

Reclamation, Lands Sold to Actual Settlers.

The act of August 18, 1894, was amended by the act of June 11, 1896. By this amendment the State is entitled to patent for such lands upon proof showing that an ample supply of water is actually furnished in a substantial ditch, etc., to reclaim such lands, without regard to settlement or cultivation. However, the act of August 18, 1894, is still in force so far as it applies to the sale of such lands by the State. The State can sell such lands only to actual settlers.

Helena, Montana, Oct. 14, 1905.

Carey Land Act Board, Helena, Montana.

Gentlemen:—Your request for an opinion as to whether the State of Montana, under the act of August 18, 1894, (U. S. Compiled Statutes, p. 1554), known as the Carey Act, and amendments thereto, can contract to sell lands reclaimed by the State pursuant to such act to persons other than actual settlers—that is to persons who do not actually make their home upon the land but have it cultivated by agents or lessees, duly received.

I understand from Mr. Wade, State Engineer, that certain parties claim that under the act of June 11, 1896, amending the Carey Act, the State could sell these lands out in 160 acre tracts without regard to settlement or cultivation. We cannot agree with this construction of such amendment. Section 4 of the act of 1894 provides that "to aid the public land states in the reclamation of desert lands therein, and the settlement, cultivation and sale thereof in small tracts to actual settlers * * * as fast as any state may furnish satisfactory proof, according to such rules and regulations as may be prescribed by the secretary of the interior, that any of said lands are irrigated, reclaimed, and occupied by actual settlers, patents shall be issued to the state, or its assigns, for said lands so reclaimed and settled." The act of June 11, 1896, merely provides that the State shall have a lien upon the lands reclaimed for the expenses of reclamation, and shall have such lien, with reasonable interest thereon, from the date of reclamation until disposed of to actual settlers. This act further provides that when an ample supply of water is actually furnished in a substantial ditch or canal, or by artesian wells or reservoirs, to reclaim a particular tract or tracts of such lands, then patent shall issue for the same to such state, without regard to settlement or cultivation. This latter clause amends Section 4 of the Act of August 18, 1894, inasmuch as said Section 4 provided that patents should only be issued to the state, or its assigns, upon satisfactory proof that said lands were "irrigated, reclaimed and occupied by actual settlers." Under the amendment of June 11, 1896, the state is entitled to its patent for such lands upon proof showing that an ample supply of water is actually furnished in a substantial ditch or canal, or by artesian wells or reservoirs, to reclaim such lands, without regard to settlement or cultivation. But this act of June 11, 1896, in no way

amends the act of August 18, 1894, so as to authorize the state, when the lands have been patented to it, to dispose of such lands to other than "actual settlers."

We must, therefore, hold that any contract entered into by the Carey Land Act Board, or its duly appointed agent, for the sale of any such lands reclaimed by the state must contain an agreement to the effect that the person purchasing the land is acquiring it for the purpose of actual settlement, reclamation and cultivation.

Yours very truly,

ALBERT J. GALEN,

Attorney General.