

**State Board of Land Commissioners, Powers of. State  
Lands, Leasing of. Oil and Gas Leases, Term of. Land,  
Amount Which May Be Leased.**

State laws respecting the leasing of state lands must harmonize with the provisions of the Enabling Act. hence, the State Board of Land Commissioners may not lease lands for gas or oil purposes for a term exceeding five years or in greater amount than 640 acres.

February 17, 1915.

Hon. Sidney Miller,  
Register State Land Board,  
Helena, Montana.

Dear Sir:

I am in receipt of your letter of the 15th instant, wherein you inquire whether the State Board of Land Commissioners is authorized under the present laws to issue leases upon any of the lands granted to the State, for periods of more than five years and in quantities of more

than 640 acres, to one person or corporation, for the purpose of exploring for and extracting coal, oil, gas or other minerals which may be contained upon or beneath the surface of said lands?

You are advised that under the provisions of Section 11 of the Enabling Act, lands granted to the State for educational purposes may be leased under such regulations as the legislature may prescribe for periods not exceeding five years, and in quantities not exceeding one section to any one person or company. The legislature in enacting Chapter 147 of the Laws of 1909, provided:

"If stone, coal, coal oil, gas or other mineral not mentioned herein, be found upon the state land, such land must be leased only for the purpose of obtaining therefrom the stone, coal, coal oil, gas or other mineral, for such length of time, and conditional upon the payment to the register of such royalty upon the product, as the State Board of Land Commissioners may determine."

The general language of this Section, while seemingly lodging in the State Board of Land Commissioners the power to fix the term and size of the leasehold estate, cannot be held to over-ride the provisions of the Enabling Act, which is a limitation on the power of the legislature to enact laws relating to state lands, and also a limitation upon the powers of the State Board to act thereunder. The two provisions must be construed together. The general terms of the law must be held to be qualified by the limitation prescribed by the Enabling Act, and the result is that no person or company may hold state lands under lease for a longer period than five years, or in greater amount than 640 acres.

An oil, gas or coal lease creates an estate in such lands just as effectually as does a lease for grazing or agricultural purposes, and no exception may be made in such cases.

Yours very truly,

D. M. KELLY,  
Attorney General.