

**Foreclosure—Lands—Sale—School Lands—State Lands  
—State.**

The expression "no land shall be sold for less than the minimum price of ten dollars per acre" has reference only to lands granted to the state for educational purposes by the Enabling Act, and lands, the title to which has been acquired through foreclosure proceedings, are not subject to this provision and may be sold at any price at which they

may be appraised; provided that they are not sold for a sum less than the state was compelled to bid for the same on foreclosure sale, and that there has been a compliance with the other provisions of the statute with reference to sales of public lands.

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

My dear Mr. Bailey:

You have requested my opinion as to whether in those cases where lands under mortgage to the state have been foreclosed and the mortgagor has failed to redeem within the statutory period, the state in selling the lands is required to sell them for the minimum price of \$10.00 per acre. You state that in some instances the amount invested will be more than \$10.00 per acre, but in a great many cases it will be considerably less.

Section 1938, Revised Codes of 1921, as amended by Chapter 94, Session Laws of 1923, provides in part as follows:

"If no other person shall bid the full amount due upon said mortgage, upon such foreclosure sale, with the costs and expenses of foreclosure sale, together with all unpaid taxes thereon and together with interest thereon from the date of judgment and decree, as allowed by law, the Register of State Lands shall bid in the property in the name of the state for the amount due, and all costs and expenses incurred and if the same is not redeemed, as provided by law, the sheriff's deed shall be made to the State of Montana and the said lands thereafter shall be subject to sale and disposal in the same manner as other state lands, but in no case shall such lands be sold for a less sum than the state was compelled to bid for the same on such foreclosure sale."

The question, therefore, arises as to whether the requirement that "the said lands thereafter shall be subject to sale and disposal in the same manner as other state lands" is a requirement that the lands shall be sold for a minimum price of \$10.00 per acre.

Sections 1855, 1856, 1857 and 1858, Revised Codes of 1921, provide the method of sale of state lands.

Section 1855 provides as follows:

"All sales and leasings of state lands shall be conducted by the Register of State Lands. Each quarter-section, or such portion thereof as belongs to the state, shall be offered for sale separately; smaller lots only may be sold when it is impossible to sell as above described, or when thereby a

larger price may be obtained, but no more than one hundred and sixty acres of agricultural land susceptible of irrigation, and not more than three hundred and twenty acres of agricultural land not susceptible of irrigation, and not more than six hundred and forty acres of grazing land or lands which, by reason of altitude, are valuable only as hay land, shall be sold to one person, or company or corporation; and no land shall be sold for less than the minimum price of ten dollars per acre, nor for less than its appraised value."

The question, therefore, is whether the expression here used "no land shall be sold for less than the minimum price of ten dollars per acre" has reference to all lands, or whether it has reference to the minimum as fixed elsewhere by law.

Turning to the provisions of the Constitution, Section 1 of Article XVII provides as follows:

"All lands of the state that have been, or that may hereafter be granted to the state by Congress, and all lands acquired by gift or grant or devise, from any person or corporation, shall be public lands of the state, and shall be held in trust for the people, to be disposed of as hereafter provided, for the respective purposes for which they have been or may be granted, donated or devised; and none of such land, nor any estate or interest therein, shall ever be disposed of except in pursuance of general laws providing for such disposition, nor unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, be paid or safely secured to the state; nor shall any lands which the state holds by grant from the United States (in any case in which the manner of disposal and minimum price are so prescribed) be disposed of, except in the manner and for at least the price prescribed in the grant thereof, without the consent of the United States. Said lands shall be classified by the Board of Land Commissioners, as follows: First, lands which are valuable only for grazing purposes. Second, those which are principally valuable for the timber that is on them. Third, agricultural lands. Fourth, lands within the limits of any town or city or within three miles of such limits; provided, that any of said lands may be reclassified whenever, by reason of increased facilities for irrigation or otherwise, they shall be subject to different classification."

The reference in this section to "lands which the state holds by grant from the United States (in any case in which the manner of disposal and minimum price are so prescribed)" refers to the lands granted the state by the Enabling Act.

Section 11 of the Enabling Act provides in part as follows:

“That all lands herein granted for educational purposes shall be disposed of only at public sale, and at a price not less than ten dollars per acre, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in the support of said schools.”

Here we find the minimum price referred to in Section 1 of Article VII of the Constitution and it clearly applies only to lands granted the state for educational purposes. That this is true is apparent from the fact that the United States granted other lands to the State of Montana for other than educational purposes; for instance, for the building of the various state institutions. (Secs. 12 and 17 of the Enabling Act.)

In *State ex rel. Galen v. District Court*, 42 Mont. 105, 116, the Court said:

“Neither is there any authority in the state to change the terms of the grant without the consent of the Congress of the United States. The framers of the state Constitution did not attempt to do so. They expressly agreed, for the state, not to dispose of any lands granted by the United States in any case in which the manner of disposal was prescribed in the grant, except in the manner prescribed, without the consent of the United States. It is expressly declared in the Enabling Act that the territory of Montana may become the State of Montana ‘as hereinafter provided’; that ‘Sections 16 and 36 are hereby granted for the support of common schools’; that ‘all lands herein granted for educational purposes shall be disposed of only at public sale.’ The Congress is presumed to have had good and sufficient reason for thus restricting the right of alienation, and the state solemnly accepted the conditions.”

In the case of *State v. Cook*, 17 Mont. 529, 536, the Court said:

“We know of no constitutional limitation upon the price for which lands granted by Congress to the state may be disposed of for the erection of public buildings at the capital. The limitation created by the Enabling Act relates to lands granted for educational purposes.”

It is apparent that the expression as used in Section 1855, “no land shall be sold for less than the minimum price of ten dollars per acre,” has reference solely to lands granted for educational purposes, the minimum price of which was fixed in the Enabling Act granting the land. Had this section been intended to mean all state lands, from whatever source title may have been derived, the ex-

pression "shall not be sold for less than ten dollars per acre," or "shall not be sold for less than a minimum price of ten dollars per acre" would have been used.

It is, therefore, my opinion that the expression "no land shall be sold for less than the minimum price of ten dollars per acre" has reference only to lands granted to the state for educational purposes by the Enabling Act, and that lands, the title to which has been acquired through foreclosure proceedings, are not subject to this provision and may be sold at any price at which they may be appraised; provided, that they are not sold for a sum less than the state was compelled to bid for the same on foreclosure sale, and that there has been a compliance with the other provisions of the statute with reference to sales of public lands.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.