

State Lands, Assignment of Lease of. Assignment of Lease of State Lands. Quantity of State Land, Which May Be Held by One Person.

Sec. 11 of the Enabling Act fixes a limitation upon the quantity of land which may be sold or leased to one person at not to exceed 640 acres; therefore, no person, company or corporation may acquire or hold by assignment more land than the original lease.

October 25th, 1913.

Hon. Sidney Miller,
Register of State Lands,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of the 24th instant, which reads as follows:

"Am I authorized by law to accept assignments of leases to one person or corporation for more than 640 acres?"

Assuming but not deciding that under existing laws upon the subject a lessee of state lands may make an assignment of his rights thereunder, which should be recognized as valid by the state land commissioners, I am of the opinion that your query should be answered in the negative. Sec. 11 of the Enabling Act reads as follows:

"That all lands herein granted for educational purposes shall be disposed of only at public sale, and at a price not less than ten dollars per acre, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in the support of said schools. But said lands may, under such regulations as the legislatures shall prescribe, be leased for periods of not more than five years, in quantities not exceeding one section to any one person or company; and such lands shall not be subject to pre-emption, homestead entry or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only."

This section fixes a limitation upon the quantity of land which may be sold or leased to any one person or company at a quantity not to exceed 640 acres. A familiar maxim of jurisprudence in this state is to the effect that nothing may be done by indirection which

is forbidden to be done directly, hence if an assignee of leases of state lands acquires any rights at all thereunder, such person, company or corporation may not acquire or hold more land than could the original lessee, viz., 640 acres.

Yours very truly,

D. M. KELLY,
Attorney General.