

Opinion No. 204.**State Lands—Leases—Renewals.**

HELD: Where there are other applicants for a lease of lands under lease the current lessee's rights are fixed by Sections 1805.20 and 1805.35 and he has only preference rights. In such a Case Section 1805.21 has no application.

February 23, 1940.

Mrs. Nanita B. Sherlock
Commissioner of State Lands
The Capitol

Dear Mrs. Sherlock:

You have submitted the following facts for my opinion:

A has a lease on state lands, which expires February 28, 1940. He desires to renew his lease, and, within the thirty day period, before the expiration thereof, made application for renewal. On February 3, 1940, B applied for a lease on the same lands. Query: Is A entitled to a renewal of the lease on the terms of the old lease or is he merely entitled to a preference right to the extent that he may take the lease at the highest bid made by any other applicant?

The pertinent sections of our statutes are: Section 1805.20, R. C. M., 1935:

“* * * In all cases where there is only one qualified person offering to lease any one tract of land, the lease shall be issued at the minimum rental as determined under the provisions of this Act, but if there are two or more persons desiring to lease the same tract, then the lease shall be issued to the highest bidder, subject, however, to the preference right of a former lessee as provided in this Act. * * *”

Section 1805.21 Id., as amended by Chapter 65, Laws of 1939:

"A lessee who has paid all rentals due from him to the state and not violated the terms of his lease may be entitled to have his lease renewed at any time within thirty (30) days prior to its expiration for an additional period of not exceeding ten (10) years."

Section 1805.35 Id.:

"The holder of a lease to state lands, who has paid his rentals when due and has not in any way violated the provisions of his lease, shall at the expiration of such lease have the preference right to lease the lands covered by his former lease to the extent that he may take the lease at the highest bid made by any other applicant."

The rights of the current lessee of state lands are fixed by these sections. Only when there are no other applicants for the same lands does the current lessee have a right to renewal on the same terms. In such a case he must exercise his right within thirty days prior to the expiration of the lease as provided by Section 1805.21.

Whenever there are other applicants before the expiration of the lease, Section 1805.21 has no application and the rights of the current lessee are fixed by the last half of the above quoted sentence in Section 1805.20 and Section 1805.35, supra. In such case he has only a preference right. We think such conclusion is necessary from the wording of the statutes themselves. Moreover, unless such is the meaning thereof, the state could never obtain a better value for its leased lands as long as a current lessee wished to renew it and made his application within 30 days prior to the expiration of the lease. Any other conclusion must logically lead to that result. A statute accomplishing such a purpose would be contrary to Section 1, Article XVII of the Montana Constitution, which reads:

"All lands of the state that have been, or that may hereafter be granted to the state by congress, and all lands acquired by gift or grant or devise, from any person or corporation, shall be public lands of the state, and shall be held in trust for the people, to be disposed of as

hereafter provided, for the respective purposes for which they have been or may be granted, donated or devised; and none of such land, nor any estate or interest therein, shall ever be disposed of except in pursuance of general 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; * * *."

We call attention to the language of our Supreme Court in *Rathbone v. State Board of Land Commissioners*, 100 Mont. 109, 122, 47 Pac. (2) 47, where Justice Matthews, speaking for the court, said:

"There is no question but that the state board, in the discharge of its trust, should, when leasing these state lands, 'secure the largest measure of legitimate advantage to the beneficiary of it.' (*Rider v. Cooney*, 94 Mont. 295, 23 Pac. (2) 261, 263.) Nor can it be successfully maintained that the board has power or authority to renew an expiring lease at the noncompetitive leasing price when there is another applicant willing and able to pay a higher rental, for the statutory rate is recognized as the 'full market value' which has been ascertained 'in the manner provided by law,' as required by Section 1, Article XVII, of the Constitution (*River v. Cooney*, supra), only when there is no competition. (Chap. 42, Laws 1933.)"

It is our opinion therefore that on the facts stated, A's rights are determined by Sections 1805.20 and 1805.35 and that he has only the preference right to lease the lands covered by his former lease to the extent that he may take the lease at the highest bid made by any other applicant.