

**Coal Lands, Reservation of in Conveyance by State. State Lands, Reservation of Coal in Conveyance of.**

All conveyances of state lands should contain a reservation of coal.

Helena, Montana, Oct. 21, 1909.

State Board of Land Commissioners,

Helena, Montana.

Gentlemen:

I am in receipt of your communication of the 19th inst., enclosing correspondence and papers relating to the purchase or sale of section 16, township 8, N. R. 25 E. You request an opinion as to the procedure in such matter, and also as to whether land which has not been classified as coal land, or is not known to contain coal, can be legally conveyed by the state without such conveyance containing the reservation of coal, oil and gas provided for in the last proviso of section 34, chapter 147, laws of 1909.

If land has been defined by the United States Geological Survey or other authority under the government of the United States, as coal lands, or if the state board of land commissioners is of the opinion that lands contain coal and has designated it as coal lands, then, or in either of said events, the state board of land commissioners is prohibited from selling such lands by section 28 of said chapter 147. The only procedure the board could follow in such event is to lease such lands on a royalty basis, in accordance with the provisions of section 70, of said chapter 147, and the surface rights may be sold or leased for either agricultural or grazing purposes.

As to the right of the state board of land commissioners to lease or convey state lands which have not been classified by the geological survey, or other authority of the United States Government as coal lands, or so designated by the state board of land commissioners, without containing a reservation of the coal, oil or gas appears to be settled by the last proviso of section 34 of said chapter 147, which reads as follows:

"Provided, further, that all leases and conveyances of state lands by the state board of land commissioners shall contain a reservation to the state of all coal, oil and gas contained therein."

This proviso makes no exception of any state lands, and in order to construe the same as not applying to lands not classified or designated as coal lands, it would be necessary to read into said proviso, after the word "lands" the following:

"not classified by the geological survey or other authority of the United States Government as coal lands, nor designated as coal lands by the state board of land commissioners."

We do not believe such a clause can be legally read into this proviso and if the legislature had intended to limit its application only to lands classified as coal lands, it certainly would have said so in the proviso.

Further, if this proviso should be construed as applying only to conveyances of state lands which had been classified or designated as

coal lands, then it has no force or effect whatever, and is merely surplusage, for the reason that the moment the lands are classified by the geological survey or other authority under the United States Government, or have been designated as coal lands by the state board of land commissioners, they cannot be conveyed at all, and, therefore, there never would be any conveyances made by the state which could contain such reservations.

In our opinion, said section 34, when construed in connection with section 28 and section 62 of said chapter 147, clearly shows that it was the intention of the legislature that all leases and conveyances of state lands should contain a reservation of all coal, oil and gas, and that all state lands classified or designated as coal lands should not be conveyed at all and leased only upon a royalty basis for the purpose of taking out coal, oil or gas, with the exception, however, that the surface could be sold or leased for agricultural or grazing purposes.

It is a well established rule of construction that a law must be construed, if possible, so as to give force and effect to all its provisions. The above construction gives full force and effect to clear and concise language employed in the last proviso of said section 34, and harmonizes it with all other provisions of such law. The other construction would not only violate the plain meaning of the language used in said proviso, but would, in effect, eliminate it from the law, as there would be no class of conveyances to which it could apply.

I herewith return all papers.

Very truly yours,

ALBERT J. GALEN,

Attorney General.