

State Land, Sale of. Sale of State Lands, Size of Tracts to Be Sold.

The law does not authorize the register of state lands to offer for sale state lands in tracts containing less than a quarter section, without first having offered the whole quarter section.

July 15th, 1913.

Hon. Sydney Miller,
Register State Lands,
Helena, Montana.

Dear Sir:

I beg to acknowledge receipt of yours of the 10th inst., asking my opinion as to whether you are authorized by law to offer and sell at public land sale forty or eighty acres of a quarter section of state land without first offering the full quarter section.

The authority to sell the lands of the state is found in Sec. 34 of Chap. 147, Session Laws of the Eleventh Legislative Assembly, a portion of which is as follows:

"The state board of land commissioners may direct the sale of any state lands, except as provided in this act, in such parcel, to actual settlers only, or to persons who shall improve the same, as they shall deem for the best interests of the state and the promotion of the settlement thereof, but no such sale shall be made except at public sale, and as herein provided."

Sec. 37 of the said act provides, in part, as follows:

"Each quarter section, or such portion thereof as belongs to the state, shall be offered for sale separately; smaller lots only may be sold when it is impossible to sell as above described, or when thereby a larger price may be obtained."

From the above quoted portions of the law relating to the sale of state lands it will be seen that it was the intent of the legislature that the largest price and greatest benefit should be obtained through the sale of state lands. However, plain though the intent of the legislature is in the matter, as to the final effect, they have nowhere

indicated how the law is to be administered in this regard. They have charged no person or board with the duty of determining when it is impossible to sell whole quarter sections, or when larger prices may be obtained by selling in smaller tracts; nor have they given any person or board discretion in determining this matter, unless it can be found in that portion of Sec. 34 above quoted. The question, therefore, resolves itself into one of business judgment and administration on the part of the state land board, and you are advised that the law does not specifically authorize you to sell lands in smaller tracts than one hundred and sixty acres, though the state land board might, in its discretion, where it appears that it would be for the best interests of the state, order lands to be sold otherwise. For this reason, such matters should be referred to the state land board for its consideration and approval.

Very truly yours,

D. M. KELLY,
Attorney General.