

Certificate of Purchase, State Lands. State Lands, Certificates of Purchase Of. Bonds, to Secure Purchase. State Lands, Reversion to State.

Chapter 147, Laws of 1909 are not applicable to contracts of purchase made prior to enactment of such law.

In case of default of principal, bondsmen upon making payments do not acquire any interest that the state is bound to recognize under laws in force prior to 1909.

If state exercises its right to cancel contract of purchase, with cancellation of contract the bond is cancelled and the bondsmen released from further liability.

January 28, 1911.

Hon. Jos. Oker,
Deputy Register State Land Dept.,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of the 25th inst., stating as follows:

Section 2163, Revised Codes, provides for a bond to be furnished the state by the purchaser of state land.

Section 41, Chapter 147, Laws of 1909, provides methods of procedure against parties who become delinquent in their payments upon lands purchased by them from the State.

1. Does this Section apply to sales made under the laws in effect prior to enactment of the laws of 1909?

2. In case the principal defaults and the bondsmen make the payments, do they acquire any interest in the land or the certificate of purchase that the State is bound to recognize?

3. Should the land revert to the State as provided in Section 41, shall the bondsmen be held liable for the amount due?

In addition to your letter, you transmitted the files of your office with reference to a purchase made by a Geo. W. Maguire and H. J. Button, on October 7th, 1903, and it is apparent that the questions you have asked are made with reference to a certificate of purchase issued prior to the enactment of the General State Land Laws of 1909.

In reply to your first inquiry, there can be no question but what the contract of purchase should be governed by the statutes in effect at the time the same was made. Section 2163, Revised Codes, 1907, provides for the first payment upon the purchase of state lands and provides for the execution of a bond conditioned for the payment of the balance of the purchase money.

Section 2168 of the Revised Codes provides that in case any payment of the principal or interest upon any purchase shall be over due, that the state board of land commissioners may cancel the certificate of purchase and declare the same forfeited and the state thereupon would be released from its obligations to convey the land.

It is clear from the statute that no provision is made for the substitution of the bondsmen in the place of the original purchaser, in the event that they make the payments in behalf of the principal. In this regard there is a distinction between the laws now in force and those in force at the time the contract in question was made.

In answer to your second inquiry, it is my opinion that in case the principal defaults and the bondsmen make the payments, said bondsmen do not acquire any interest in the land or certificate of purchase that the state is bound to recognize.

In answer to your third inquiry, in view of the opinion expressed above that Section 41, of Chapter 147, Laws of 1909, does not apply to sales made prior to the enactment of that law, it necessarily follows that the provisions of Section 2168, of the Revised Codes would apply in case the land should revert to the state and the reversion should be had in accordance with the provisions of that Section, that is to say, that the state board of land commissioners would in their

judgment elect to cancel the certificate of purchase and declare the rights of the purchaser forfeited and it is my opinion that upon such election by the board of land commissioners, the bond given to secure the deferred payments would be cancelled with the cancellation of the certificate of purchase. This opinion is given with reference to the laws in effect at the time the certificate of purchase in question was made and is not intended to apply to certificates of purchase given under the provisions of Chapter 147 of the Laws of 1909.

Yours very truly,

ALBERT J. GALEN,

Attorney General.