

Land Board—Leases—Rental—State Lands.

House resolution No. 2 is not binding upon the land board in fixing a minimum rental for either grazing or agricultural lands per section or by the acre. The minimum rental at which such lands may be leased by the board is not less than five per centum of the appraised value which means the full market value of the lands for such purposes.

I. M. Brandjord, Esq.,
Register of State Lands,
Helena, Montana.

May 2, 1925.

My dear Mr. Brandjord:

You have submitted to this office your difficulties in reconciling certain provisions of the enabling act, the constitution and the statutes, with the action of the land board as directed by house resolution No. 2 relating to minimum rental fees on agricultural and grazing land.

As I understand your question it is: What is the legal basis for determining the amount of rental on state lands classified as grazing and agricultural?

House resolution No. 2, introduced by Holton and Waite, relates to grazing fees and recommends that a minimum grazing fee of \$40.00 per section per year be charged, and a minimum agricultural rental of 50c per acre per year. The resolution states:

"It is believed that if this recommendation is adopted and authorized that it will result in greatly increasing revenues from the state lands and also will be of great benefit to the people engaged in agricultural pursuits and to the livestock industry."

The resolution provides for serving a copy upon the state board of land commissioners, the register of state lands, and the state land agent.

The purpose of the resolution is not clear. No one will contend that a resolution adopted by either or both houses of the legislative assembly becomes a law.

Section 19 of article V of the constitution provides:

"No law shall be passed except by bill."

Section 20 of article V provides:

"The enacting clause of every law shall be as follows: 'Be it enacted by the legislative assembly of the state of Montana.'"

Section 22 of this article provides:

"No bill shall be considered or become a law unless referred to a committee, returned therefrom, and printed for the use of the members."

Section 24 of this article provides:

"No bill shall become a law except by a vote of a majority of all the members present in each house, nor unless on its final passage the vote be taken by ayes and noes, and the names of those voting be entered on the journal."

The resolution, therefore, did not become a law and is merely advisory and not binding upon the board.

You have called attention to the provisions of section 1 of article XVII of the constitution, which provides:

"and none of such land, (land granted to the state or acquired by gift, grant or devise) nor any estate or interest therein, shall ever be disposed of except in pursuance of general laws * * * nor unless the full market value of the estate or interest disposed of, * * * be paid."

This section of the constitution also classifies land into four classes: First, lands valuable for grazing; third, agricultural land.

Section 2 of article XVII provides that the lands of the first class (grazing) may be sold or leased under such rules and regulations as may be prescribed by law and that agricultural lands may be either sold or leased under such rules and regulations as may be prescribed by law.

A leasehold interest is clearly an estate or interest in land (*Wheeler vs. McIntyre*, 55 Mont. 295, 301) and, therefore, within the requirement that it cannot be disposed of for less than the full market value.

Section 1883, R. C. M. 1921, provides:

"no land shall be leased for a longer period than five years, nor for a less rental than the minimum rental fixed by the board, which shall not be less than five per centum per annum of the appraised value of such lands."

The minimum price at which certain lands granted to the state may be sold was fixed in the grant and the state cannot dispose of these lands for less than the minimum price, but there is no limitation on the state as to the price at which they shall be leased.

Section 11 of the enabling act, after prescribing a minimum of \$10.00 per acre for lands granted by this act, provides:

"But said lands may, under such regulations as the legislature shall prescribe, be leased for periods of not more than five years, in quantities not exceeding one section to any one person or company."

The only limitation, therefore, on the price at which lands may be leased is the limitation of the full market value contained in section 1 of article XVII, and the provisions of section 1883 which fixes the minimum rental at not less than five per centum of the appraised value of the land.

The full market value of lands for either agricultural or grazing purposes can only be determined by comparison with the market value of other similar lands, and their market value for either agricultural or grazing purposes would, therefore, depend upon the demand for such lands and the price at which similar lands could be leased. It would follow that the board could not adopt an arbitrary minimum rental for grazing lands or agricultural lands without first fixing the market value of such lands for such purposes.

It is, therefore, my opinion that house resolution No. 2 is not binding upon the land board in fixing a minimum rental for either grazing or agricultural lands per section or by the acre, but that the minimum rental at which such lands may be leased by the board is not less than five per centum of the appraised value which means the full market value of the lands for such purposes.

Very truly yours,

L. A. FOOT,
Attorney General.