

No. 426

**CAREY LAND ACT BOARD—CAREY ACT LANDS, lease
of—LEASES—REIMBURSEMENTS**

Held: Where a Carey Land Act lease becomes inoperative because of a sale of the land by the Carey Land Act Board, the lessees thereof should be reimbursed for the portion of the rent from which they will derive no benefit.

June 15, 1942.

Mr. Fred Buck
State Engineer
State House
Helena, Montana

Dear Mr. Buck:

You have requested an opinion from this office on the following set of facts:

X has purchased certain Montana "Carey Act" lands, as provided for by the laws of Montana. The land had previously been leased by the Carey Land Act Board to certain lessees who have been compensated by X for all improvements placed on the premises by them.

The lessees now request the Carey Land Act Board to reimburse them for that portion of the 1942 cash rent from which they will not derive any benefit. May the Carey Land Act Board reimburse the lessees?

Carey Act lands were acquired by the State of Montana from the United States Government under the Act of Congress, approved August 18, 1894, and the acts amendatory thereto, commonly known as the "Carey Act." The purpose of the Federal Government's grant and the State's cooperation is the reclamation of arid or desert lands.

The Federal Law provides in part as follows:

"Any State contracting under this section is hereby authorized to make all necessary contracts to cause the said lands to be reclaimed, and to induce their settlement and cultivation in accordance with and subject to the provisions of this section . . ."

9A, FCA, Title 43, No. 641.

Section 1979, Revised Codes of Montana, 1935, part of the legislation of the State of Montana in cooperation with the Federal Government, gives to the Carey Land Act Board the authority to sell or lease Carey Act Lands. It provides in part as follows:

"The board shall sell or lease any or all of the lands acquired by the state under provisions of this act, in quantity not to exceed one hundred and sixty acres to one individual . . ."

The leases under which the lessees here involved were holding the land, prior to X's purchase, provided in part as follows:

"provided, . . . that the Carey Land Board Act may, in its discretion, sell said land or any part thereof to anyone upon the same terms, and in the same manner, as though this lease had not been executed, it being understood that the party of the first part reserves the right to sell said property at any time."

The lessees have paid their annual rentals for 1942. They have paid for something they will not receive, for something from which they cannot derive the benefit intended, inasmuch as the state had sold the land leased to them. The state cannot, in equity, hold money it has received for a specific purpose when the fulfillment of that purpose is no longer possible.

It is therefore my opinion that, where a Carey Land Act lease has become inoperative because of a sale of the land by the Carey Land Act Board, the lessees thereof should be reimbursed for the portion of the rent paid from which they will derive no benefit.

Sincerely yours,

HOWARD M. GULLICKSON
Attorney General