

Military Reservation, Care and Control Of.

In the absence of legislative provision, the care and control of the Fort Ellis Military reservation is vested in the governor, as commander-in-chief of the military forces of the State, and he may direct the sale or removal of buildings thereon.

Helena, Montana, May 6, 1905.

Hon. Joseph K. Toole, Governor, Helena, Montana.

Dear Sir:—I am in receipt of your favor of the 5th, requesting my opinion as to whether authority is vested in the governor or any one else, outside of the legislative assembly, to sell or authorize the sale of certain buildings upon the Fort Ellis military reservation. In reply I give you the following as my opinion.

The grant of said military reservation to the State of Montana places no restrictions or limitations upon the use of the buildings located on said land, but the only mention of buildings or other improvements upon said land contained in the grant is that the land shall be "selected according to legal subdivisions so as to embrace the buildings and improvements thereon." (26 U. S. Statutes at Large, 748.)

Section 6, of Article VII, of the constitution of the State of Montana, reads as follows:

"The governor shall be commander-in-chief of the militia forces of the state, except when these forces are in the actual service of the United States, and shall have power to call out any part or the whole of said forces to aid in the execution of the laws, to suppress insurrection or to repel invasion."

As the legislature has not thus far enacted any law with reference to said Fort Ellis military reservation, I am of the opinion that said tract of land is under the direct care, supervision and control of the governor of the state, by virtue of his power as commander-in-chief of the military forces of the state. (Opinion of Judges, 13 South Dakota, 191.)

In the absence of legislative enactment to the contrary, the care, control and management of said military reservation is absolutely within your exclusive province as commander-in-chief of the militia, and there being no limitation in the grant of the lands to the State of Montana respecting the buildings or other improvements thereon, I am of the

opinion that you can sell such buildings, or authorize their sale or removal. There can be no question as to the right of the state to make additional improvements upon such lands, or to absolutely tear down and remove the buildings now standing thereon, and I am of the opinion that the governor, as the chief executive and commander-in-chief of the militia, may direct the making of additional improvements upon such lands, or the repair, sale or removal of the buildings standing thereon.

Respectfully yours,

ALBERT J. GALEN,
Attorney General.