

State Lands, Right of Legislature to Release the State's Rights to Private Persons.

Under Section 11 of the Enabling Act State lands are not subject to entry under the laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only; and, therefore, the State cannot by law relinquish its rights to private persons, and a law of that character would be special legislation under Article V, Section 26, of the Constitution.

February 8, 1905.

Hon. Alexander T. McDonald, Member of the Legislature, Helena, Montana.

Dear Sir:—You ask opinion of this office as to whether it is proper and legal for the legislature to pass a law whereby the State will be compelled to release its rights to certain lands entered upon by persons in Flathead county.

In reply to your inquiry I give you the following as my opinion: It would not be proper for the legislative assembly to so legislate. Such legislation would be contrary to the Enabling Act, and would be contrary to the provisions of our Constitution. School lands were granted to the State of Montana by Congress in trust for school purposes and the legislature has no right or authority to interfere with the express provisions of such trust. The act of Congress places limitations upon the State's right of use, sale and acceptance of such lands.

Section 11 of the Enabling Act provides:

“That all lands herein granted for educational purposes shall be disposed of only at public sale, and at a price not less than ten dollars per acre, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in the support of said schools. But said

lands may, under such regulations as the legislatures shall prescribe, be leased for periods of not more than five years, in quantities not exceeding one section to any one person or company; and such lands shall not be subject to pre-emption, homestead entry or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only."

Under our Constitution, Article V, Section 26, the legislature is prohibited from passing "any local or special laws, * * * granting, any special or exclusive privilege, immunity or franchise whatsoever."

Yours very truly,

ALBERT J. GALEN,

Attorney General.