

No. 41

EASEMENT—STATE LANDS—PUBLIC USE

Held: State may grant easement for right of way across state lands for public use.

March 7, 1941.

Mr. H. C. Hall
Deputy County Attorney
Cascade County
Great Falls, Montana

Dear Mr. Hall:

You have requested my opinion as to whether the State may grant to Cascade County an easement for a water main through a tract of land owned by the State. Section 1805.62 of the Revised Codes of Montana, 1935, as amended, provides as follows:

"1805.62. The State Board of Land Commissioners may grant an easement for right of way across or upon any portion of state lands for any public highway, street or for any ditch, reservoir, railroad, private road, telegraph or telephone line, or for any other public use, as defined in the Code of Civil Procedure, provided, that this Section shall not be construed to grant authority to convey any such land, except for the purposes above set forth; and provided further, that whenever lands granted for any of the purposes mentioned in this Section shall cease to be used for such purposes, said easement shall forthwith terminate upon notice to that effect to the person to whom such grant was made, served at his last known post office address. The Board shall charge and cause to be collected the full market value of the estate or interest disposed of through the granting of any such easement and also fix, charge and cause to be collected the amount of the actual damages resulting to the remaining land or lands from the granting of such easement as nearly as the same can be ascertained, providing, however, that where a road follows the section lines of state lands, the increased value accruing to said lands, on account of construction of a road on said right of way easement, shall be taken into consideration by the State Board of Land Commissioners in determining compensation, if any, for the easement."

And Subsection 3 of Section 9934 of the code of civil procedure declares "pipes conducting water . . . for the use of the inhabitants of any county" to be a public use.

The State, therefore, may grant such an easement in the manner provided by Section 1805.61 and Section 1805.62 of the Revised Codes of Montana, 1935, as amended by Chapter 108 of the 1939 Laws.

Sincerely yours,

JOHN W. BONNER
Attorney General