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bind it. Davidson County v. Harmon, 292 S.W. 777 (Tenn. 1956); Medford v. Marinicci Bros. & Co., 181 N.E.2d 584 (Mass. 1962).

The Legislature in enacting laws affecting trust lands is limited by both the Constitutional and Enabling Act provisions. The trust lands, commonly called school and institutional lands were given to the State of Arizona by Congress, encompassed with special restrictions. Act of June 20, 1910, C. 310, 36 U.S. Sta. 557, 568-579. By its Constitution the State accepted these lands and agreed to be bound in the administration of such lands by all of the Enabling Act restrictions. Article X, Arizona Constitution. Pursuant to the Enabling Act and the Constitution, the Legislature of Arizona enacted laws to carry out these restrictions. Title 37, Arizona Revised Statutes. These laws vest the administration of the trust lands in the State Land Commissioner and give him the power to manage the lands, subject to the restrictions, for the best interest of the beneficiaries; to administer all laws relating to said lands; and to decide all disputes and clarify all questions pertaining to these lands. Sections 37-102 and 37-132, A.R.S. If the County Board of Supervisors has the power to create no-fence districts and include trust lands within such districts, there is then a conflict between the powers of the County Board of Supervisors and the State Land Commissioner. We think no such conflict exists.

Our courts have adopted the rule which would prohibit municipalities from enforcing their zoning ordinance against property belonging to the state or other municipalities. City of Scottsdale v. Tempe, Maricopa County, 90 Ariz. 393 and Board of Regents of the Universities, Etc., v. City of Tempe, 88 Ariz. 299. We think this rule is equally binding as between counties and the state.

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The creation of a no-fence district is tantamount to a zoning ordinance, and when created to include trust lands, may encumber these lands contrary to the provisions of the Enabling Act. To require fencing of an area which includes trust lands leased for grazing purposes may require the expenditure of funds by the lessee or the state greatly in excess of the value of the grazing right and as a result prevent such leasing and deprive the beneficiaries of the lands of revenue to which they are otherwise entitled. The Board of Supervisors of any county should not be allowed to impose its police powers upon the trust lands.

Under the common law, the owner of animals must control his animals in a manner which will prevent trespass upon property of others. This policy of the common law has never been accepted as a general rule in grazing states, and has never been the rule in Arizona. Thus, Section 2652 of the Revised Statutes of the ARIZONA TERRITORY (1901), states:

"No person or persons shall be entitled to damages for stock trespass upon cultivated or improved land, unless such land is enclosed within a lawful fence."

Recognizing that in given instances the law should be altered, Section 2656 of the Revised Statutes of the Arizona Territory (1901) provided for the formation of no-fence areas. This enactment with minor changes has continued to the present time. See Sections 3250 and 3254 of the Revised Statutes of Arizona, 1913; Sections 50-603 and 50-606, Arizona Code Annotated, 1939; and Article 7, Title 24, Arizona Revised Statutes. It is apparent from the most recent enactments by our Legislature that the policy in favor of grazing interest remains today. This policy should not be ignored in the case of trust lands, unless the Legislature acting under the restrictions of the Enabling Act and Constitution has the power

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to and does authorize the inclusion of these lands within no-fence districts.

It is therefore the opinion of this office that Section 24-341, Arizona Revised Statutes may not be utilized to create a no-fence district which includes any lands belonging to the State of Arizona.

Respectfully submitted,

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