

State Lands, Assignment of Certificate of Purchase. Certificate of Purchase, Who Can Take Assignment of.

The law prohibits a person from holding more than a certain amount of the several classes of land. Therefore, a person who has purchased the full amount of any one of such classes is not authorized to take an assignment of a certificate of purchase of any more of such class of land.

Helena, Montana, March 4. 1910.

Hon. F. H. Ray,
Register of State Lands,
Helena, Montana.

Dear Sir—

I am in receipt of your letter of March 3, in which you state a prospective buyer has submitted the following question to, to-wit:

"If I buy, say, 640 acres grazing land, can I sell my contract with the state to my neighbor, who has also a contract with the state for 640 acres, and when he has paid for the 1280 acres, will the state grant him deed to the full amount?"

and you request an opinion from this office upon such question.

Section 37, of chapter 147, laws of 1909, provides that:

"Not more than one hundred and sixty acres of agricultural land susceptible of irrigation, and not more than three hundred and twenty acres of agricultural land not susceptible of irrigation, and not more than six hundred and forty acres of grazing land, or lands which, by reason of altitude are available only as hay land, shall be sold to one person or company or corporation."

From the above quotation it is clear that the spirit and intent of the land law of this state is that one person shall not be entitled to purchase any more of each of the above classes of lands than is mentioned in the above quotation from said section 37.

However, section 45 of said law provides that when the whole purchase price for the tract of land has been paid that the person shall be entitled to letters patent for the land sold to him, or his assignor.

This section clearly recognizes the right of a bona fide purchaser of state lands to assign his certificate of purchase, and the assignee, upon the full payment, would be entitled to patent for such land.

Furthermore, section 48, of the same law, expressly states that:

"Certificate of purchase shall be assignable, but all such assignments shall be in writing and be acknowledged as other conveyances of real estate, and shall be filed for record in the office of the register of state lands."

While the above section gives a purchaser of state lands the right to assign his certificate of purchase, it does not follow that every person is in a position to take such an assignment and file it with the register of state lands, as is required by said section 48.

As it is the policy and intent of the law, as shown above, that one

person, company or corporation is not entitled to purchase more of any one class of land than that fixed in said section 37, it necessarily follows that when the records in the office of the register of state lands show that a person is already the owner of a certificate of purchase for 640 acres of grazing land, that he is not in a position to have an assignment to him of another certificate of purchase of grazing lands, recorded in such office. If he could do this he would accomplish indirectly the very thing which the law expressly declares that he cannot do.

It is also provided in this section:

“That the board of land commissioners may cancel any certificate of purchase, upon the ground of fraud within three years of the date of its issuance, upon giving to the person named in the certificate of purchase, at his last known place of address, thirty days notice that the same is held for cancellation; and if the same is registered, hearing shall be had before the board of Contest.”

Therefore, in our opinion, a person who already has a certificate of purchase for the full amount of any particular class of land presents for record an assignment of another certificate of purchase for the same class of land, that the board has authority to give him the thirty days notice to the effect that the certificate of purchase assigned to him is held for examination.

It is a general principle of law that every person is presumed to know the law, and when a person has already purchased from the state all of a particular class of lands which the law allows him to purchase he is presumed to know that he has no legal right to take an assignment of a certificate which would permit him to purchase any more of that particular class of land. When he takes such an assignment it is, in effect, a fraud upon the land laws of the state, in that it is an attempt, indirectly, to accomplish that which he could not do directly under the law.

Very truly yours,

ALBERT J. GALEN,
Attorney General.