

Taxation, of Lands Within Irrigation Projects. Irrigation Projects, Taxation of Lands in.

When all things necessary to be done by the homesteader, as a condition precedent to obtaining title, have been completed, such lands are taxable, otherwise his title is not complete and the land not subject to taxation.

December 4th, 1913.

Hon. D. W. Doyle,
County Attorney,
Chouteau, Montana.

Dear Sir:

I am in receipt of your telephonic communication, submitting for my consideration the question of whether

"Lands within irrigation projects provided for by the act of congress, 1910, concerning which the secretary of the interior has not yet made any designation as to the irrigation unit of which the said lands shall belong or which limit shall represent the acreage reasonably required to support a family, are taxable, the proof of residence, improvements and cultivation for five years mentioned in the said act of June 23rd, 1910, having been made?"

A similar question has previously been before this office, and was answered in an opinion to Hon. T. P. Squier, chairman of the board of county commissioners at Forsyth, Montana, and reported in Opinions of Attorney General, 1910-12, page 123, in which it was held that

"The State of Montana cannot tax land under contract of purchase from the United States government until such time as the purchaser has obtained a patent therefor, or has fully complied with his contract of purchase."

From your conversation over the telephone I gather that you have held such lands to be taxable for the reason that they were allowed to be assigned. This conclusion would only be correct in the event that all things necessary to be done by the homesteader had been completed. In other words, when the homesteader has done all of the things required of him as a condition precedent to his obtaining title, and there remains only the act on the part of the government of making out the evidence of the legal title to the lands in which the settler has the full equitable title, then such lands would be taxable by the State of Montana. But if there remain any acts or payments or conditions to be fulfilled on the part of the settler, then his equitable title is not completed, and the land would not be subject to taxation. It is to be noted that the act of June 23rd, 1910, allows an assignment to be made, but subjects the assignee of such lands to all the limitations, changes, terms and conditions of the reclamation act.

You are, therefore, advised that homesteaders in reclamation projects are taxable only when all limitations, changes, terms and conditions prescribed by the reclamation act have been fulfilled, either by the original entry man or his assignee.

Yours very truly,

D. M. KELLY,
Attorney General.