

**Carey Land Act Board, Authority Of. Conveyance of Patented
Lands. Canal Bonds, Lien Of.**

The Carey Land Act Board has no authority to convey to the United States Government lands for which it has received a patent from the Government.

Bonds issued the Dearborn Canal Company are declared to be a lien upon patented lands reclaimed by such canal, and the Board cannot issue a conveyance of such lands free from all liens or incumbrances until such time as said bonds have been declared invalid or satisfied.

Helena, Montana, July 30th, 1906.

Carey Land Act Board, Helena, Montana.

Gentlemen:—Your request for instructions as to your authority to comply with the request made by the Honorable Commissioner of the General Land Office in letter dated May 24th, 1906, addressed to his Excellency, the Governor of Montana, received.

In this letter he asks you to file a formal relinquishment of the rights which the state has obtained to lands under the Dearborn Canal by the approval of List 5, and also to prepare and file a deed for the lands included in patent No. 1, issued to the State of Montana for a part of said lands under said canal, together with an abstract of title covering said lands, showing that the title to the lands described in patent No. 1, is in the state and that the title has not been incumbered in any way.

In our opinion, in the absence of further legislation, you have no authority to execute deeds to the United States conveying the lands described in said patent, and before you could issue a deed for the lands,

the title to which is vested in the state by virtue of said patent No. 1, you would have to have special authority given you by the legislature.

Furthermore, if you had authority to re-convey to the United States the lands described in patent No. 1, it would be impossible at this time to furnish an abstract of the same showing that the title thereto had not been incumbered, for the reason that the State Arid Land Grant Commission issued bonds to the amount of \$207,800.00 to the Dearborn Canal Company, which bonds were made a lien upon the lands covered by the Dearborn Canal. The contract entered into with the Dearborn Canal Company, or their predecessor in interest, for the construction of such canal, provided that such bonds shall constitute a lien upon the lands and appurtenances thereto and to this district belonging", and provided further that "all bonds issued hereunder, of whatever date, up to the sum of twelve and a half dollars for each acre aforesaid, shall be first mortgage bonds of equal lien and standing.

This contract was recorded with the county clerk of the county in which such lands are situated. The Dearborn Canal Company claim that by virtue of this contract and the bonds issued pursuant thereto, they have a lien upon the patented lands. In fact they have instituted an action in the Federal Court for the purpose of foreclosing their lien, which action is now pending on a demurrer filed by the state, upon the ground that the court has no jurisdiction of the case. While we believe the Dearborn Canal Company failed to comply with this contract, and that the bonds were improperly issued to it, nevertheless, until such bonds have been declared invalid by a court of competent jurisdiction, they stand on the records as a lien against the patented lands.

For the reasons above stated we are of opinion that you cannot comply with certain parts of the request made by the Commissioner of the General Land Office.

We return herewith, your letter to Governor Toole, and also the letter of the Commissioner.

Very truly yours,

ALBERT J. GALEN,
Attorney General.