

State Lands, Amount of Sales to One Person. Land Law of 1909, Not Retroactive. State Lands, Rights of Purchaser After Assigning His Certificate.

Chapter 147, laws of 1909, limiting the number of acres that can be sold to any one person, is not retroactive, and, therefore, does not affect purchasers under prior laws.

Where a purchaser of state lands has duly assigned his certificate of purchase he is in a position to again purchase a tract of land from the state, the same as if he had never theretofore made a purchase; provided, of course, that his assignment of the first certificate was to a person legally entitled to receive the same.

Helena, Montana, March 24, 1910.

State Board of Land Commissioners,
Helena, Montana.

Gentlemen:

I am in receipt of your letter of March 21, requesting an opinion upon the following propositions:

"Section 37, of chapter 147, laws of 1909, approved March 19, provide that 'not more than 160 acres of agricultural land susceptible of irrigation, and not more than 320 acres of agricultural land not susceptible of irrigation, and not more than 640 acres of grazing land or lands which, by reason of altitude are valuable only as hay land, shall be sold to one person, or company or corporation.'

1. Query: Does this provision of the law require the state land register to take cognizance of sales made prior to the above enactment in computing the amount of land that may be sold to one person, company or corporation?

2. Should the purchaser, under the new law, assign his certificate of purchase to another party, will he be permitted under the law to purchase other lands from the state which added to his first purchase would exceed the limitation prescribed by the statute?"

The only question presented in your first inquiry is as to whether said chapter 147 is retrospective, so as to affect persons who purchased land prior to its enactment.

Section 3, of the revised codes, lays down the general rule for the construction of the codes as follows:

"No part of it is retrospective, unless expressly so declared."

Eight Cyc., p. 1022, lays down the general principal for the construction of laws as follows:

"Statutes not expressly made retrospective in terms are otherwise construed, if possible."

Many cases are cited in support of the above quotation from Cyc. Judge Story, in *Society for Propagation v. Wheeler*, 2 Gall., (U. S.) 105 defined a retrospective law as follows:

"Upon principal, every statute, which takes away or imparts vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past, must be deemed retrospective."

There is nothing in said section 37, or elsewhere in said chapter 147, declaring that said law is to be retroactive. Therefore, under the general rules of construction it can not be held to operate on past transactions, so as to attach a new disability or limitation on such past transactions. Therefore, in our opinion, a person who had purchased lands from the state prior to the enactment of said chapter 147 is not, as a result thereof, prohibited from purchasing the full amount of each of the several classes of land permitted to be purchased by one person under said section 37.

In answer to your second question, you are advised that when a purchaser, under said chapter 147, has assigned his certificate of purchase to a person who is legally entitled to take such an assignment, that the original purchaser thereupon ceases to be a purchaser from the state, as his assignee becomes, in fact, the purchaser of the land described in such certificate of purchase. Therefore, if the original purchaser who has assigned his certificate of purchase, and the assignment has been accepted and filed by the register of the land office, desires to again purchase a tract of land from the state, he is in position so to do, the same as if he had never theretofore made a purchase from the state.

It is the intention of the law that no person shall acquire more of each class of land than that mentioned in said section 37, and under the above construction such intention of the law is fully carried out as the assignee of the first certificate of purchase acquires no more than the law allows to any one person, and the purchaser who assigns the first certificate acquire under the second certificate of purchase no more than the law allows any one person to acquire.

Very truly yours,

ALBERT J. GALEN,

Attorney General.