Opinion No. 285

State Lands—Leases—Rent—Refunds.

HELD: Where leases of state lands have been executed before the enactment of Chapter 42, Laws of 1933, and moneys for the rental thereof have been paid to the state treasurer, no part of them may be refunded.

July 14, 1933.

You request an opinion regarding the leasing of grazing and mineral lands belonging to the State of Montana. You ask: "Shall we charge the rentals as specified in the aforesaid leases now ready for delivery, or shall one-half of the rentals under each of the said leases be refunded? The ruling of the Supreme Court on this point seems clear and convincing; the letter of the 'law' as expressed in Chapter 42 of the 1933 Session Laws is equally plain. Which shall we follow?"

In Rider v. Cooney, et al., 94 Mont. 295, the Supreme Court said:

"The legislature may determine the policy to be followed in the leasing of the state grazing lands, and that question may not be reviewed by the courts. But the question as to whether or not, under the policy adopted by the legislature, the market value for the grazing lands is being received is a question of fact which may be investigated by a proper tribunal in an appropriate proceeding. It is our intention by this opinion not to in any manner foreclose the judicial investigation of this fact, but only to point out that the contention that it may not be investigated under proper pleadings and in a proper tribunal is without merit. * * * The presumption being that the act is constitutional, we are compelled to assume for the purpose of this opinion that the state will receive the market value for its grazing lands. However, if it should later appear that the valuations determined by the act of the legislature have been arbitrarily fixed, and amount to a mere subterfuge to enable persons desiring to secure these grazing lands at less than their true value, or that the policy declared by this legislative act results in a material portion of these lands being leased at a price less than their actual value, then clearly the act is unconstitutional and cannot stand.

"We are therefore unable on the record before us to declare the act unconstitutional. No reason appears herein why the defendants should be enjoined from proceeding under the provisions of chapter 42 of the laws of 1933."

On the 18th day of May, 1933, two days after the opinion in the Rider case was handed down, the State Board of Land Commissioners adopted a motion conforming to the provisions of Section 3 of the Act in question so far as state grazing lands are concerned, but providing that all new leases in cases where there was no competitive bidding should expire on or before February 28, 1935.

Under the circumstances, we think the leases to which you refer should

be executed in accordance with the terms of the motion and the provisions of Chapter 42, Laws of 1933. If the rent moneys have already found their way into the state treasury, of course no part of them can now be returned, (In re Pomeroy, 51 Mont. 119; First Nat. Bank v. Sanders County, 85 Mont. 450) but if they have not, then so much of them as is over and above the required amounts should be refunded to the proper parties.

You also state:

"Another question has arisen under the new legislation: Hundreds of lessees holding grazing leases on State lands paid the rentals for the rental year beginning March 1, 1933, before Chapter 42 of the 1933 Session Laws went into effect; some of them paid the rentals after the bill was signed but before the Supreme Court rendered its decision. Many of the lessees who paid the full rentals under these leases now claim that they are entitled to the refundment of one-half of the rentals paid. Please render your opinion on this point also."

Evidently the leases just mentioned were executed before the measure was enacted. As the lessees have done no more than live up to their contractual obligations no refunds can or should be made. Even the legislature itself, broad as are its powers, may not command that refunds be made in such cases. (State v. Fischl, 94 Mont. 92., 20 Pac. (2d) 1067; Yellowstone Packing & Provision Co. v. Hays, 83 Mont. 1).

You express some doubt about the validity of the proviso to Section 3, Chapter 186, Laws of 1933, relating to the leasing of mineral lands owned by the state. It is true that the royalty which it exacts is small, but we think the rule laid down in the Rider case applies.