

Fort Ellis Military Reservation, Grant to the State.

Under Chapter 163, United States Statutes at Large, Vol. 26, p. 747, a section of the old Fort Ellis Military Reservation was granted to the State of Montana to be used by the State as a permanent militia camp-ground, or such other public purpose as the legislature in its discretion might provide. Until the legislature has designated some other public purpose, the land granted the State must be used as a militia camp-ground. It cannot be leased to individuals for private purposes, as such would be in plain violation of the purposes for which it was granted to the State.

March 20, 1905.

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

Dear Sir:—In compliance with your request for an opinion as to what effect the making of a lease by the State of Montana for section 15, township 2 south, range 6 east would have upon the state's right and title to such land, we respectfully submit the following:

Said section 15 was a part of the Fort Ellis Military Reservation, and by an act of congress (Chapter 163, U. S. Stat. at Large, Vol. 26, p. 747) it was granted to the State of Montana.

Section 2, of said Chapter 163, reads as follows:

“That there is hereby granted to the State of Montana, one section of said reservation, to be selected according to legal subdivisions so as to embrace the buildings and improvements thereon to be used by said State as a permanent militia camp-ground, or for other public purposes in the discretion of the State Legislature; Provided, that whenever the State shall cease to use said lands for public purposes the same shall revert to the United States.”

It is clear from the reading of this section that such land was granted to the State of Montana to be used by the State as a permanent militia camp-ground until such time as the legislature in its discretion shall designate some other public purpose for which such land may be used by the State; and whenever the State ceases to use such land as a “permanent militia camp-ground”, or for such other public purposes as the legislature may in its discretion designate, the same shall revert to the United States.

The legislature has never exercised its discretion of designating some other public purpose for which the land may be used; therefore, at this time, the only public purpose for which the State can use this land is the

one mentioned in the act granting it to the State, namely, "as a permanent militia camp-ground."

Can the State safely lease this land to private parties, or for private purposes, without subjecting the same to the danger of reverting to the United States?

In our opinion it cannot. The State cannot exercise authority over such lands beyond the express terms and limitations of the grant. Any lease of this land for farming, stock raising, or other purposes for which an individual or individuals might use such land would certainly be a private use thereof. The fact that the rent received from such persons for such use of the land would be placed in the fund used for the maintenance of the militia (if there could be found any authority in law or procedure whereby the same could be legally placed in such fund) would not change the fact that the land was being used for private purposes by the lessee.

We are of opinion, therefore, that any lease of such lands would raise complications which might result in the same reverting to the United States, and that it is not safe, in view of the construction placed by the courts upon similar limitations and conditions in grants, for the State to make any lease of such land.

Respectfully yours,

ALBERT J. GALEN,

Attorney General.