

No. 171

**STATE HIGHWAY COMMISSION—STATE BOARD OF
LAND COMMISSIONERS—LEASES—EASEMENTS—
DAMAGES**

Held: Lessee of state lands is entitled to due and timely notice by party receiving grant of easement and said lessee is entitled to any damages resulting to his improvements or crops or his leasehold interest.

July 16, 1941.

State Highway Commission
Helena, Montana

Attention: Mr. H. G. Dean, Attorney

Gentlemen:

You state that the Montana Highway Commission proposes to construct a highway over land owned by the State of Montana, which land is now leased by the State Board of Land Commissioners to a third party. You further state the Land Board has heretofore made and executed an easement to the State Highway Commission for right-of-way purposes. You ask whether or not the Highway Commission is thereby granted an unqualified right of entry upon such state lands, and if the State Highway Commission is liable for any damages to the leasehold interest.

In my opinion your inquiry is answered by Section 1805.63, Revised Codes of Montana, 1935, as amended by Chapter 108, Laws of Montana, 1939, which reads as follows:

“Whenever any kind of right of way easement has been granted under this act and the state land in which it is granted is under lease, the party receiving such grant shall give due and timely notice to the

lessee and shall make just settlement with him for any damages resulting to his improvements or crops or leasehold interests. Upon such settlement being made, the lessee shall open or move any fences that may obstruct the right of way over the lands under his lease and otherwise cooperate in the opening of the right of way. Proof shall be filed with the board that such settlement has been made before the deed to the easement is issued."

From the foregoing, it is my opinion a lessee of state lands is entitled to due and timely notice by the party receiving an easement and the lessee is further entitled to damages resulting to his improvements or crops or leasehold interests because of the granting of said easement.

Sincerely yours,

JOHN W. BONNER
Attorney General