

**Flathead Indian Reservation, State Lands on. Reservations,
Selections of State Lands on.**

The state of Montana has the right to select indemnity lands on the Flathead Indian Reservation for all school lands lost to it by reason of allotments or otherwise. Such selections should be made prior to any entry of lands by those drawing successful numbers.

Helena, Montana, October 6, 1909.

State Board of Land Commissioners,
Helena, Montana.

Gentlemen:

I am in receipt of your communication, requesting an opinion as to the state's right to lands situated on the Flathead Indian Reservation, and especially with reference to the selection of lieu lands in said reservation for school lands which have been lost to the state by virtue of allotments or otherwise.

Section 8 of the Act of Congress of April 23, 1904, (33 U. S. Stats., p 303), reads as follows:

"Sec. 8. That when said commission shall have completed the classification and appraisement of all of said lands and the same shall have been approved by the Secretary of the Interior, the land shall be disposed of under the general provisions of the homestead, mineral, and town-site laws of the United States, except such of said lands as shall have been classified as timber lands, and excepting sections sixteen and thirty six of each township, which are hereby granted to the State of Montana for school purposes. And in case either of said sections or parts thereof is lost to the said State of Montana by reason of allotments thereof to any Indian or Indians now holding the same, or otherwise, the governor of said state, with the approval of Secretary of the Interior, is hereby authorized, in the tract under con-

sideration, to locate other lands not occupied, not exceeding two sections in any one township, and such selections shall be made prior to the opening of such lands to settlement; Provided, that the United States shall pay to said Indians for the lands in said sections sixteen and thirty-six, or the lands selected in lieu thereof, the sum of one dollar and twenty-five cents per acre." The first paragraph of section 9 of the same act reads as follows:

"Sec. 9. That said lands shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the time when and the manner in which these lands may be settled upon, occupied, and entered by persons entitled to make entry thereof, and no person shall be permitted to settle upon, occupy, or enter any of said lands, except as prescribed in such proclamation;"

On May 22, 1909, the President issued a proclamation regarding the said lands.

Sections 7 and 9 of said proclamation read as follows:

"Beginning at nine o'clock A. M., on April 1, 1910, and continuing thereafter on such dates as may be fixed by the Secretary of the Interior, persons holding numbers assigned to them under this proclamation will be permitted to present their applications to enter (or file their declaratory statements), at the land office for any land district in which their numbers entitled them to make entry in order in which their applications for registration were selected and numbered, but no person can present more than one application to enter or file more than one declaratory statement."

"Sec. 9. None of the lands opened to entry under this proclamation shall become subject to settlement or entry prior to the first day of September, 1910, except in the manner prescribed herein; and all persons are admonished not to make any settlement prior to that date on lands not covered by entries or filings made by them under this proclamation. On September 1, 1910, all of said lands which have not been entered under this proclamation will become subject to settlement and entry under the general provisions of the homestead laws and the said Acts of Congress."

In our opinion said lands will first be opened to settlement and entry under said proclamation on April 1, 1910, and that therefore, pursuant to the provisions of said section 8 of said act of congress quoted above, the governor of this state, with the approval of the secretary of the interior, should make location of lands in said reservation for lands lost to the state by reason of allotments or otherwise prior to the first day of April, 1910.

Of course, the state cannot make such selections until it has first received from the department a list of lands in sections 16 and 36 which have been allotted to Indians, or otherwise reserved.

Section 6 of the Act of Congress of April 27, 1904, (33 U. S. Stats.,

361), which provided for the opening of the Crow Indian Reservation, provided that selections made by the state "shall be made prior to the opening of such lands to settlement," and under this law the state made its selections of lands in said reservation prior to the time that persons were permitted to enter lands pursuant to the drawings held for that purpose, and the language of the two laws is so similar that undoubtedly the same procedure will be followed in the Flathead Reservation; so that the state will make its selections prior to the entry of lands by those drawing successful numbers, instead of the date of September 1, 1910, when the lands are opened to entry by persons other than those who made drawings entitling them to entry on April 1.

Very truly yours,

ALBERT J. GALEN,

Attorney General.