

State Forests—State Lands—Sale.

State lands within a state forest which are chiefly valuable for forest growth and water-shed protection are not subject to sale by the state land board.

R. P. McLaughlin, Esq.,
State Forester,
Missoula, Montana.

January 19, 1926.

My dear Mr. McLaughlin:

You have requested an opinion whether the state of Montana can sell any of its lands which are classified as forest lands and which under the provisions of chapter 179, laws of 1925, are chiefly valuable for timber production and water-shed protection.

You state that you have an application to purchase the land surrounding Fish lake in the Stillwater state forest. These areas are state forest lands belonging to the state of Montana and have been definitely set aside for state forest purposes under the provisions of sections 1907 and 1908 of the revised codes of 1921. And further, they have been permanently set aside as part of the Stillwater state forest by the provisions of chapter 179, laws of 1925.

The constitution provides in section 4 of article XI that the state board of land commissioners has "the direction, control, leasing and sale of the school lands of the state, and the lands granted for the support and benefit of the various state educational institutions, under such regulations and restrictions as may be prescribed by law."

Section 1 of article XVII of the constitution provides:

"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 further provides:

"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."

Section 2 of article XVII provides:

"The lands of the first of said classes may be sold or leased, under such rules and regulations as may be prescribed by law. The lands of the second class may be sold, or the timber thereon may be sold, under such rules and regulations as may be prescribed by law."

It is apparent from the foregoing provisions of the constitution that the method of disposition of state lands was not definitely fixed by the constitution.

In 1925 the legislature passed an act (chapter 179) entitled:

"An Act to Create State Forests; to Provide for Their Use, Management, Control and Disposition; * * *."

Section 1 of this chapter provides:

"That all lands at present owned by the state of Montana, and all that may hereafter be acquired by the state through escheat, exchange, purchase, grant or devise, which are principally valuable for the timber that is on them, or for the growing of timber or for watershed protection, are hereby classified and designated 'state forests' and reserved for forest production and watershed protection."

Section 2 of the act then designates the number of state forests, and section 4 provides:

"Under the direction of the state board of land commissioners, the state forester may sell the timber crop and other crops of the forests, after examination, estimate, appraisal and report, * * *."

It is apparent from the provisions of chapter 179, laws of 1925, that the legislature has adopted a policy of establishing state forests which shall not be disposed of, but shall be maintained for the timber and other crops that may be grown thereon, and that until such act is repealed the state board of land commissioners has no authority to sell lands which have been included by the legislature in state forests.

The land in question, being within a state forest, is not subject to sale at this time.

Very truly yours,

L. A. FOOT.

Attorney General.