

**Soldiers' Home Entitled to Lands Selected at Fort Maginnis.
For Maginnis, Lands Selected for Soldiers' Home. Reform
School Grant, Lands for Soldiers' Home Taken Out of.**

Under act of March 2nd, 1893, 25 U. S. Stat. 938, the State was given authority to select two sections of land for the use of the Soldiers' Home, and to deduct that amount from the grants made by the Enabling Act. Under this authority the State deducted two sections from the Reform School Grant and placed it to the credit of the Soldiers' Home.

Helena, Montana, Dec. 26, 1898.

State Board of Land Commissioners, Helena, Montana.

Gentlemen:

We are in receipt of your communication of the 22nd inst., in which you state that it appears that certain land formerly embraced in the Fort Maginnis Reservation was selected by the State under the Reform School Grant but credited to the Soldiers' Home, and that said home has been receiving the revenue derived from the leasing of the above lands selected from the reservation. This land was granted to the State by the Act of March 2nd, 1895 (25 U. S. Stat. p. 938). The act making this grant of the two sections from the old Fort Maginnis Reservation reads

as follows and contains a proviso showing how the selection should be made to-wit:

"That the Governor of the State of Montana is hereby empowered and authorized to select and enter of the public lands contained within the boundaries of the abandoned Fort Maginnis Military Reservation, in Fergus County, State of Montana, which are free from any settlement or other right or claim at the date of selection, not exceeding in all two sections, on which are situated the buildings heretofore used for military purposes; that the lands and water rights so selected and entered, with the buildings thereon, are hereby granted and donated to the State of Montana for the maintenance of a soldiers' home, or for other public purposes: Provided, that the entry and selection of lands in the provisions of this act shall be construed as being in part satisfaction of the grant of lands to the state of Montana for educational, penal, and reformatory institutions, under the provisions of Section Seventeen, of the Act of Congress of February twenty-second, eighteen hundred and eighty-nine."

This proviso was, in affect, an amendment of the grant contained in the Enabling Act to the extent of authorizing or permitting the State of Montana to change the purposes for which the lands granted by the Enabling Act were to be used to the extent of two sections of land. It then remained for the State Board of Land Commissioners to determine out of which grant of lands made by the Enabling Act they would take the two sections to be used for the Soldiers' Home.

In the opinion of the Commissioner of the United States Land Office, dated September 10th, 1895, he said:

"Hence as it seems to be a requirement of the proviso to the Act of March 2, 1895 (supra) that the two sections of land authorized to be selected by said act shall be taken and accepted by the State as in part satisfaction of one or another of the grants made by Section 17 of the Act of February 22, 1887, I must insist upon the instructions in office letter (K) of May 27, 1895, —being complied with. I would state in this connection that I can see no obstacle in the way of "the lands and building" being used for the maintenance of a soldiers' home and at the same time the former i. e. the quantity of land selected, being charged to and deducted from the quantity the State is still entitled to select in satisfaction of the grant for either one of the purposes named in section 17 of the Enabling Act."

Pursuant to the above ruling of the Commissioner of the United States Land Office, the State Board amended its list selecting this land in the Fort Maginnis reservation by stating therein that such selection was "to be charged to the State Reform School selections."

The records transmitted to us with the request for an opinion do not show what action the Commissioner of the Land Office took upon this amended selection list, but as the amended selection list complied with

the instructions of the commissioner we assume that the list was approved and the land selected was charged by the commissioner to the grant to the reform school.

And as the State Board of Land Commissioners were given authority by the Act of Congress and the ruling of the Commissioner of the Land Office to select two sections for the use and benefit of the soldiers' home out of the grant made by the Enabling Act for other purposes it is apparent that the rental received from these two sections so selected and the proceeds from the land when sold should go to the use and benefit of the soldiers' home.

It also appears that under the above law, and the ruling of the commissioner, that the reform school would not be entitled to select two additional sections in lieu of those transferred by the Board of Land Commissioners to the use of the soldiers' home.

Very respectfully yours,

ALBERT J. GALEN,
Attorney General.