

No. 456

LANDS—STATE LANDS—BOARD OF LAND COMMISSIONERS, power and authority of to change certificates of purchase—CERTIFICATES OF PURCHASE OF STATE LANDS

Held: Under the broad discretionary powers granted to the Board of Land Commissioners by the legislature and the Constitutional provisions, the Board—after determining a change in a certificate of purchase will secure the largest measure of legitimate and reasonable advantage to the trust and the people of the State of Montana—has the power and authority to effect such a change as will bring about the result required by the Constitution and the statutes.

July 28, 1942.

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

Dear Mr. Walker:

You have submitted for my opinion the following question:

"Where a purchaser of state school lands—who has heretofore entered into an amortized contract with the State Board of Land Commissioners and has paid on the contract for many years—now requests of the said board that the said contract of purchase be modified to the extent that certain subdivisions of said lands so contracted to be purchased be segregated and dropped from the said contract and all interest of the purchaser in said segregated lands revert to the state, with the purchaser then paying the balance due the state on the remaining lands in said contract, does the Board of Land Commissioners have the power and authority under the law to grant the said request?"

It is well to note the board has been given broad powers by the Constitution and by the legislature in the administration of the state lands.

Section 4 of Article XI of our Constitution is as follows:

"The governor, superintendent of public instruction, secretary of state and attorney general shall constitute the state board of land commissioners, which shall have the direction, control, leasing and sale of the school lands of the state, and the lands granted or which may hereafter be granted for the support and benefit of the various state educational institutions, under such regulations and restrictions as may be prescribed by law."

The legislature has provided in Section 1805.3, Revised Codes of Montana, 1935, as follows:

"The state board of land commissioners, consisting of the governor, superintendent of public instruction, secretary of state and attorney general, as provided by the constitution, shall be the governing board of the department of state lands and investments; it shall have and exercise general authority, direction and control over the care, management and disposition of all state lands and 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 the 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." (Emphasis mine.)

Our Supreme Court has held:

"... the state board of land commissioners, as the instrumentality created to administer that trust, is bound upon principles that are elementary, to so administer it as to secure the largest measures of legitimate advantages to the beneficiary of it. To that end, and of

necessity, the board must have a large discretionary power over the subject of the trust; and therefore it has been expressly given 'the direction, control, leasing and sale' of these lands, under such regulations and restrictions as may be prescribed by law. (Const., Article XI, Section 4)." (Emphasis mine.)

State ex rel. Gravely vs. Stewart, 48 Mont. 347, 349, 137 Pac. 854, 855.

The foregoing was quoted in approval by our Supreme Court and the Court added:

"It will be noted that it is specifically declared that the control and management are subject to such rules and regulations as are prescribed by the legislature. Of course, the legislature must act as a body and within its constitutional powers (State of Montana ex rel. Haire v. Rice, 204 U. S. 291, 27 Sup. Ct. 281, 51 L. E. 490), and it cannot under the guise of regulation divest the board of its constitutional power to control and manage the state lands (In re Canal Certificates, 19 Colo. 63, 34 Pac. 274).

"... As a part of the executive department of the state, the state board is subject to legislative control within the restrictions placed on the legislature, in this regard, by the Constitution."

Leuthold v. Brandjord, et al., 100 Mont. 96, 106, 47 Pac. (2nd) 41, 46.

Our Supreme Court again held:

"There is no question but that the state board, in the discharge of its trust, should, when leasing these state lands, 'secure the largest measure of legitimate advantage to the beneficiary of it'. (Rider v. Cooney, 94 Mont. 295, 23 Pac. (2d) 261, 263.) Nor can it be successfully maintained that the board has power or authority to renew an expiring lease at the noncompetitive leasing price when there is another applicant willing and able to pay a higher rental, for the statutory rate is recognized as the 'full market value' which has been ascertained 'in the manner provided by law' as required by section 1, Article XVII, of the Constitution (Rider v. Cooney, supra), only when there is no competition."

Rathbone v. State Board of Land Commissioners 100 Mont. 109, 122, 47 Pac. (2nd) 47, 48, 49.

Our Supreme Court, in speaking of the Land Board, has held:

"Since the board is a constitutional agency charged with the administration of a public trust, since it is vested with discretionary power in that behalf, and since its discretion is invoked whenever it is called upon to confirm or reject of a sale, this court cannot compel it to exercise that discretion in any particular way. (State ex rel. Harrus v. District Court, 27 Mont. 280, 70 Pac. 981. . . .)

"In State ex rel. Reed v. Scott, supra, (18 Neb. 597, 26 N. W. 386), it was said: 'The board of educational lands and funds is a trustee for the sale and leasing of the lands set apart for the support of educational institutions, and, to justify the interference of a court, there must be an abuse of the trust . . . It is the duty of the board to sell or lease the educational lands of the state for the highest price possible to be obtained and increase and protect by all honorable means the funds for the support of the educational institutions; and so long as the board is faithfully performing its duty in that regard, this court will refuse to interfere.' If this be sound, as we think it is, then in the course complained of the board was actuated by the very considerations which are supposed to govern it. . . ." (Emphasis mine.)

State ex rel. Gravely v. Stewart, 48 Mont. 347, 350, 351, 137 Pac. 854, 855.

In commenting on the action of the board in leasing state lands under consolidated gas and oil lease, our Supreme Court stated:

"The board then is confronted with the problem of insuring to the state the full market value of the estate disposed of and receiving the proceeds and providing that they remain intact, and on such determination this court will not substitute its opinion for the opinion of the board, nor will it control the discretion of the board unless it appears that the action of the board is arbitrary and, in effect, fraudulent."

Toomey v. State Board of Land Commissioners 106 Mont. 547, 562, 81 Pac. (2nd) 407, 415.

It should, however, be pointed out:

"A certificate of purchase does not pass legal title but such title remains in the State until the patent issues; but when, on payment of a part of the purchase price of state lands, a certificate of purchase is issued by the state, and equitable title to the land vests in the purchaser."

50 C. J. 1162.

The Supreme Court of California has held that, when the state issues a certificate of purchase of state lands, an equitable title to the lands vests in the purchaser.

Russ v. Crichton, 117 Cal. 695, 49 Pac. 1043.

Our own Supreme Court has held:

"The authorities are in accord that an enforceable contract for the purchase and sale of real property passes to the purchaser the equitable and beneficial ownership thereof, leaving only the naked legal title in the seller, as trustee for the purchaser, and as security for the unpaid purchase price."

Kern v. Robertson, 92 Mont. 283, 288 12 Pac. (2nd) 565, 567.

The general rule is stated in 13 C. J. 855 as follows:

"A contract for the sale of land works a conversion, equity treating the vendor as holding the land in trust for the purchaser, and the purchaser as a trustee of the purchase price for the vendor. The vendor's interest thereafter in equity is in the unpaid purchase price, and is treated as personalty, while the purchaser's interest is in the land and is treated as realty."

However, in order for this principle of equitable conversion to apply, there must be a binding contract (66 C. J. 703), and such as a court of equity will specifically enforce against an unwilling purchaser.

See 3 Pom. Eq. Jur., 4th Ed., Sec. 1161.

In the case of Calvin v. Custer County, 111 Mont. 162, 167, 107 Pac. (2nd) 134, 136, (1940) our Supreme Court held an option to purchase land was such an enforceable contract, holding as follows:

"It is conceded, of course, that the legal title was in plaintiff. The trial court, however, found that the equitable title or estate was in the United States, and that being the case, found that the property was exempt from taxation. The court was correct in its conclusion."

I have searched in vain for a case where a similar question as the one here presented has been passed upon, or where this question has been commented upon, but have found none.

I find no express authority for the board to cancel out a part of the land covered by a contract or certificate of purchase, nor to cancel a contract or a certificate after it is once issued, except only the provisions of Section 1895.88, Revised Codes of Montana, 1935, (the amendment of

which expired January 1, 1941), which provides the method of cancelling of certificates upon default in the payments of the purchase price, and the reversion of the lands to the state.

Here the board has issued a certificate of purchase to the purchaser, the state retaining the bare legal title to the purchaser having the exclusive rights to the property and the equitable title. The purchaser requests the board to segregate and drop out of the certificate of purchase certain lands.

The board having the power and authority to determine in the first instance it was for the best interests of the state to make the said contract, it appears the board would have the power and authority to alter the contract—if, in the sound discretion of the board, taking into consideration all of the facts involved, the board determines such a precedent and procedure will “secure the largest measure of legitimate and reasonable advantage to the state of Montana.”

It is therefore my opinion, under the broad discretionary powers granted to the Board of Land Commissioners by the Legislature and the Constitutional provisions, the board—after determining a change in a certificate of purchase will secure the largest measure of legitimate and reasonable advantage to the trust and the people of the State of Montana—has the power and authority to effect such a change as will bring about the result required by the Constitution and the statutes.

Sincerely yours,

HOWARD M. GULLICKSON
Attorney General