State Lands, Duty of County Clerks. County Clerk, Duty of. Recording of Instruments, Relating to State Lands.

"Clear Lists" or "Certificates" from the commissioner of the general land office, conveying title to the state, have the force and effect of patents, and being the evidence of title in the state, are entitled to record in the office of the clerk and recorder of the county in which the land is situate.

July 29th, 1913.

Hon. Sidney Miller,
Register State Land Office,
Helena, Montana.

Dear Sir:

I am in receipt of your lettter of this date, submitting the question:

"Is it the duty of the county clerks and recorders of the various counties of the State of Montana to record certificates issued by the commissioner of the general land office granting land to the State of Montana within such county,"

In your letter it is stated that one of such certificates, commonly called "clear list," relating to a grant of land from the government to the state and situate in Cascade County, had been sent to the clerk of that county for record, and has been returned with the statement that the county clerk, acting on the advice of the county attorney, refused to record the same on the ground that "the law does not call for the recording of the lists in the different counties." We are not able to agree with the conclusions reached by the county attorney. The object of the recording law is that the purchaser may place on record in the county where the land is situate the record of his title, but if the conclusions reached by the county attorney are correct, then the purchaser would be able to trace his title on the record of the county only back to the patent issued by the state, but there would not be anything of record there showing that the state had authority to issue patent. The federal law granting land to the state does not, except as to Secs. 16 and 36, specify or describe the land granted. As to the school Secs. 16 and 36, the federal law makes selection of the specific land granted to the state, and that law is the source of the state's title. No other patent is issued to the state, hence, as to these sections, the state looks only to the law for the evidence of its title, and as it is a general law, all persons must take notice of it, and there is therefore nothing to record in any office, for the state takes by operation of the specific selections made by the operation of the law itself, but in other cases the federal law only grants the right to the state to make selections of land within its border, but does not describe the land selected. Hence, there is nothing in the law by which it could be ascertained whether the state does or does not own any land outside of Sections 16 and 36.

The state makes these selections of the lands and the selections so made are certified to the general land office. If approved by the general land office, certificates are issued, which are sometimes called "clear lists." These certificates are the only evidence of the state's title, and whether called "certificates" or "clear lists," they are in effect patents from the government of the United States to the state, and unless they are put on record in the county where the land is situate, the purchaser could not trace his title back to the government of the United States, which everyone knows to be the original owner of the soil. It is true that the record of these certificates or "clear lists" or patents are kept in the general land office of the state. It is also true that a record thereof is kept in the general

land office at Washington, but this has nothing to do with the question as to whether they may of right be recorded in the county where the land is situated. It is also true that it is the duty of the state to notify the local authorities in the various counties when state land has been sold, but this, likewise, has no connection with the right to record in the county, for if recorded, the local authorities could not ascertain therefrom that the title to the land had passed into private ownership, hence the land office gives that information, so that the land if sold by the state may be listed for assessment and taxation in the county.

Sec. L, Ch. 147, Laws of 1909.

Notwithstanding the existence of the law which requires the recording of these instruments in the general land office of the state, and making it the duty of that office to procure maps, plats, etc., and to inform the local authorities of the sale of land, the legislature of the state enacted into law Secs. 4643 and 4645 of the Revised Codes. Sec. 4643 provides:

> "Any instrument or judgment affecting the title to or possession of real property may be recorded under this chapter."

There is nothing in the law which compels the owner or holder of a deed to land to record the same in the county where the land is situate, but the right exists in him to have it so recorded upon demand being made therefor, and it seems idle to say that the state does not have the same right. That the law above referred to applies to county recorders is evidenced from the fact that in the same article it is provided:

> "The county clerk must in all cases endorse the amount of his fee for recording the instrument recorded."

These "clear lists" or "certificates" from the commissioner of the general land office, having the force and effect of patents and being the evidence of title in the state, in my opinion are entitled to record in the office of the county clerk and recorder of the county in which the land is situated. This opinion relates to lieu and indemnity selections.

Yours very truly,

D. M. KELLY,

Attorney General.