

**Board of Land Commissioners—Herd District—Lessee—  
State Lands.**

A lessee of state lands may sign a petition to include such land in a herd district, showing that he is a lessee and signing as such, and unless the state, through the Land Board, protests the inclusion, the land may be included in the herd district.

H. V. Bailey, Esq.,  
Register of State Lands,  
Helena, Montana.

My dear Mr. Bailey:

You have requested the opinion of this office upon the following question:

Has a lessee of state lands the right to sign a petition to include such land in a herd district?

The law providing for the creation of herd districts in this state is found in Sections 3384 to 3389, both inclusive, of the Revised Codes of Montana of 1921. The first section provides for the filing of a petition signed by "owners or possessors of fifty-five per cent of the land in such district." That the word "possessors" was intended to include "lessees" is conclusively shown by the last paragraph of that section, wherein it is provided that "should the signature of a lessee appear on the petition creating or abolishing any herd district, the owner or owners of said land may appear either in person or agent and enter their protest," whereupon, the name of such lessee is stricken from the petition. This indicates clearly, we think, an intention on the part of the Legislature to give a lessee of land the right to sign a petition creating or abolishing a herd district including the leased land, and such signature must be accepted unless the owner of the land protests.

The question is therefore whether the state occupies any different status as the owner of leased land proposed to be included in a herd district than is occupied by a private owner. The State Board of Land Commissioners is given the power to lease state lands upon

the terms and conditions as provided for in the statutes (Sections 1882 to 1904, inclusive, R. C. M. 1921), thus the state is in a different position from an individual lessor only in that the individual is at liberty to lease upon such terms and conditions as may be agreed upon between himself and the lessee, while the state cannot enter into a lease of state lands on any terms other than provided in the statutes.

However, the statutes are silent regarding the inclusion of state land held under lease in a proposed herd district.

It is, therefore, my opinion that in that respect the state is in the same position as a private lessor, and that the lessee of state land can sign a petition to include such land in a herd district, showing that he is a lessee and signs as such, and that unless the state, through its Land Board, protests the inclusion, the land may be included.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.