

Improvements by Lessee of State Lands, Purchase of. Lessees of State Lands, Disposition of Improvements Made by. Purchase of State Lands. Disposition of Prior Improvements on.

It was the intention of the law passed by the Eleventh Legislative Assembly that the purchaser of state lands which had heretofore been occupied by a lessee should pay the reasonable price of such improvements to said lessee, and this must be done for the further reason that the purchaser bought the land subject to the rights of the lessee and the conditions of his lease, and the conditions set forth in the advertisement of the sale.

June 17th, 1913.

Hon. Sidney Miller,
Secretary State Land Board,
Helena, Montana.

Dear Sir:

I beg leave to acknowledge receipt of yours of May 28th, 1913, submitting for my consideration the question of whether or not the purchaser of state lands is compelled, under the law, to pay for improvements placed upon the land by a previous lessee.

The plain intent of the provisions of Chap. 147 of the Session Laws of the Eleventh Legislative Assembly was to protect a lessee to the extent of the improvements placed by him upon the land. (Secs. 40, 80 and 81.) Sec. 81 is as follows:

“When any person has heretofore, or shall hereafter, settle upon or improve any of the lands of the state, held by him under lease from the state, and a sale of such lands is made by the

state subsequent to such settlement or improvement, and the lessee shall not become the purchaser, the person becoming the purchaser of such lands shall pay to such lessee the reasonable value of the improvements thereon. Whenever the parties cannot agree as to the reasonable value of such improvements, the value thereof shall be decided by the state land agent, or one of his assistants, but nothing herein contained shall be construed to interfere with the right of the purchaser of any such lands to the immediate possession thereof, upon the issuance to him of the certificate of purchase. Provided, such original lessee may elect to remove said improvements, as herein provided."

It will be seen from the section above quoted that it is the intention of the law that the purchaser shall pay to the lessee the reasonable value of the improvements upon the land, and provides a method of appraisement when the owner of the improvements and the purchaser of the land cannot agree. Also, it must be borne in mind that the purchaser bought the land subject to the rights of the lessee and the conditions of his lease, these conditions being set forth in the advertisement made by the registrar of the sale.

The purchaser entered into the contract of purchase with knowledge of the laws governing the sale of lands by the state as set forth in Chap. 147 of the Session Laws of the Eleventh Legislative Assembly, and with knowledge of the conditions as set forth in the advertisement of the sale of the lands. These provisions were entered into and are a part of his contract of purchase, and he cannot now be heard to say that he did not understand it or intended something different.

However, the rights of the purchaser in this matter do not necessarily give the state any power to directly enforce such payment for the improvements. The state has a right to declare all amounts paid forfeited if there is default in any payment for a period of thirty days after notice of default is given to the bondsmen of the purchaser, as provided by Sec. 41 of Chap. 147. Since the state has fulfilled its part in the transaction, it remains for the purchaser to fulfill his part of the agreement or lose his payment, and you are advised to hold the money paid by him until the time when his next payment is due, and thereupon to give him notice of his default, if the next payment is not made, and to declare the preliminary payment forfeited unless the next payment is made in accordance with law.

Yours very truly,

D. M. KELLY,
Attorney General.