

### State Elevators—Grain Storage—Lease — Agricultural Department.

The State of Montana has authority to lease property outside the state for grain storage space providing the state in which the land is situated makes no objection and providing that this state subjects itself to the laws and regulations of the other state.

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Chairman, Senate Agricultural Committee, and  
W. S. McCormack, Esq.,  
Chairman, House Agricultural Committee,  
Helena, Montana.

Gentlemen:

You have requested my opinion as to whether the State of Montana, through the State Department of Agriculture, may lease and supervise grain storage space at a terminal market outside the State of Montana.

A solution of this question involves a determination of the following questions:

First: Is the plan proposed one that "the public good may require" within the meaning of Sec. 1, Art. X, of our Constitution?

Second: May a state hold property in another state for any purpose?

The answer to the first question involves an interpretation of Section 1 of Article X of the Constitution of this State, which provides as follows:

"Educational, reformatory and penal institutions, and those for the benefit of the insane, blind, deaf, and mute, soldiers' home, and such other institutions as the public good may require, shall be established and supported by the state in such a manner as may be prescribed by law."

The Supreme Court of this State in the case of *State ex rel. Lyman v. Stewart*, 58 Mont. 1, in speaking of this provision of the Constitution, said:

"This language is broad enough in its scope to include any sort of an institution which the Legislature in its discretion may determine the public good requires. Therefore, whether the authority of the Legislature to establish and provide for the support of any public institution by the state is to be found in this clause of the Constitution or in its general police power, there can be no doubt that it exists."

The question involved in the Lyman case was whether the State may, under its police power, lawfully engage in the business of operating a grain elevator in this State for the benefit of the public, as provided by Chapter 150 of the Laws of 1917 and Chapter 204 of the Laws of 1919. The legislation was upheld as a valid exercise of the police power of the State.

To the same effect are the cases of *Green v. Frazier* (N. D.), 176 N. W. 11, and *State ex rel. Lyon v. McCown* (S. C.), 75 S. E. 392.

It is generally known that, as a result of the system of grading, weighing and dockage at terminal markets, the farmers of Montana receive inadequate prices for their grain. The operation of a terminal grain storage space by the State of Montana will, if properly managed, tend to secure to the Montana farmers a just and equitable means of grading their grain at terminals, and to eliminate many of the causes for inadequate prices of grain and thus promote the interests of the farmers of this State.

It is an admitted fact that farming is one of the basic industries of the State, and, upon the prosperity of the farmer, depends to a large extent the welfare of all of the people of the State. It is, therefore, my opinion that legislation, which has for its object and purpose the establishing of an institution for the promotion of the general welfare and prosperity of the farmers such as that contemplated, is authorized by the constitutional provision set forth hereinabove, and that such an institution is one that the public good may require within the meaning of the constitutional provision.

The second question involved is more difficult of solution. There is a dearth of decisions bearing upon the right of the state to lease or hold property in another state, but I see no reason why this can not be done, providing the other state consents thereto, and providing further, that this state shall in so doing subject itself to the laws of the other state.

It is, therefore, my opinion that the State of Montana may lease property in Minneapolis or at any other point outside of the state for the purpose stated in your question, providing the state in which the land is situated makes no objection, but consents thereto, either tacitly or otherwise, and providing further that this state in doing so, subjects itself to all the laws and regulations of the other state the same as any private individual.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.