

State Lands, Re-lease of. Re-lease, of State Lands.

Section 2174, Revised Codes of Montana, is not repealed by the provisions of Chapter 147, Session Laws of 1909, and a prior lessee of state lands has a preference right to lease the lands held by him.

November 6, 1914.

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

Dear Sir:

I am in receipt of your communication under date the 5th instant, reading as follows:

"Will you please advise me whether or not that part of Section 2174, of the Revised Codes providing that when there are other offers made for the re-lease of state land, the old lessee shall have the right to lease the land at the highest bid offered, has been repealed? Our present custom is to lease the land to the highest bidder."

The chief difference between the provision of Chapter 147, Session Laws of 1909, relating to leases, and Section 2174, Revised Codes of Montana, 1907, is in the manner in which a prior lessee gives notice of a desire to re-lease lands held by him. The former enactment requires a written application under oath showing the nature and value of the improvements placed upon the land by him. The latter enactment adds the condition that the value shall not be decreased, and reserves in the state the right to sell the land in the same manner as though the lease had not been given. There has been no explicit or express repeal of Section 2174, Revised Codes of Montana, 1907, and since they both deal with the same subject, we must, if possible, construe them together, and give effect to both, in so far as this is possible. This is the rule, even though there is an apparent conflict between the two.

"So far as reasonably possible, the several statutes, though seemingly in conflict with each other, should be harmonized, and force and effect given to each, as it will not be presumed that the legislature in the enactment of a subsequent statute intended to repeal an earlier one, unless it has done so in express terms."

36 Cyc., 1149.

A comparison of these two enactments does not disclose any necessary conflict between them. All that can be said is that the later one changes the method slightly and makes one or two new provisions as to the state's rights, a further argument in favor of the view that the legislature did not intend to repeal that portion of Section 2174, Revised Codes of Montana, 1907, giving a prior lessee a preference right, is the fact that the new enactment is wholly silent upon the subject. We may indulge the presumption, then, that the legislature intended to leave this provision in favor of the prior lessee as the law. I note that you at present lease such lands to the highest bidder. This, I presume, is a regulation adopted by the Board, in as much as I find no provision in the law of 1909, requiring you to call for bids, or even to lease land to the highest bidder when such bids are made.

You are, therefore, advised that Chapter 147, Session Laws of 1909, does not repeal that portion of Section 2174, Revised Codes of Montana, 1907, giving to former lessees a preference right to re-lease lands, and that such provisions of the code of 1907 are still in effect.

Yours very truly,

D. M. KELLY.
Attorney General.