

No. 476

STATE BOARD OF LAND COMMISSIONERS—STATE
LANDS—CANCELLATION OF CERTIFICATE OF PUR-
CHASE—REINSTATEMENT OF CERTIFICATE OF PUR-
CHASE—LEASE OF STATE LAND AFTER CANCELLA-
TION OF CERTIFICATE OF PURCHASE

Held: Owner of reinstated certificates of purchase of state land, which land was leased to another person after cancellation of original certificate of purchase and before reinstatement, takes land subject to all terms and conditions of said lease.

September 2, 1942.

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

Dear Mr. Walker:

You have asked this office for an opinion as to the rights of an original purchaser under the amortization contract of state school lands or mortgage lands, who wishes to reinstate his contract and make payment of all delinquencies and the full amount owing on the contract, in a case where the property has been leased to another person after the contract was cancelled and before it was reinstated.

Section 1805.88, Revised Codes of Montana, 1935, as amended by Section 4 of Chapter 141 of the Session Laws of 1939, provides that when a purchaser of state land is in default, the certificate of purchase is subject to cancellation, and upon such cancellation being made as provided in the Section, the land shall become the property of the state to the same extent as other state land and shall be open to lease and sale.

Section 1805.89, Revised Codes of Montana, 1935, permits the State Board of Land Commissioners in its discretion, and when the land has not been sold to another purchaser, to reinstate the cancelled certificate of purchase upon application being made therefor within the time limited by such section and upon meeting the other requirements thereof. It specifically provides:

“This reinstatement shall not have the effect of cancelling any lease that the state may have issued on the land or affecting any of the provisions of said lease.”

In the case of *Leuthold v. Brandjord*, 100 Mont. 96, 47 Pac. (2nd) 41, it is held the State Board of Land Commissioners is subject to such rules and regulations as may be prescribed by the legislature for the handling of state lands. In the instant case the provision is that the reinstatement shall not have any effect on leases made between the date of cancellation and reinstatement.

In *Christofferson v. Chouteau County*, 105 Mont. 577, 74 Pac. (2nd) 427, supra, the court stated the right of reinstatement is not absolute and is not one the State Board of Land Commissioners is bound to grant, but may do so in its discretion.

It is thus apparent the absolute right is given to the state to lease the land after cancellation of the original certificate of purchase and the person applying for reinstatement must accept such conditions as may be prescribed by law, said purchaser having no vested right in the land or in the right to purchase by reason of the original purchase.

Consequently, it is my opinion that, under the facts set forth, the original purchaser—upon reinstatement of his certificate of purchase—will take the reinstatement subject to the right of the lessee and the lessee will be entitled to continue to hold the land under the lease for its unexpired term and subject to its conditions.

Sincerely yours,

R. V. BOTTOMLY
Attorney General