

**Contract to Purchase State Land, Assignment of. Dower, in
Contract to Purchase. Assignment, of Contract of Purchase.**

Whether a wife has such an inchoate right of dower in lands held by her husband under a contract of purchase as to require her to join in the assignment of the contract is a question on which the authorities are at variance and which is left in doubt by the provisions of Section 3708, Revised Codes, and it is recom-

mended that for the protection of the state and the assignee the board require the wife to join with her husband in making assignment of the contract.

Helena, Montana, April 12, 1909.

Honorable F. H. Ray, Register, Helena, Montana.

Dear Sir:

I am in receipt of your letter of April 7, submitting for the consideration of this office the following question:

"Please advise if, where a certificate of purchase is assigned by a married man, it is necessary for his wife to join in the assignment?"

The rights of a married woman in the lands of her husband, whether such rights are inchoate or vested, is a matter of statutory regulation. Section 3708, of the Revised Codes, provides that:

"A widow shall be endowed of the third part of all lands whereof her husband was seized of an estate of inheritance at any time during the marriage, unless the same shall have been relinquished in legal form."

This part of the section above quoted would not include lands held by the husband under contract of purchase, because the husband was not seized of an estate of inheritance.

Stephens v. Leonard, 122 Mich. 125, 80 N. W. 1002.

However, this section of the statute further provides:

"Equitable estates shall be subject to the widow's dower, and all real estate of every description, contracted for by the husband during his lifetime, the title of which may be completed after his decease."

Whether this later part of the section means that the widow's inchoate right of dower attaches to the rights which the husband has in land held under a contract of purchase prior to his death, or whether it means that she is only dowable in lands held by him under such contracts where he did not assign the contract to some one else during his lifetime, is a question on which the authorities are at variance, and our own court has never passed upon the question.

14 Cyc. 910, 911.

While it would seem that her right to dower in such estates attaches only to the interest which the husband may have at the time of his death, and would therefore not prohibit him from assigning the contract without her written consent, yet there is doubt as to the construction which our Supreme Court will put upon this section, and we therefore advise that, as a matter of safety to the state, the wife should join in the assignment made by the husband of his contract to purchase state lands.

Very truly yours,

ALBERT J. GALEN,

Attorney General.