

Northern Montana Agricultural and Manual Training School — Agricultural Experimental Sub-Station — Sales — Gravel — Purchasing Agent — Funds — General Fund.

The purchase of the land by the State from the United States, constituting a part of the Fort Assiniboine Military Reservation, was for the benefit of the Northern Montana Agricultural and Manual Training School.

Sale of gravel from that part of the land occupied by the Agricultural Experimental Sub-Station was without authority of law. Proceeds from said sale should be credited to the Northern Montana Agricultural and Manual Training School fund, and not to the general fund, nor to the Experimental Sub-Station.

Melvin A. Brannon, Esq.,
Chancellor of University of Montana,
Helena, Montana.

April 19, 1930.

My dear Chancellor Brannon:

With reference to the file which you submitted relating to the sale of gravel from the section of land purchased by the State from the United States, constituting a part of the Fort Assiniboine Military Reservation, I beg to advise that I have examined the file and the statutes relating thereto, and report as follows with reference to the question of what fund should be credited with the moneys received from the sale of the gravel.

Sections 917 to 925, both inclusive, of the Revised Codes of Montana of 1921, which constituted the first enactments relative to the purchase of the land and the establishment of the Northern Montana Agricultural and Manual Training School and the Agricultural Experimental Sub-Station on said land, provided that the State board of education should take possession and control of all the lands and build-

ings and that an executive board should have the immediate direction and control of the affairs of the school, subject to the general supervision and control of the state board of education, while the Experimental Sub-Station was established under the direction of the directors of the Montana Agricultural Experimental Station, and under the general control of the State board of education.

In 1925, the legislature amended Sections 917, 918 and 921, and enacted other legislation so that provision was made for the local executive board to take possession and control of that part of the property which was not under the control of and being used by the Agricultural Experimental Station. Said board is authorized, with the consent and approval of the state board of examiners, to sell and dispose of any of the property as it may deem advisable "to prevent loss due to deterioration or other causes." The proceeds received from such sale "as well as any other moneys received for said school from any other source," are to be deposited with the State treasurer and credited to the Northern Montana Agricultural and Manual Training School fund for the support of said school.

I gather from the file submitted that the gravel was taken from that part of the land which was under the control of, and being used by, the Experimental Sub-station. It will be observed that the local board was not authorized to take control of this land being used by the sub-station, nor did the board have any authority to sell any property that was under control of or used by the Experimental Sub-station, nor could said board sell any of the property at all over which it did have jurisdiction, except for the purpose of preventing "loss from deterioration or other causes." It is therefore apparent that the local board would have no authority to sell this gravel.

This land that is used by the Experimental Sub-station is under the control of the State board of education, and that board, like all other boards and officers who are given control of the State's property for specific purposes, is a trustee of the property for the uses and purposes mentioned in the statute, and in dealing with the property it must always find its authority to do so in the law. I fail to find anything in the law which would warrant the board of education, or anyone else, selling this gravel.

Apparently it was assumed that the purchasing agent had the authority to sell it under the purchasing agent act, but in my opinion he did not have such authority. At the time this contract was entered into the gravel was a part of the real estate and remained so until severed from the land. It was, therefore, a contract creating a right in real estate which the purchasing agent had no right to create. His rights under the purchasing agent act insofar as selling property is concerned, are confined to the things mentioned in the act, among which is not to be found real property.

If this was properly sold by the purchasing agent, under the terms of that act, the money would go into the general fund. As he did not have the authority to sell it, and as no one else apparently had the

right to do so, then the State has money which the law did not contemplate it would ever receive, and consequently there is no specific direction in the statute as to what shall be done with it.

It is apparent from the history of the legislation that the school was established for the purpose of fulfilling certain conditions upon which the acquisition of the land in question depended and that the Experimental Sub-station was established to operate in connection with said school, and eventually to be taken over entirely and be operated by the school as part of its activities, though as yet that has not been accomplished. There is nothing in the legislation which indicates that the sub-station has any right in the land or buildings occupied by the sub-station other than the right of occupancy for the purpose of conducting a sub-station. On the other hand, the school appears to be the direct beneficiary of the property, as it is made plain that any of it that is sold in accordance with law shall be sold for the benefit of the school.

While, as stated above, in my opinion, no one had the right to sell this gravel, nevertheless, it has been sold. The right of occupation does not give rise to ownership of the property occupied, nor does it create any right to appropriate the proceeds to the occupant's use when the property is sold, especially when, as appears here, the sale was made with the consent of the occupant. When this property was sold with the sub-station's consent it ceased to be used by the sub-station for the purposes for which it was founded, and therefore, the proceeds which now stand in the same position as the property itself have passed from the control of the sub-station to the local board, as that board is entitled to the control of all the property except that used by the sub-station.

As it appears that the intention of the legislature was that the school should be the beneficiary of the property itself, it follows, in my opinion, that these proceeds from the sale of this gravel should be credited to the Northern Montana Agricultural and Manual Training School fund.

Very truly yours,
L. A. FOOT,
Attorney General.