

Lands, Sale of Under Lease. Lessee, Preference Right of in Purchase of Leased Lands. Sale of Lands Within Three Months of the Expiration of Lease.

1. State lands now under lease may be sold under the provisions of Chapter 147, laws 1909.
2. Any sale of lands held under lease prior to March 19, 1909, may be sold by giving notice as provided in the lease.
3. The preference right of purchase granted to lessees in leases held by them are not taken away by the subsequent law.

Helena, Montana, April 6, 1909.

State Board of Land Commissioners, Helena, Montana.

Gentlemen:

I am in receipt of your letter of the 3rd inst., submitting the following questions:

1. Can state lands now under lease be legally offered for sale and sold at a time more than three months prior to the expiration of the lease without the consent of the lessee?

2. Has the lessee who holds a lease prior to March, 1909, any preference right in the purchase of the land under the lease as provided by Section 2174, Revised Codes?

1. Section 2162, Revised Codes, contains the proviso:

"That no lands, already under lease, shall be offered for sale, or lease, unless such lease expired within three months from the date of the offering."

This act was approved March 1, 1899, and this proviso, by its terms, only relates to land then "already under lease," and the section of which the proviso is a part prohibited the leasing of lands for a longer period than five years. Hence, the leases that were in existence at the date of the approval of the act have long since expired, and that proviso can, therefore, have no relation to leases now existing. Moreover, the leases

issued by the state contain the proviso, or condition, that the lands leased may be sold "whenever the state so desires," by giving notice to the lessee as provided in the lease.

Therefore, lands held under, lease, which were executed and became effective prior to March 19, 1909, may be sold, but such sales should be conducted in accordance with the provisions of Senate Bill No. 59, Chapter 147, Laws of 1909. And if such leases were executed after March 19, 1909, such lands, in the discretion of the board, may be sold at any of the regular public sales of said lands held in the county where the land is situated.

Sec. 68, Chap. 147, Laws 1909.

2. Chapter 147, Laws of 1909, does not and cannot take or deprive a man of any vested rights. Hence, the lessee of lands prior to the taking effect of said Chapter 147 has a preference right of purchase, which was granted to him by law at the time of the execution of his lease.

Very truly yours,

ALBERT J. GALEN,

Attorney General.