

Opinion No. 362.

State Lands, Exchanges—State Board of Land Commissioners—State Water Conservation Board.

HELD: The State Board of Land Commissioners does not have the authority, express or implied, to exchange land with the State Water Conservation Board.

October 8, 1936.

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

I have your letter of October 2, raising the question of the authority of the State Board of Land Commissioners to exchange State school land for land owned by the State Water Conservation Board.

The State Board of Land Commissioners was created by the provisions of Section 4 of Article XI of the State Constitution. The said board has control over State lands "under such regulations and restrictions as may be prescribed by law." The lands granted the State by Congress must be held in trust for the people to be disposed of for the respective purposes for which they are granted. (Section 1 of Article XVII of the State Constitution). The lands granted by Congress under the provisions of The Enabling Act of the State of Montana "may be exchanged for other lands, public or private, of equal value and as near as may be of equal area." The authority of the State to exchange lands granted by Congress for other lands did not exist until the amendment of Section 11 of the

Enabling Act approved May 7th, 1932 and accepted by the State of Montana through the Twenty-third Legislative Assembly. (Chapter 84, Laws of 1933).

Lands granted to the State by Congress may not be disposed of except in pursuance of general laws providing for such disposition. (Section 1 of Article XVII of the State Constitution, Section 11 of the Enabling Act.) General laws have been passed providing for the exchange of timbered lands or lands from which timber has been cut or burned. These laws were enacted by the legislature in 1931 in contemplation of the amendment of Section 11 of the Enabling Act and appear as Sections 1995.1 to 1995.6, inclusive, Revised Codes of Montana, 1935. Section 1805.19, Revised Codes of Montana, 1935, gives authority to the State Board of Land Commissioners to exchange lands with counties and, in certain instances, with the federal government. No legislation has been enacted by the legislature which authorizes the State Board of Land Commissioners to dispose of state lands by exchange with the State Water Conservation Board.

Generally speaking, the powers of public officers and boards are limited by the Constitution or by statute, and their acts, to be valid, must find warrant in the law, either expressly or by fair implication. (21 Cal. Jur. 372, 46 C. J. 1031, 22 R. C. L. 455). Concerning the power of the State Board of Land Commissioners the Montana Supreme Court in the case of Leuthold v. Brandjord, et al, 100 Mont. 96, 106, 47 Pac. (2nd) 41, has said: "The paramount law, it is true, vests the control over state lands in the state board as the instrumentality to administer the trust in such manner 'as to secure the largest measure of legitimate advantage to the beneficiary of it. To that end, and of necessity, the board must have a large discretionary power over the subject of the trust.' (State ex rel. Gravely v. Stewart, 48 Mont. 347, 137 Pac. 854, 855; Rider v. Cooney, supra). But wherever such control is mentioned in the Enabling Act and in the Constitution, it will be noted that it is specifically declared that the control and management are subject to such rules and regulations as are prescribed by the legislature."

No legislation provides for the disposition of State lands by exchange except those statutes relating to exchange of timbered, cut over or burnt over lands and those relating generally to exchange of lands with the United States and with counties as stated above. In my opinion the State Board of Land Commissioners does not have the authority, express or implied, to exchange land with the State Water Conservation Board. In view of the fact that no general law exists which provides for the disposition of State lands in such a manner it seems that such procedure would be directly contrary to the clear mandate of the State Constitution and of the Enabling Act.