

State Forester—Sales—Timber—Wood.

Sales of small quantities of dead or down timber, or of a limited quantity of green timber, for domestic use may be made to farmers or prospectors at less than market value, without violating article XVII of the constitution.

Rutledge Parker, Esq.,
State Forester,
Missoula, Montana.

June 17, 1927.

My dear Mr. Parker:

Your letter addressed to I. M. Brandjord, register of state lands, has been referred to me for opinion on the following statement of facts:

“It has been the practice of this department for many years to issue free permits for dry wood to citizens of Montana; also green timber in small amounts for domestic use has been sold at rates below the actual, commercial value. In doing this we have been guided by laws enacted by the state legislature and the wishes of the state land board.

“It now appears that there is some question whether these laws are in conflict with article XVII of the constitution, and that our past practice of issuing free permits and granting reduced rates on timber, by authority of the state land board, is in error.”

The question raised is in regard to the constitutionality of section 7 of chapter 179 of the session laws of 1925, which section authorizes free permits for dead and down timber in such quantities and under such regulations as the state board of land commissioners may approve for fuel and domestic purposes to residents and settlers of the state, and authorizes permits for cutting and removing timber to farmers, ranchers and prospectors, with such restrictions and regulations as the board may approve, for timber in quantities of 25,000 board feet or less, where it is to be used for domestic purposes in the repairing and development of the ranch, farm or mine, providing that not to exceed 25,000 board measure shall be granted in any one year, and that the rate charged shall be fixed by the board.

Is this section in conflict with article XVII of the constitution of Montana? This article provides:

“* * * and none of such land, nor any estate or interest therein, shall ever be disposed of except in pursuance of gen-

eral 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: * * *”

If it is assumed that a particular tract of dead or down timber has an actual commercial value and the small quantities of growing timber in the particular location covered by the permit have a definite market value, then it must be conceded that a permit for less than the actual commercial value of the timber is in violation of this article, unless there are other justifiable reasons for legislative discretion in favor of the class favored by section 7, supra. Because such timber may have a market value in one location, because sufficient in quantity, quality or accessibility to be commercially valuable, is no indication of the value of the same forest material in another location, where it is inaccessible or insufficient in quantity or quality to justify commercial use.

No one can walk through the forest without being impressed with the enormous quantity of dead and down timber going to waste because it has no commercial value in its particular location. Because the farmer, rancher or prospector who resides in the immediate locality of such forest material, and who is not otherwise employed, can make use of a small quantity of this material for fuel or other purposes, is no reason why he should be required to pay a theoretical value for it without violating the constitutional provision referred to. It is very often the case that the material is of no value to anyone else, because the cost of getting it out and transporting it to market far exceeds its commercial value for fuel purposes.

The same is true of small quantities of green timber. In many cases the quantity available, or the quality, or the location of it, would make it unmarketable at any price; furthermore, the good will and friendly cooperation of those who live in and near the forest, if it can be obtained by the apparent concession made by this section, is of far more value to the state as a protection to the forest than the full market value, where it has any actual commercial value, and would more than offset any theoretical or arbitrary valuation placed thereon were it in such location, quantity and quality to give it a definite value for commercial use generally.

It is therefore my opinion that the discretion given the state for-ester and the state board of land commissioners by section 7, supra, does not violate the article of the constitution referred to.

Very truly yours,

L. A. FOOT,
Attorney General.