

## Opinion No. 262.

**Public Welfare—State Board of—Montana Relief Commission, Contracts of, Assumed by Welfare Board—Sale or Other Distribution of Property.**

HELD: The State Board of Public Welfare having assumed the contracts and obligations of the Montana Relief Commission, may revoke or terminate said agreements, as provided by said contract.

2. Personal property owned by the State Board may only be sold or otherwise disposed of under authority of the State Purchasing Agent and with the consent of the Governor.

September 24, 1940.

Mr. I. M. Brandjord, Administrator  
State Department of Public Welfare  
Helena, Montana

My dear Mr. Brandjord:

You have requested my opinion on the following question:

"May the State Board of Public Welfare terminate a certain agreement entered into on the 17th day of August, 1934, between Judith Basin County and the Montana Relief Commission, whereby the Montana Relief Commission obtained 'the free and unrestricted use' of certain lands in Judith Basin County for the purpose of constructing and operating a well for public use thereon, and transfer to Judith Basin County without any cash consideration at all the property rights acquired by the Montana Relief Commission under the said agreement and also transfer without cash consideration its rights in the well constructed on the said land and in the equipment placed thereon for the operation of the well?"

You advise that in accordance with this agreement, the Montana Relief

Commission proceeded to drill and did drill a well in cooperation with the Federal Government; that the well produced a goodly quantity of water which was used for the purposes stated in the agreement; that the well in question still produces, but is no longer being used, or is needed for the general purposes mentioned in the agreement.

The Montana Relief Commission was created by act of the Twenty-third Legislative Assembly, 1933. This commission, as appears from the title of the Act (Chapter 45), was created for the purpose of administering relief funds advanced by the Reconstruction Finance Corporation of the United States, to relieve distress among the inhabitants of the state caused by the depression. In the Extraordinary Session of the Twenty-third Legislative Assembly, an institution was created and designated "Emergency Relief" for which was set up an Emergency Relief Fund into which was placed all money provided by the legislature. By this Act, Chapter 20, Session Laws of 1933-34, Twenty-third Extraordinary Legislative Assembly, the Montana Relief Commission was empowered and authorized to administer said fund. By neither of these acts was the commission authorized to acquire title to property. The apparent intent of the legislature in both these acts was to create an agency to function during the emergency only. It was not intended that such agency should be of a permanent character.

The agreement here in question was entered into during the life of this commission in order to carry out the purpose for which it was created, to wit, the relief of distress, in this instance, distress caused by drought. The only right acquired by the commission through this agreement was that specifically stated therein, to wit, the right of the free and unrestricted use of the property for the purposes of drilling and constructing a well to provide water for livestock, and domestic use, so long as the drought continued. By the terms of the agreement the commission was given the right to "terminate, abandon or revoke the agreement," and it was specifically provided therein that the agreement "shall continue in full force and effect as long as the area in which the above described property is located and suf-

fers from the drought, and as long as it is necessary to drill and construct wells and/or reservoirs to relieve distress resulting from said drought, and/or as long as there is water available from said well and/or wells and/or reservoir and/or reservoirs located upon the above described premises for general public domestic use for the general use of livestock." From this language of the agreement, it is quite apparent that there was no intent on the part of either party that any title either by fee or less, should pass. We must conclude, therefore, that no title to real property passed by virtue of this agreement, but only a right of use of real property for a specific purpose and a limited time.

The State Board of Public Welfare acquired whatever rights, liabilities or obligations were created by this agreement by virtue of the provisions of sub-section (f), Section II, Part I of Chapter 82, Laws of 1937, the act creating the State Department of Public Welfare. Therefore, in the agreement here in question, the State Board of Public Welfare was substituted for the Montana Relief Commission as one of the parties thereto, and acquired all rights under said agreement given to the commission.

The purpose of the agreement having long since been accomplished, the State Board of Public Welfare may exercise the right granted by said agreement and abandon, revoke or terminate the same, either with or without a cash consideration.

You advise that certain equipment was placed on said land, and you ask if such may be turned over to the County Commissioners of Judith Basin County, without any cash consideration.

This equipment constituted personal property and was acquired by the State Board of Public Welfare by virtue of sub-section (f), Section II, Part I, Chapter 82, Laws of 1937, and the title thereto became vested in the State of Montana, for the use and benefit of the Department of Public Welfare.

This office has heretofore held that under the provisions of Section 293.4, R. C. M., 1935, the state purchasing agent, with the consent and approval of the Governor, has the exclusive right to sell or dispose of, or authorize the sale or other disposition of personal property of the department, title to

which is in the State. (See Opinion No. 190, Vol. 17, Opinions of the Attorney General.)

It is therefore my opinion that the State Board of Public Welfare may, with the authority of the state purchasing agent and the consent of the Governor, dispose of said equipment without cash consideration.

For your guidance, we enclose form for terminating the agreement of August 17, 1934.