

State Lands, Improvements of Lessee On. Lessee of State Lands, Payment for Improvements On. Purchaser of State Lands, Liable for Improvements of Former Lessee.

The intention of the law is that a purchaser of state lands must reimburse a prior lessee for improvements. The state board of land commissioners has authority to require a purchaser to furnish satisfactory evidence of settlement with the lessee for improvements before the issuance of certificate of purchase to him.

Helena, Montana, June 15, 1910.

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

Dear Sir:—

I am in receipt of your letter of June 11th, requesting an opinion upon the following proposition:

“Section 43, Chapter 147, of the 1909 Laws, makes it mandatory upon the register to make out certificates of purchase, and deliver same to the purchaser whenever any purchaser pays the 15 per cent. on state land purchased by him.

“Section 81 requires the purchaser of state land to pay the lessee for any improvements thereon, but provides for the giving to the purchaser of such land immediate possession thereof upon issuance to him of certificate of purchase.

“Sections 44, 79, 81 all provide that the lessee shall be paid by the purchaser for the value of the improvements, placed by him on the land, but does not make it the duty of any officer to enforce these provisions.

"My practice is to endeavor to protect the lessee in his rights by asking from the purchaser evidence, either, there were no improvements, or that he has paid for same.

"In the advertisements of the sale of state lands the following appears: "All lands under lease are sold subject to the rights of the lessee and conditions of the lease."

"In view of the mandatory provisions of Section 43, am I justified in pursuing the present practice, if so, do the conditions specified in the advertisement furnish sufficient legal ground for me to require in addition to the 15 per cent evidence that improvements, if any, have been paid for?"

From the provisions of Sections 44, 79 and 81 of said Chapter 147, it is apparent that it was the intention of this law that the state should protect the interest of lessees in improvements erected by them during the time they hold the lands under lease from the state whenever such lands are sold to parties other than such lessee.

This intention is clearly shown and the manner of protecting the lessee clearly pointed out in Section 69 of said law, which provides that where a person applies to lease any land from the state upon which improvements had been placed by a former lessee, that before such lease shall issue said applicant shall file in the office of the register a receipt showing that he has settled with the former lessee for the improvements, or that the owner has elected to remove the same.

However, as stated by you, neither of said Sections 44, 79 or 81 specifically provide in what manner the state shall proceed to protect the lessee. While Section 43 provides that whenever any purchaser of state lands has paid 15 per cent of the purchase price and executed a proper bond, that the register shall make out a certificate of purchase and deliver the same to the purchaser, and while Section 81 provides that upon receipt of the certificate of purchase the purchaser shall be entitled to the immediate possession of the land, still there is nothing in the law which will prevent the state board of land commissioners, under the powers conferred upon it by Section 1 of said law, to adopt a rule and regulation providing that the register of state lands shall not issue a certificate of purchase until the purchaser has furnished satisfactory evidence in the form of a receipt showing that he has made settlement with the lessee for the value of the improvements situated upon the land, or that the lessee has elected to remove such improvements, or that the purchaser has tendered to the lessee the value of the improvements as decided upon by the state land agent or one of his assistants in cases where the purchaser and lessee could not agree between themselves.

In case the board should adopt a rule as indicated above, then all advertisements for the sale of state lands should contain a clause in substance as follows:

"All lands under lease are sold subject to the rights

of the lessee and conditions of the sale, and the purchase must furnish evidence of settlement with the lessee for improvements before certificate of purchase will be issued to him."

I have prepared a form of receipt to be taken from the lessee and delivered to you, showing settlement with the lessee for his improvements, which form I herewith enclose.

Yours very truly,

ALBERT J. GALEN,

Attorney General.