

Dear Mr. Parker:

Replying to your inquiry of June 30, which in short makes inquiry as to what length the Montana State Board of Forestry may go in making and enforcing rules and regulations and whether or not under subdivision d of Section 5 of Chapter 128, Laws of 1939, you are permitted to close certain areas to entry for short periods of time in order to prevent or remove extreme hazards as to forest fires, etc.

Section 3, Article XIX of the Constitution of the state reads as follows:

"The Legislative assembly shall enact suitable laws to prevent the destruction by fire from any cause of the grasses and forests upon lands of the state or upon lands of the public domain the control of which may be conferred by congress upon this state, and to otherwise protect the same."

It is a general principle and rule of law that the states may exercise ordinary police powers over National forests for the preservation of the public health, (71 C. J. 6) and it is the policy of the United States Government to reserve for public welfare lands on which is growing timber (71 C. J. 5). When reasonably necessary to promote public welfare, the creation of forest reserves comes within the police powers, in the exercise of which police power the means adopted must be appropriate, and not unduly oppressive (71 C. J. 11.)

It is my opinion that if properly handled, such a rule or regulation as might require the closing of certain areas for a limited time during the hazardous portion of the year, comes within the police power of the state which gives the board a right to exercise such precaution. The object of the closing is the preventing of some offense which might result in manifest evil and is exercised for the purpose of preserving public health, safety and for the general welfare of the public (12 C. J. 929.) Since the very foundation of the police power is the control of private interests for public welfare, a statute is not rendered unconstitutional by the mere fact that private rights of persons or property are subject to restraint or that loss may result to individuals from its enforcement (12 C. J. 930).

Opinion No. 98

Forestry—State Board—Rules and Regulations.

HELD: The State Board of Forestry may promulgate and enforce reasonable rules and regulations for the protection of life and property.

A rule or regulation closing certain areas of high fire hazard during extreme emergency conditions, for limited periods, is within the authority of the board.

July 14, 1939.

Mr. Rutledge Parker
Executive Secretary, State Board of
Forestry
Missoula, Montana.

The Legislature may, and in this instance did, authorize an administrative body to make rules and regulations relating to the administration and enforcement of the law (*The United States v. Williams*, 6 Mont. 379.) I am convinced that under the act in question it was the intent of the Legislature to provide adequate protection of forest lands from fire against negligence or wilfulness of even such land owners as may be within the reserve and to give to the forestry board the power of so protecting for the general welfare of the public.

I would say that you have the right to exercise the rule and regulation of closing, as indicated by your letter, even to the extent of private lands subject to the rights of egress and ingress of the owners thereof.