

Opinion No. 131.**State Lands—Patent—Fee—Commissioner of State Lands.**

HELD: The commissioner of state lands must collect a fee of \$5.00 for issuing a patent to state lands even though the contract of purchase was entered into before Chapter 60, Laws of 1927, became law.

June 28, 1935.

Hon. I. M. Brandjord
Commissioner of State Lands
The Capitol

You submit the following question: In the year 1915, the party contracts to purchase lands from the State of Montana; patent for said lands is to issue several years later. At that time the statute provided for a charge or fee of \$2.00 for the issuing of a patent. (Section 6, Chapter 147, Laws of 1909, later codified as Section 1823, Laws of 1921.) This statute was repealed and by Section 120, Chapter 60 of the

Laws of 1927, the Commissioner of State Lands was required to charge \$5.00 for the patent to any land sold. The question is, shall the commissioner of state lands collect a charge of \$5.00 for a patent to be issued in 1935?

The question appears to be answered in an opinion given by Attorney General Albert J. Galen in Volume 3, Opinions of the Attorney General, page 110. His opinion contains the following statement in relation to the patent fee:

"Such fees are in the nature of a tax to pay for the services of the officer in issuing patents, and are credited to a fund for the purpose of reimbursing the state for the salary and expenses of the officers whose duty it is to issue such patents. (Paige on Contracts, p. 1748.)

"It does not impair the obligations of the contract theretofore entered into for the sale of the land, or affect any vested rights under such contract."

It seems similar to the right of a corporation, the taxes of which are fixed in its articles of incorporation, which is a contract. Additional taxes may be later imposed. (Fletcher on Corporations, Section 6911; *Ft. Smith & W. R. Co. v. Black et al.*, 165 Pac. 174.) It, therefore, appears that it is your duty to collect the \$5.00 charge for a patent as required by the present statute.