

## No. 114

## STATE LANDS—IMPROVEMENTS, removal of

**Held:** Under Section 1805.88, Revised Codes of Montana 1935, as amended, right of removal of improvements was given to holders of uncanceled certificates of purchase of state lands as of March 17, 1939.

May 12, 1941.

Mr. J. W. Walker  
Commissioner of State Lands and Investments  
State Capitol  
Helena, Montana

ATTENTION Mr. Walter J. Burton  
Assistant Commissioner

Dear Mr. Walker:

You asked for a general interpretation of Section 1805.88, Revised Codes of 1935, as amended, as it relates to the ownership of improvements placed on lands sold by the State subsequent to the execution of the certificate of sale in a case where such certificate is subsequently canceled.

Section 1805.88 of the Revised Codes of Montana, 1935, as amended by Section 4, Chapter 141, Laws of 1939, provides:

**“Section 1805.88. Default in Payment of Purchase Price—Cancellation of Certificate.** Whenever any purchaser of state land hereafter sold, or the assignee, shall default for a period of thirty (30) days or more in the payment of any of the installments due on his certificate of purchase, the certificate shall be subject to cancellation and the Board shall cause to be mailed to him at his last known postoffice address a notice of default and pending cancellation which notice shall give him sixty (60) additional days from the date of mailing such notice in which to make payment of the delinquent installment or installments with penalty interest. If he fails to make such payment within that period the certificate of purchase shall from that date and without further notice be null and void, the duplicate of the certificate in the office of the commissioner shall be canceled and the land under the certificate shall revert to the State and such land shall become the property of the State to the same extent as other state lands and shall be open to lease and sale, **provided that all buildings, fences and other improvements placed thereon subsequent to the date of execution of such certificate of purchase shall be and remain the property of the purchaser named in said certificate of purchase or of his heirs, assigns, or devisees; and may be removed from such land**

at any time within ninety (90) days from and after the date of such cancellation. If such buildings, fences, and other improvements shall not have been removed prior to the expiration of such ninety (90) day period, they shall become the property of the State."

The emphasized portion was added by the 1939 amendment and became effective upon the approval by the Governor of Chapter 141 on March 17, 1939. Under the foregoing amendment the right to remove improvements within ninety days after the date of cancellation of certificates executed subsequent to March 17, 1939, clearly exists. The sole question arises as to certificates executed prior to March 17, 1939, but canceled after that date.

The words "land hereafter sold" appearing in the section as amended might lead to the conclusion that the right to remove improvements is limited to lands sold after the date the amended Act became effective. Such a construction is unwarranted. This portion was not altered by the amendment and must be considered as having been law from the time of its enactment in 1927.

Edwards v. Lewis and Clark County, 53 Mont. 359, 165 Pac. 297;

State v. Dawson County, 87 Mont. 122, 286 Pac. 125.

The right of removal given by this section, in my opinion, extends not only to certificates executed subsequent to March 17, 1939, but to uncanceled certificates executed prior to said date.

This interpretation finds support in the fact that Section 5, Chapter 141, Laws of 1939, which section expired January 1, 1941, gave the right of removal to holders of certificates which had been canceled within six years prior to March 17, 1939. By the amendment of Section 1805.88, supra, the Legislature undoubtedly meant to extend that privilege to holders of uncanceled certificates then in existence as well as future purchasers.

Sincerely yours,

JOHN W. BONNER  
Attorney General