

No. 118

**STATE BOARD OF FORESTRY—ADMINISTRATIVE
BOARDS, rules and regulations of**

Held: The State Board of Forestry may not promulgate regulation con-
travening statute.

May 19, 1941.

Montana State Board of Forestry
Forestry Building
State University of Montana
Missoula, Montana

Attention: Mr. Rutledge Parker, Secretary

Gentlemen:

Section 9 of Chapter 128, Laws of 1939, provides:

“Section 9. Every owner of forest land classified as such by the board is hereby required to furnish protection against the starting or existence, and to suppress the spread, of fire on such land during

the full period of each forest fire season defined by this act. Such protection and suppression shall be in conformity with reasonable rules and standards for adequate fire protection to be prescribed by the board. If such owner does not provide for such protection and suppression, said board may provide the same, at a cost of not less than one cent or more than five cents per acre per annum, and in the event thereof, the owner of said land shall pay to the county treasurer of the county in which such land is situated, the charge for the same approved by the board, in accordance with the provisions of this act."

Section 2 of Chapter 141, Laws of 1941, amends the foregoing section by adding the following words:

"Provided, that for the purposes of this Section, any legal subdivision of not more than one hundred sixty (160) acres of forest land classified as such by the Board, to be designated by the owner, shall be deemed by the Board to be protected by the owner, if more than one-half thereof is within the radius of one mile of a permanent habitation occupied throughout the fire season either by the owner or by someone under the owner's direction, and provided further that the starting, existence and spread of fire on said designated legal subdivision, without immediate and reasonable measures for suppression being taken by said owner or under his direction, shall be prima facie evidence that protection is not being furnished by said owner, and the Board shall thereupon provide protection and suppression in accordance with the provisions of this section."

The State Board of Forestry desires to know whether it has the power, under Chapter 128, Laws of 1939, to promulgate a regulation to the effect that the 1941 amendment shall operate retroactively so as to cover the fiscal year July 1, 1940 to June 30, 1941.

If such authority exists at all, it is found under subsection (d) Section 5, Chapter 128, Laws of 1939, which empowers the Board "to make and enforce reasonable rules and regulation for the purpose of enforcing and accomplishing the provisions and purposes of this act; provided, however, that such rules and regulations shall not conflict with the powers of the state board of land commissioners."

The 1939 Act (Section 9, Chapter 128, supra) specifically includes "every owner of land" irrespective of the quantity of land owned. Chapter 141, Laws of 1941, the amendatory Act, effective July 1, 1941 (Section 9, Revised Codes of Montana, 1935), is not retroactive (Section 3, Revised Codes of Montana, 1935).

A regulation promulgated by an administrative agency or board charged with the administration of an Act has the force and effect of law, if it is reasonably adapted to the administration of the Act and **does not contravene some statutory provision.** (Maryland Casualty Company v. United States, 251 U. S. 342; 40 S. Ct. 155, 64 L. Ed. 297.)

The proposed regulation operates in direct contravention to Section 9, Chapter 128, Laws of 1939.

Sincerely yours,

JOHN W. BONNER
Attorney General