

Arid Lands, State, Lying Within Irrigable Limits of National Irrigational Projects.

Under Chapter 53, Laws 1905, the state board of land commissioners are not prevented from offering for sale or selling state lands lying within the irrigable limits of national irrigation projects, prior to their completion, at a price in excess of the minimum price fixed by the Enabling Act. But before title passes from the State to such purchaser proof should be required by the state land board shown that the purchaser has fully complied with the said law.

April 21, 1905.

Hon. John P. Schmit Register, State Land Office, Helena, Montana.

Dear Sir:—I am in receipt of your favor of the 6th, asking my opinion as to the effect of the passage of House Bill No. 219, Chapter 53, Laws of 1905, upon the right of the Board of Land Commissioners to dispose of state lands designated as irrigable and lying within the irrigable limits of any existing or proposed national irrigation system in Montana.

After carefully studying said law, I place the following construction upon the same, to-wit: All lands now or hereafter owned by the state, which are designated as irrigable under any existing or proposed national irrigation system in Montana, shall be disposed of by the State in farm units subject to the limitations and conditions of Chapter 1093, 32 U. S. Statutes at large, 388, and acts amendatory thereof; but no title to such State lands shall pass from the State until the conditions and limitations provided for in said United States law have been fully complied with, and the board are fully satisfied of such compliance on the part of the purchaser nor until the purchaser produces to the board satisfactory evidence of the acquisition of the right to the use of water for the irrigation of such lands duly issued by the government. However, the State can sell, or offer for sale, such state lands before completion of any such government irrigation project, subject to the limitations above stated, for the law provides that all lands which are not sold by the State prior to the time when water is ready for delivery thereon from the works constructed by the United States shall, from that time on, be sold at the minimum price fixed by the Enabling Act of the State of Montana.

Under this construction of said Act there can be no objection to the State Board of Land Commissioners making sale of lands lying within the irrigable limits of any such irrigation project for any amount over and above \$10.00 per acre before such project is completed and water ready for delivery therefrom. But before title passes from the State, by virtue of the execution of proper conveyances, the Board should require such purchaser to show that he has fully complied with the law.

All such State lands as are not sold prior to the time when water is actually ready for delivery from the works constructed by the United States, shall, from that time on, be sold at the minimum price fixed by the Enabling Act. But where the project is not completed, and water is

not ready for delivery therefrom, there are no restrictions upon the price per acre at which such lands may be sold.

Yours very truly,

ALBERT J. GALEN,

Attorney General.