

State Lands, Irrigation of. Irrigation Districts, State Lands
In.

Under Chapter 146, Laws of 1909, unoccupied state lands may not be included in irrigation districts provided thereby.

Helena, Montana, December 7, 1909.

State Board of Land Commissioners,
Helena, Montana.

Gentlemen:

I am in receipt of your letter of November 23, together with enclosures, concerning the Carterville Irrigation District.

Chapter 146, laws of 1909, provides a method for the establishment of districts so that the lands of the state may be irrigated.

Section 26 of this law dedicates a right of way for the construction

and maintenance of such irrigation projects over and through any lands owned by the state of Montana. But aside from this provision, I do not believe that the law contemplates that vacant lands belonging to the state of Montana should be included within these irrigation districts.

Section 32 of the act provides that the board of commissioners of the district shall apportion the water for irrigation among the lands in the district. Certain water apportioned to unoccupied state lands would be of no value to the state and detrimental to the other lands in the district.

Section 49, of the act, provides for an annual levy of taxes in these districts, for the collection of which the lands themselves become liable. These taxes would be uncollectable against vacant state land, for the reason that the land could not be sold, either by the treasurer of the county for delinquent taxes, or in compliance with an execution issued out of court.

The enabling act, the constitution and the statutes of this state provide the methods by which state lands may be disposed of, and those methods must be strictly adhered to. There is no authority in law conferring upon the state board of land commissioners, or other board or officer of this state, granting it or him power to improve the lands of the state by irrigation, cultivation or other development.

It is my opinion, therefore, that unoccupied state land which is not held under contract by a purchaser, is not subject to the provisions of chapter 146, laws of 1909, and that no action need be taken by the board, other than to notify the proper officer of the Carterville Irrigation District that the land therein owned by the state should be eliminated from calculations looking to the irrigation of the district and the collection of taxes to meet the expenses incurred.

Very truly yours,

ALBERT J. GALEN,

Attorney General.