

Opinion No. 5

**State Lands—State Board of Land
Commissioners—Disposition of
Improvements upon Surrender of
Certificate of Purchase—Rights of
Lessee and Purchaser Upon Surrender
of Certificate of Purchase.**

Held: (1) When a purchaser of either agriculture or grazing land, owned by the State, surrenders his certificate of purchase for cancellation, the improvements the purchaser bought from the former lessee may be removed from such land at any time within ninety (90) days from and after the date of such cancellation. But, if such improvements are not removed within the ninety (90) day period, they shall become the property of the State of Montana.

(2) When either agriculture or grazing land, owned by the State, which was under lease at the time it was sold, is turned back to the State by the purchaser neither the purchaser nor the former lessee have any preferences in a subsequent lease when thirty (30) days or more have elapsed after the proper termination of the former lease, nor does the former lessee's lease continue to be in effect.

March 10, 1951.

Mr. W. P. Pilgeram
Commissioner of State Lands and
Investments
Capitol Building
Helena, Montana

Dear Mr. Pilgeram:

You have given me the following situation:

A holds a lease on a section of state land classified as either agricultural or grazing land. This land is sold to B, who, a year later, after paying the initial payment, getting a certificate of purchase, and buying the improvements from the lessee, feels that he has bid too much. B, before the contract is delinquent, wishes to surrender the contract and take a lease on these lands.

Based on this statement of facts you have asked me these questions:

1. Does the purchaser, B, remain the owner of the improvements when he surrenders his contract, or will the improvements revert with the land to the State?
2. Does A, the lessee, continue to have a lease on this land if B surrenders his contract to the State?
3. Would either A or B have a preference to a lease after the surrender and cancellation of the certificate of purchase?

Before answering your specific questions, I would like to point out that as far as the legal consequences are concerned there is little or no difference between a volunteer surrender of a certificate of purchase and cancellation for nonpayment. On this is the following, taken from Opinion No. 366, Volume 19, Opinions of the Attorney General:

"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.

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."

Therefore, we must start with Section 81-924, Revised Codes of Montana, 1947, entitled "Default In Payment Of Purchase Price—Cancellation Of Certificate." This section contains the answer to your first question. It reads:

"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 and such land shall become the property of the state to the same extent as other state lands and shall be open to lease and sale, provided that all buildings, fences and other improvements placed thereon subsequent to the date of execution of such certificate of purchase shall be and remain the property of the purchaser named in said certificate of purchase or of his heirs, assigns, or devisees; and may be removed from such land at any time within ninety (90) days from and after the date of such cancellation. If such buildings, fences, and other improvements shall not have been removed prior to the expiration of such ninety (90) day period, they shall become the property of the state."

Although the section uses the language "placed thereon subsequent to the date of execution of such certificate of purchase", when referring to improvements, it is my opinion that improvements already on the land at the

time of the sale, and then bought by the purchaser of the land from the former lessee are also within the provisions of this statute.

Section 81-402, Revised Codes of Montana, 1947, as amended by Section 2, Chapter 201, Laws of 1949, provides in part:

" . . . All leases of agricultural or grazing lands, or town or city lots shall be upon condition that the state board of land commissioners may in its discretion, offer said land for sale at any regular public sale of state lands held in the county where the land is situated, upon the same terms, and in the same manner as land not under lease."

This statutory provision has been incorporated into Agricultural and Grazing Lease—Form 1B—which I understand is now currently in use by the State Board of Land Commissioners. This reads:

"The State Board of Land Commissioners may in its discretion offer the lands under this lease for sale at any of the regular public sales of State Lands held in the county where the land is situated upon the same terms and in the same manner as land not under lease, subject, however, to the rights of the lessee to compensation for improvements as herein provided; and subject also to the provision that the purchaser will not be given possession by the State prior to March 1st next succeeding the date of sale unless the lease expires prior to that date, except through special agreement between the purchaser and the lessee."

Section 81-405, Revised Codes of Montana, 1947, contains the provisions for renewal and preference rights of the lessee of state land that is classified as agricultural, grazing, town lot, or city lots. However, it should be noted that these rights expire after thirty (30) days have elapsed after the proper termination of the lease. By proper termination I am, of course, including the notice to the lessee provided in the section.

Section 81-924, Revised Codes of Montana, 1947, heretofore mentioned, provides that upon the cancellation of the certificate, as provided in the sec-

tion, the land shall be open to lease and sale.

Therefore, in answer to your three questions it is my opinion:

(1) When a purchaser of either agriculture or grazing land, owned by the State, surrenders his certificate of purchase for cancellation, the improvements the purchaser bought from the former lessee may be removed from such land at any time within ninety (90) days from and after the date of such cancellation. But, if such improvements are not removed within the ninety (90) day period, they shall become the property of the State of Montana.

(2) That when thirty (30) days, or more, have elapsed after the proper termination of the lease as a result of the sale (which I understand is the case in your set of facts) that the former lessee has no further rights in the lease, including the preference right of meeting the highest bidder on subsequent leasing of the land. Neither does purchaser B have any preference right in or to a subsequent lease.

Very truly yours,
ARNOLD H. OLSEN
Attorney General

Note To Opinion No. 5

On February 28, 1951, just prior to the issuance of this opinion, the following amendment added to Section 81-924, Revised Codes of Montana, 1947, became law:

" . . . In case of cancellation of certificate of purchase or surrender of certificate of purchase and where the land is again open to lease, the former lessee shall have the prior right to lease the tract at the existing rate or at the rate set by competitive bidding if such occurs." (Chapter 158, Laws of 1951)

However, this new law does not affect the problem which gave rise to the request for this opinion because "No law contained in any of the codes or other statutes of Montana is retroactive unless expressly so declared." Section 12-201, Revised Codes of Montana, 1947.

ARNOLD H. OLSEN
Attorney General