

Opinion No. 276**Forests—Stumpage—State Lands, Exchange of—State Board of Land Commissioners.**

HELD: The state may not exchange stumpage for other lands from which the timber has been partially removed.

The determination of whether or not certain lands are of equal value to others proposed to be exchanged is vested in the State Board of Land Commissioners' discretion.

July 18, 1933.

You request my opinion relative to the exchange of privately owned timber lands for lands of the state in accordance with Chapter 180 of the Laws of

1931. You first ask whether or not the state may exchange stumpage (or, as I understand it, the right to remove timber from certain lands) for other lands from which the timber has been partially removed.

We are of the opinion that this in effect means the exchange of timber for lands and is not an exchange of lands as contemplated by the statute and that such an exchange cannot lawfully be made.

You next inquire whether it is necessary that the lands of the same class be exchanged, that is, whether cutover lands must be exchanged for cutover lands.

The statute is not entirely definite upon that point. It does provide that the state "in exchange therefor may convey not to exceed an equal value of similar land owned by the State of Montana." A discretion is vested in the State Board of Land Commissioners in making such exchange. This discretion must give considerable power to the board in their determination as to what are lands of similar character. Their discretion should be very carefully exercised but we could not fix the limits beyond which they should go in determining this matter.