

**Mining Locations, on State Lands. State Lands, Mining Locations on.**

Section 71, chapter 147, laws of 1909, does not authorize the location of mining claims upon state lands during the time they are held under a valid lease from the state.

Helena, Montana, October 20, 1909.

State Board of Land Commissioners,

Helena, Montana.

Gentlemen:

I am in receipt of your communication of the 15th inst., requesting a construction of section 71, chapter 147, laws of 1909, which provides for the location of mining claims upon lands belonging to the state, the question submitted being as to whether a person discovering mineral in vein, lode or ledge, or mineral in a placer deposit upon state lands which are then held by lease from the state has the right to enter into possession of the land embraced within a mining claim and to work and develop the same.

In our opinion this section applies only to state lands not occupied by lessees or persons holding the same under certificates of purchase. When the state has executed a lease for a tract of state land, the lessee is entitled to the possession of all of said land during the life of his lease, and a person desiring to prospect on such land, or to enter thereon for the purpose of making a mining location would have to deal with the lessee of such land for, in the absence of an express provision in the statute to the effect that lessees of state land take the same subject to the right of other parties to enter thereon to prospect and to locate mining claims and work the same, or in the absence of such a reservation in the lease itself, the lessee takes such land free from all such rights of third parties, and during the time he holds a valid lease, he is, for all intents and purposes, the temporary owner of such land.

Very truly yours,

ALBERT J. GALEN,

Attorney General.