their vast store of oil, remained dedicated to the support of the Texas public schools.

The Permanent School Fund embarked on a new mission in 1983. Local school districts are able to build new buildings or upgrade by issuing bonds, which are paid back with interest. It's a voter-approved loan. The interest rate paid on these bonds depends on a bond rating. The better the bond rating, the lower the interest rate paid. In the early 1980's one of the major bond rating firms threatened to lower the bond rating of Texas school districts. This would have cost Texans millions of dollars in increased interest payments and make it difficult for small rural schools to improve facilities. Senator Grant Jones of Abilene proposed that the Permanent School Fund provide a guarantee of school district bonds. The result of that would be an automatic triple-A-plus bond rating with the lowest

interest rate available. The voters agreed and approved a constitutional amendment in November of 1983. In January of 1984, Forney ISD, located just east of Dallas, received voter approval of a 2.9 million dollar bond for the construction of a Kindergarten through third grade primary school campus. In 2012, the bond guarantee program was extended to qualifying public charter schools. Currently, the Permanent School Fund is the guarantee on more than \$77 billion in local school district bonds, saving taxpayers about \$150 million each year through lower interest rates paid by local schools.

The 15-member elected State Board of Education is charged by the state constitution with the management of the Permanent School Fund, overseeing the work of a professional investment team. The School Land Board manages land and mineral leases dedicated to the Permanent School Fund. As a result, the Permanent School Fund is the largest educational endowment in the United States with a value of more than \$42 billion. Wise management and investments have allowed the Permanent School Fund to make distributions to the legislative appropriations process, half of which is assigned to the instructional materials and technology allotments for local public schools.

Today the Permanent School Fund continues the legacy and vision of those far-sighted Texans who, in 1845, created the perpetual fund, and who, in 1854, set aside \$2 million to begin the fund's investment function. Its success is a tribute to visionary Texans who, in 1873, set aside half of all the state's public land for public schools, and who, in 1939, set aside the minerals under the state's waters in rivers, lakes channels and gulf waters and then fought to keep this resource for Texas students. All Texans can be proud of its historic investment in the future, through investment in the cultivation of young minds through the state's public free schools. Truly, the Texas Permanent School Fund is a Texas treasure.