

State Lands, Leases on Unsurveyed. Leases, by State on Unsurveyed Land. School Lands, Unsurveyed, Whether Subject to Lease.

The State does not have any authority either to sell or to lease unsurveyed school sections 16 and 36.

Helena, Montana, October 28, 1915.

Hon. State Board of Land Commissioners,

Helena, Montana.

Gentlemen:

I am in receipt of your letter of the 26th instant, submitting the question:

as to whether the state can legally issue leases on unsurveyed school sections 16 and 36?

It has been repeatedly decided that the state does not have any title whatsoever to Sections 16 and 36 until after survey and the approval of the plat by the Federal authorities, and it has also been affirmatively held by the Supreme Court of Montana that the state does not have any authority to lease such unsurveyed land.

Clemons v. Gillette, 33 Mont. 321, 83 Pac. 879.

This question was also considered in detail in special proceedings reported in Opinions Attorney General, 1910-12, at pages 537 to 544, in which reference is made to the various Acts of Congress, as well as to advice of the Hon. Secretary of the Interior of the United States, in which it is held that the state at most has but an equitable title in Sections 16 and 36 until after survey, and that such equitable title is subordinate to the legal title remaining in the government until after identification of the lands by survey. You are, therefore, advised that a lease by the state of these unsurveyed lands is wholly ineffectual for any purpose whatsoever.

Yours very truly,

J. B. POINDEXTER,

Attorney General.