

Taxation, of Government Lands. Lands, Government, Taxation Of.

The State has no right to impose a tax upon lands the title to which is in the government of the United States, unless the Act of Congress vests such power in the state.

June 4, 1912.

Mr. Vernon Butler,
County Clerk,
Chinook, Montana.

Dear Sir:

I am in receipt of your letter of the 27th ult., making inquiry as to the right of the State to tax lands now held by settlers by contract with the Government under the reclamation act of 1903, in which letter you state that final receipts had been issued to certain homesteaders but that such final receipts have now been canceled; that the land theretofore had been taxed. The question now presented is whether the land is still subject to taxation after the cancellation of the final receipts.

When the receipts were canceled the title to the land and the right to the possession thereof were in the same condition they were before the issuance of the receipts at all. Hence the most that the settler had was an equitable right to obtain title by complying with the conditions required under the laws of the United States, but the title to the land was still with the general government. While we have in this State a general provision that the possessory right to land may be taxed, yet it is difficult to determine how the collection of the tax would be enforced as to government land. Where the settler owns land under contract with the State then the State being the taxing power may properly tax the interest or estate which the settler has acquired by virtue of his contract of purchase and in the event the settler refuses to pay the tax, may withhold the granting of patent to him, thereby foreclosing him of the right which he obtained by virtue of his contract to purchase. This question was discussed by the Supreme Court in the case of Courtney vs. Missoula County, 21 Mont. 591, but the State cannot sell and convey title to land owned by the general government. The right of the State to tax government land has been recently considered by this office in an opinion rendered to Mr. T. P. Squier, Chairman Board of County Commissioners, Rosebud County, and I enclose you herewith a copy of this opinion, which will apply to lands held under homestead laws as well as land held under contract.

Very truly yours,
ALBERT J. GALEN,
Attorney General.