

Timber Lands, Sale of.    Lands, Timber, Sale of.

Timber lands cannot be sold except in cases where the soil, when the timber is removed, would make good agricultural land. In all other cases the timber must be sold separate from the land and the land held for the purpose of re-forestation.

Helena, Montana, November 2, 1909.

State Board of Land Commissioners,

Helena, Montana.

Gentlemen:

I am in receipt of your communication of November 1st in which you request an opinion upon the following question:

“Does chapter 147 of the laws of 1909 prohibit the sale of timber land either before or after the timber is removed therefrom?”

We find no section of said law which expressly prohibits the sale of timber lands.

However, section 26 provides for the classification of lands as follows:

1. Grazing lands.
2. Timber lands.
3. Agricultural lands.
4. Lands lying within the limits of any town or city, or within three miles of said limits.

Section 29 provides the method to be followed in selling the fourth classification of lands. Section 37 provides the method of selling lands in classifications 1 and 3, and the only provision we find relating to the

sale of classification No. 2—timber lands— is the following proviso in section 34:

“provided that whenever the soil on any timber land is of such character that when cleared it would make good agricultural land, the land may be sold with the timber thereon as timber land.”

This proviso strongly implies that when the lands would not make good agricultural land that they could not be sold with the timber thereon. In section 53 it is provided that:

“The state board of land commissioners shall have power to sell timber on state lands at such price per thousand feet as in its judgment shall be for the best interests of the state, and not otherwise.”

This section apparently prohibits the sale of timber in any manner except at a price per thousand feet, for it says that it must not be sold otherwise, and if you sold the land and the timber together you would be otherwise selling the timber than by the thousand feet. The only exception to the sale of timber at so much per thousand feet is the proviso found in said section 34 where the land would make good agricultural land. Further evidence that it was not the intention of the legislature that timber lands should be sold except where the land would make good agricultural land is found in the elaborate method provided in the law for the sale of the timber and the issuance of permits to cut the timber off of said lands.

See sections 53, 54, 55, 56, 57 and 58.

Again in section 40, the distinction is made between the sale of state lands and sale of timber on state lands, and in section 63 timber lands are excepted. Again it is apparent from the provisions of section 21 that it was not the intention to sell lands of the state upon which timber was growing except in the case where it would make good agricultural lands, for the reason that it is provided in said section 21 for “Reforestation of the denuded forest lands of the state.”

This language clearly implies that it was not the intention that the forestry board should plant trees upon land not theretofore containing timber, but that it should grow timber upon state lands which had theretofore been timber lands and from which the timber had been removed under the provisions of sections 53 to 57 of said law. Therefore, in our opinion, it is the intention of said law that the state board of land commissioners can only sell timber lands with the timber thereon when such lands would make good agricultural lands after the removal of the timber and that in all other cases the timber only shall be sold, as provided in said law, and thereafter, the lands shall be held by the state for the purpose of reforestation, under the provisions of such law.

Yours very truly,

ALBERT J. GALEN,

Attorney General.