

Appeal From Decision Cancelling State Selection, Not Advisable. State Lands, Appeal Not Advisable From Decision Cancelling Certain Selections.

Where the state has filed selection lists in violation of rules adopted by the Commissioner of the General Land Office, an appeal from the decision holding such selections for cancellation would be ineffectual.

Helena, Montana, June 9, 1909.

State Board of Land Commissioners,

Helena, Montana.

Gentlemen:

I herewith return the opinions and correspondence of the United States

Land Office, relating to the state's selection lists Nos. 150, 151 and 152, holding said lists for cancellation because allowed by the local office before the general land office had accepted the relinquishment and cancelled list No. 53.

The above papers were transmitted to this office for the purpose of considering the advisability of appealing from the decision of the acting commissioner of the general land office, rendered on June 22, 1908, ordering the cancellation of such selection.

It appears that the state, pursuant to a decision of the assistant commissioner rendered on December 21, 1907, filed a relinquishment of certain lands on February 5, 1908, and two days thereafter the state filed in the local land office new selection lists embracing the land relinquished on February 5. It further appears that the relinquishment filed by the state on February 5 was not accepted by the commissioner of the general land office until February 28.

Rules 13 and 14 of the regulations governing the state selections, which were prepared by Mr. R. A. Ballinger, commissioner of the general land office, and approved by secretary of the interior, Garfield, on April 25, 1907, read as follows:

"13. No application will be allowed for lands covered by an existing selection or entry, nor will any right be recognized as initiated by the tender of any such application.

No amendment will be allowed of any indemnity school land selection by the substitution of new base, in whole or in part, in place of that originally tendered, defective from any cause."

"14. The local officers will not enter on their records the relinquishment of any state selection, until directed to do so by the General Land Office. All relinquishments of state selections will be forwarded to the General Land Office, through the local office, and if accepted, the local officers will be directed to cancel the selections on their records. The cancellation will become effective as of the date of receipt of order of cancellation by the local office, after which, and not before, the land if not reserved will be subject to disposition under the general land laws."

The filing of the new selection lists by the state on February 7 was in direct violation of the foregoing rules, as such land was not relinquished and open to selection at the time the state filed such lists. In view of the fact that the above rules were prepared by commissioner Ballinger, who is now secretary of the interior, it does not appear to us advisable to appeal from the decision of the present commissioner to the secretary of the interior, as it is altogether improbable that Mr. Ballinger would set aside the rules theretofore adopted by him when commissioner in order to sustain such appeal. Therefore, in our opinion, no appeal should be taken in this case, and the state should file a new selection list in lieu of the list ordered cancelled.

Very truly yours,

ALBERT J. GALEN.

Attorney General.