

No. 227

STATE LANDS—CROP INSURANCE PREMIUM PAYMENTS—RENTALS ON CROP-SHARE LEASES

Held: The limitations of the Enabling Act, State Constitution and statutes prevent the use of crop-share rental on state lands or any portion thereof for payment of crop insurance premiums.

August 30, 1941.

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

Dear Mr. Walker:

I have the request of your department for an opinion of this office as to the legality of participating in the Federal Crop Insurance program with respect to crops grown on state land and operated by tenants on a crop-share basis. You point out that—under the program—premiums are payable at the end of the season for which the insurance is taken out from crops raised that year and, if the crop is a failure, the premium is deducted from loss payment made.

The State Board of Land Commissioners, which is responsible for the operation of your department and for the proper administration of the lands held by the state, is created and exists by virtue of Section 4 of Article XI of the Montana Constitution and has only such powers as are granted

by the Constitution and which are given by statutes enacted in accordance with the Constitution. It should also be pointed out that, in administering the lands granted by Congress, the Board is governed by the terms of the congressional grant, that is, the provisions of the Enabling Act, and also by the limitations contained in the Constitution.

The terms of the Congressional grants of land were accepted by Section 7 of Ordinance I of the Montana Constitution and each change in the Enabling Act has been accepted by our state legislature, the latest having been by Chapter 8 of the Laws of 1939. Section 11 of the Enabling Act, which limits the use and disposition of land granted by Congress for whatever purpose, provides in part:

"Rentals on leased lands, interest on deferred payment on lands sold, interest on funds arising from these lands and all other actual income, shall be available for the maintenance and support of such schools and institutions."

Section 5 of Article XI of the Constitution of Montana specifically provides for the disposition "of all rents received from the leasing of school lands." Section 12 of the same Article provides for the use of "rents from leased lands or properties" of the state university and of all other state institutions of learning.

The lands granted by Congress and accepted by the state become a trust and funds derived therefrom are trust funds to be devoted exclusively to the purpose of the trust. (State ex rel. Bickford v. Cook, 17 Mont. 529, 535, 43 Pac. 928; State ex rel. Koch v. Barrett, 26 Mont. 62, 68, 66 Pac. 504.) See also Article XVII, Section 1, of the State Constitution which recognizes this trust.

It has been held the constitutional provisions above cited are limitations upon the power of disposal by the legislature and embody and express injunction upon the legislature that the property with which they deal must be devoted exclusively to the purpose for which it has been or may be acquired. (In re Beck's Estate, 44 Mont. 561, 576, 121 Pac. 784; Newton v. Weiler, 87 Mont. 164, 171, 286 Pac. 133.)

The state's share of the crop in crop-share leases constitutes, without question, the rental for such land and the use of that rental, as far as land granted by Congress is concerned, is provided for and limited by Section 11 of the Enabling Act (all lands granted by the Act) and Section 5 (school lands) and Section 12 (land of the State University and other state institutions of learning) of Article XI of the State Constitution. The legislature has no authority to direct the use of rentals for other purposes and, of course, the State Board of Land Commissioners has no authority inconsistent with the Constitution and the Enabling Act.

These limitations of the Enabling Act and Constitution govern just about all of the land administered by your department except the so-called "mortgage land." (Some of the provisions of the Constitution may also apply to these lands.) But the receipts from the mortgage lands are already pledged for the repayment of the loss to the state's permanent school fund resulting from the loaning of money on farm loan mortgages. (Section 1218.1 to 1218.6 of the Revised Codes of Montana, 1935). Section 1218.5 specifically requires that "all receipts from lessees as rentals or otherwise; . . . shall be paid over . . . to the state treasurer and shall be placed in the state farm loan sinking fund." (Emphasis mine.)

Although it appears possible and even likely that the income from lands rented on a crop-share basis might be stabilized if the state were able to participate in the Federal Crop Insurance program, it is my opinion the limitations of the Enabling Act, Constitution and statutes prevent the use of crop-share rental or any portion thereof for payment of crop insurance premiums.

Sincerely yours,

JOHN W. BONNER
Attorney General