

**State Lands, Selection of. Grant of Lands, Right of State to  
in Forest Reservation. Forest Reservation, State Lands in.**

The state may waive its right to sections 16 and 36 in national forest reservations, and may make lieu selections of lands elsewhere in exchange for such sections.

Helena, Montana, October 6, 1909.

Hon. F. H. Ray,  
Register, State Land Office,  
Helena, Montana.

Dear Sir:

I am in receipt of your favor of the 4th inst. asking, on behalf of the board of land commissioners, my advice as to what further steps, if any, should be taken by the State with reference to the State's rights to lands within National Forest Reservations.

Having fully reviewed and considered both opinions of the secretary of the interior, upon the subject addressed to me, the one bearing date September 29, and the other September 30, 1909, I am of the opinion that the state is the beneficiary on account of these decisions, and that the land department should now proceed to make lieu selections, releasing all undesirable school lands embraced with National Forest Reservations, and take in place and stead thereof good agricultural or other lands now constituting part of the public domain. While I am of opinion that perchance we might be able to maintain our rights under the Enabling Act, and have the Act of 1891 set aside as unconstitutional, still the Act of

1891 is of greatest benefit to the state in the final analysis, and so long as the state does not raise any question as to its constitutionality no one else can or will. Under a strict interpretation of the Enabling Act we would be held to take the identical lands named in the grant namely, sections 16 and 36, wheresoever situated, and this would force us to take rocky peaks or mountain tops, without any right whatsoever to make an exchange; therefore, it seems to me that the wiser course to be pursued at this time is to adopt this decision of the Secretary of the Interior as final, and accordingly, proceed to make lieu selections of good lands in exchange for such poor tracts as the state may have located within forest reservations.

Very truly yours,

ALBERT J. GALEN,

Attorney General.