

No. 366

STATE LANDS—CANCELLATION OF CERTIFICATES OF PURCHASE—CERTIFICATES OF PURCHASE OF STATE LANDS, Cancellation of

Held: State Board of Land Commissioners may, in exercise of proper discretion, cancel certificates of purchase of state lands although such certificates are in good standing, where purchaser so requests.

February 27, 1942.

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

Dear Mr. Walker:

You inquire as follows:

"We have a request for the immediate cancellation of certain certificates of purchase that are not delinquent and are paid up to a future date. Have we the authority to cancel these certificates under these conditions?"

I assume you have in mind the power of the State Board of Land Commissioners in this respect.

The situation you present is unique, in that the purchaser desires cancellation of certificates of purchase in good standing.

The cancellation clause of the form of certificate of purchase which you use embodies substantially the language of Section 1805.88, Revised Codes of Montana, 1935, as amended, which provides inter alia:

"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 to the same extent as other state lands and shall be open to lease and sale."

The Board of Land Commissioners is vested with broad constitutional and statutory powers as to the sale of school lands. (Section 4, Article XI, Montana Constitution; Section 1805.3, Revised Codes of Montana, 1935.)

The statutory powers granted are declared by Section 1805.3, *supra*, to be:

“ . . . it shall have and exercise general authority, direction and control over the care, management and disposition of such lands and the funds arising from the leasing, use, sale and disposition of such lands or otherwise coming under its administration. In the exercise of these powers, the guiding rule and principle shall be that these lands and funds are held in trust for the support of education, and for the attainment of other worthy objects helpful to the well being of the people of this state; and that it is the duty of the board so to administer this trust as to secure the largest measure of legitimate and reasonable advantage to the state. The enumeration in this act of specific powers conferred upon the board shall not be so construed as to deprive the board of other powers not enumerated but inherent in the general and discretionary powers conferred by the constitution, and necessary for the proper discharge of its duties; but there can be no such implied powers inconsistent with any part of the constitution, nor shall any inherent powers be assumed to exist which would be inconsistent with any statutory provision or with the general rule and principle herein stated.”

No good reason appears why the Board, acting in its discretion and in observance of the above powers, may not, at the request of a holder of a certificate of purchase, cancel it even though the certificate may be in good standing. However, no greater rights or benefits to the purchaser nor greater detriment to the state can inure because of the fact the certificate is in good standing. In other words, the status of the parties must be understood to be the same as though the certificate had been canceled under the forfeiture clause for default in payment of installments due thereunder.

It is my opinion, therefore, the questioned authority exists in the Board. Such cancellation is not a matter of right on the part of the purchaser, but may or may not be granted by the Board in the exercise of its proper discretion.

Sincerely yours,

JOHN W. BONNER
Attorney General