

State Lands, Leases of. Improvements, on State Lands.

When land leased by the state is taken over by the bondsmen of the lessee, the question as to the ownership of the improvements placed thereon by the lessee, is a question entirely between him and his bondsmen.

October 8th, 1914.

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

Dear Sir:

I am in receipt of your communication under date September 5th, submitting three questions as to the right of parties to improvements upon state lands in cases where the lessee defaults in payment of rent, which reads as follows:

"When a lessee of state lands becomes delinquent in the payment of the annual rental and such delinquency continues for more than sixty days and the lease is transferred to a bondsman upon him paying the rental as provided by Section 77, Chapter 147, 1909 Session Laws, does the lessee forfeit all his right, title and interest in any improvements that may be placed upon the land, and if so, to whom are the improvements forfeited?"

"Does the lessee have the right to remove such improvements as are capable of removal, within ninety days or at any time after he forfeits the lease?"

"If the lessee does not forfeit the improvements how and from whom can he recover, after forfeiture and transfer of lease to a bondsman?"

The only provision for payment for improvements upon state lands,

is that found in Sections 61 and 81, Chapter 147 of the Laws of 1909. Section 81, however, refers to the case where a sale of lands formerly under lease is made, and the rule laid down there cannot be taken as a guide in the case of a forfeiture.

The question of the right to the improvements upon leased lands in the case of forfeiture, and a taking over of the lease by the bondsman is a matter entirely between the forfeiting lessee and the bondsman. The state in making a lease, leases the bare land, and takes no note of the improvements which are placed upon the land by the lessee during his tenure. The bondsman upon taking the lease, in case of a forfeiture is not in a position of a new lessee or a purchaser, in as much as no new lease is entered into, and so far as the state is concerned, the bondsman merely stands in the place of the original lessee. This assignment comes by operation of law, and the state is in no wise concerned as to the ownership of the improvements. Under the terms of Section 77, in part as follows:

"In case any lessee becomes delinquent for more than sixty days after notice, the register shall forthwith, unless an extension has been granted, declare a forfeiture of the lease and may eject the lessee from the land."

No provision is made, and we are not told as to any disposition of the improvements.

In answer to your questions, then, I am of the opinion that in a case where the lease is taken over by the bondsman, that the forfeiture or claim to the improvements is a matter between the forfeiting lessee and his bondsman, and that the state's only interest is in seeing that the rent is paid upon the lease as originally made out. The question of the removal of the improvements is one also in which the state would have no interest or authority in deciding. The only action possible under these circumstances, would be an action by the forfeiting lessee against his bondsman for a recovery of the improvements.

Yours very truly,

D. M. KELLY,
Attorney General.