

State Lands—Sale of Timber.

The Forestry Department has no right to sell timber less than eight inches in diameter twenty feet from the ground.

July 9th, 1917.

Mr. John C. Van Hook,
State Forester,
Helena, Montana.

Dear Sir:

I have your letter of recent date in which you state:

"The State is in possession of timbered lands, where lodgepole pine, cottonwood, and birch is so crowded that it interferes with its growth, and matures before the average size is gained.

"We have acres of lodgepole pine amounting to millions of feet, which will never grow to the size of saw timber, and is now allowed to mature, decay, and is subject to wind falls, thereby becoming a total loss to the State; as well as a great danger in case of fire to the surrounding timber. This class of timber can be sold for posts, poles and stulls which is now allowed to go to waste."

The question which you have presented is whether or not the Forestry Department would have a right to use its own judgment in the disposition of this class of timber in locations where the thinning process will benefit the surrounding timber, reducing the fire hazard, besides bringing in a revenue to the State.

Section XXI of Chapter 147 of the 1909 Session Laws, relating to the duties of the Forestry Department provides:

"It shall be the duty of the Forestry Board to ascertain the methods of reforesting the denuded forest lands of the state; to prevent forestry waste, and the destruction of forests by fire, to manage the forests of the state on forestry principles, to encourage private owners in preserving and growing timber, and to conserve forest tracts around the head waters and on the water sheds of the water courses of the state." * * *

But Section LIII of the same chapter, as amended by Section 4 of Chapter 118 of the 1911 Session Laws, provides in part as follows:

"Section 53. The State Board of Land Commissioners shall have power to sell timber on state lands at such price per thousand feet as in its judgment shall be for the best interests of the state, but not otherwise; but no such sale of live timber shall be made at a less price than three dollars per thousand feet. But no live timber less than eight inches in diameter, twenty feet from the ground, shall be sold or permitted to be cut. All timber sold or cut from state lands shall be cut and removed, under such rules and regulations for the preservation of standing timber, and the prevention of fires, as the State Board of Land Commissioners shall prescribe." * * *

This Section contained the same restriction which is underlined above before the amendment of 1911.

Section 1 of "An Act to provide for the sale of timber lands belonging to the State," approved March 7th, 1893, Third Session Laws, page 46, was in part as follows:

"The Board of Land Commissioners may sell the timber on lands belonging to the State when the same is liable to waste, as provided in this section, and not otherwise.

"No such timber shall be sold or disposed of unless the same is liable to waste." * * *

This Section became Section 3560 of the Political Code of 1895. But by House Bill No. 226, approved March 5th, 1897, Fifth Session, page 193, this part was amended to read as follows:

"The State Board of Land Commissioners shall have power to sell the timber on State Lands at so much per thousand feet, as in their judgment shall be for the best interests of the State. But no live timber less than eight inches in diameter twenty feet from the ground, except lodge pole pine or bull pine shall be sold."

This Section was carried forward as Section 2213 of the Revised Codes of 1907.

From an examination of the foregoing history of this legislation it will be noticed that in 1909 the legislature deprived the State Board of Land Commissioners of the right to cut or sell lodge pole pine or bull pine. I do not believe, therefore, that the Forestry Department would have a right, as the law now stands, to cut or sell timber less than eight inches in diameter twenty feet from the ground.

Respectfully,

S. C. FORD,

Attorney General.