

State Lands—Mortgage Foreclosures.

Chapter 94, Laws of 1923, construed as authorizing the sale of lands acquired by the state under mortgage foreclosure proceedings, and the Act is held to be constitutional.

H. V. Bailey, Esq.,
Register State Lands,
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My dear Mr. Bailey:

You have requested my opinion as to the constitutionality of Chapter 94 of the Laws of 1923, which amends Section 1938, Revised Codes of Montana, 1921.

Section 2 of this Act amends Section 1938 by adding thereto a provision permitting the sale of lands, acquired by the state under mortgage foreclosure proceedings, to the original mortgagor of said lands, his heirs, legatees, or other interested persons of record, under certain conditions and upon certain terms. Under the provisions of Section 1938, as thus amended, the mortgagor, his heirs, legatees or any other interested person of record, at any time before the expiration of ninety days after the time for redemption has expired, may apply to the State Board of Land Commissioners to repurchase the land, and such application shall be given precedence over any other

application to purchase such land. The applicant must pay for such land the full amount paid by the state on the sale under the foreclosure proceedings, together with interest thereon at the legal rate, fifteen per cent of such amount being paid when such application is accepted, and the remainder being paid on the amortization plan during a period of not to exceed thirty-five years, with interest at 5% per annum. When the application is accepted and the fifteen per cent is paid, a certificate of purchase is issued the applicant, and when all payments have been made he receives a deed from the state.

I presume your question regarding the constitutionality of the Act is prompted by the provisions of the Enabling Act, and of our Constitution, which contain certain limitations and restrictions on the method and manner of disposal of the lands granted to the state on its admission to statehood, and the price at which such lands may be sold. Such provisions, however, have no application to lands other than those granted by the Enabling Act, and as the lands to which the bill in question applies are not derived by the state by way of any grant contained in the Enabling Act, but are derived by the state from a source altogether different, none of the provisions of the Enabling Act or of the Constitution with reference to granted land have any application whatever to the lands acquired under these mortgage foreclosures. As to these lands the Legislature has full power and authority to prescribe the manner and method by which they shall be sold, and this the Legislature has done by the Act in question.

It is, therefore, my opinion that Chapter 94 of the Laws of 1923 is in all respects constitutional.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.