

Billings Polytechnic Institute, Sale of State Lands to. State Lands, Sale to Billings Polytechnic Institute. Resolution of Legislature, Not a Law.

House Joint Resolution No. 8 is in no sense a law, therefore not binding upon the board of land commissioners, nor can it be held to amend the laws in force as controlling the action of such board.

The law provides that no state lands shall be sold, except at public sale. Therefore, the board has no authority to grant to the Billings Polytechnic Institute the lands referred to, and at the price mentioned in said house joint resolution.

Helena, Montana, March 24, 1910.

State Board of Land Commissioners,

Helena, Montana.

Gentlemen:

I am in receipt of your letter, enclosing a letter from the Billings Polytechnic Institute, and also a request for an opinion as to whether or not joint resolution number eight, adopted by the Eleventh Legislative assembly (laws of 1909, page 389), directing the sale of certain state lands to the "Billings Polytechnic Institute" is binding upon the state board of land commissioners.

This resolution is not a law, for the reason that it does not comply with sections 19, 20 and 23, of article V., of the state constitution.

The same legislative assembly adopted joint resolution number thirteen, directing the state game and fish warden to appoint the wife of Charles B. Peyton, deceased, as a deputy game and fish warden. The supreme court, in the case of State ex rel Peyton v. Cunningham, 103 Pac. 1197, construed this joint resolution, and after quoting the sections of the constitution referred to above, the court said:

"These provisions are to be construed as mandatory and prohibitory, because there is no exception to their requirements expressed anywhere in the constitution, section 29, article 3.

Hence they are exclusive, and any expression if its will by the legislative body as law, even though it be by unanimous vote, in a form other than as therein prescribed, is void.

The resolution under which relatrix claims is not in the form of a bill. It has no enacting clause. It has no title. Therefore, though it was passed by both Houses and approved by the Governor, it is of no avail as an authoritative expression of the legislative will upon the subject with which it deals. It is not, in effect, an amendment to the act of March 5th; nor, as an independent piece of legislation, can it be considered as having created an office. Addressed, as it is, to the state game and fish warden, it has not even an advisory force, since it advises him to appoint relatrix to an office which does not exist."

It therefore follows that house joint resolution number eight is in no sense whatever a law binding upon the state board of land commissioners, and if it is not a law it cannot be held to amend the laws of the state which were in full force and effect and controlling the actions of said board.

Section 1, of chapter 147, laws of 1909, provides that the state board of land commissioners,

"Shall have direction and control of all lands belonging to the state, to manage the same as the best interests of the state shall require, not inconsistent with the provisions of this Act, and the constitution of this State."

Section 97, of the same chapter, provides that the words "state lands," and "public lands of the state," mean all lands granted to the state by United States, or by any person, and all lands to which the state may become the owner by operation of law.

From this definition of the word "lands" it is apparent that the lands referred to in said joint resolution number eight comes within the provisions of said chapter 147, and are under control and management of the state board of land commissioners.

Section 34, of said chapter, provides for the sale of state lands, and among other things expressly declares that:

"No such sale shall be made, except at public sale, and as herein provided."

Therefore, as said house joint resolution number eight is not a law, and does not, therefore amend any of the provisions of said chapter 147, it follows that the state board of land commissioners have no authority to sell such land except at public sale and in the manner provided by said chapter 147.

Even if such resolution had been introduced in the form of a bill, with a title and enacting clause, so as to make it a law when passed, it would still be in the nature of a local or special law, in conflict with section 26, of article V., of the state constitution, and, therefore, unconstitutional.

You are therefore advised that even if you desired to follow the suggestions made by the legislature in said house joint resolution number eight, to the effect that this land should be sold at the minimum price

of \$10.00 per acre, that you are prohibited from so doing by the provisions of said chapter, which expressly states that all state lands must be sold at public auction, and sales at public auction, of course, mean sales to the highest bidder.

Very truly yours,

ALBERT J. GALEN,

Attorney General.