

**VOLUME NO. 36****Opinion No. 113**

**STATE LANDS — Sale of land granted by Enabling Act; STATE PRISON — Transfer of prison site to City of Deer Lodge; 25 Stats. at Large 676; Ordinance 1, section 7, 1889 Montana Constitution; Article X, section 11, 1972 Montana Constitution; Chapter 9, Title 81, Revised Codes of Montana 1947.**

**HELD: In order for the state to transfer title of the state prison and connected lands to the City of Deer Lodge, legislation authorizing this type of transaction must be enacted by the Montana legislature.**

December 8, 1976

Mr. James G. Blodgett, Deputy Warden  
Montana State Prison  
Box 7  
Deer Lodge, MT 59722

Dear Mr. Blodgett:

You recently requested my opinion as to whether a bill must be introduced in the Montana Legislature in regard to the transfer of the old prison site to the City of Deer Lodge after Senate Bill 3747 becomes law.

As a matter of background the prison and connected lands were granted to the state of Montana in 1889 by the Enabling Act (25 Stat. at Large 676). The Enabling Act imposed certain conditions on the land it granted. Among these conditions was the requirement that the state not dispose of the land for less than full market value. The terms of this grant were accepted by the state of Montana in section 7 of Ordinance 1 of the 1889 Montana Constitution. The 44th Montana Legislative Assembly adopted House Joint Resolution 61, which requested the United States Congress to do whatever was necessary to grant the land in question to the City of Deer Lodge.

In 36 **Opinions of the Attorney General**, No. 87, I held that the state must adhere to the full market value requirement of the Enabling Act in disposing of the territorial prison site at Deer Lodge, absent a congressional waiver. Subsequent to the issuance of this opinion, Senator Mansfield introduced Senate Bill 3747 in the United States Senate. The text of the bill reads as follows:

**A Bill to eliminate a restriction relating to certain land granted to the State of Montana.** Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any requirement or limitation on the disposal of lands set forth in section 11 of the Act of February 22, 1889 (25 Stat. 676, as amended), are hereby declared inapplicable to any transfer by the State of Montana to the city of Deer Lodge and associated lands granted to the State by section 15 of that Act.

Although Senate Bill 3747 was not enacted before the adjournment of the 94th Congress, I understand that its passage is expected in the 95th Congress. Your question is, assuming the passage of Senate Bill 3747, whether the state of Montana must take any further legislative action in regard to the transfer of the old prison site to the City of Deer Lodge.

In order to answer this question we must ascertain the status of the land in question if Senate Bill 3747 is enacted. This bill would merely remove the federal limitations on the disposal of the land by the state. The fact that the federal restrictions may be removed will not automatically remove the constitutional and statutory restrictions of the state.

Article X, section 11 of the 1972 Montana Constitution reads as follows:

Section 11. Public land trust, disposition. (1) All lands of the state that have been or may be granted by congress, or acquired by gift or grant or devise from any person or corporation, shall be public lands of the state. They shall be held in trust for the people, to be disposed of as hereafter provided, for the respective purposes for which they have been or may be granted, donated or devised.

(2) No such land or any estate or interest therein shall ever be disposed of except in pursuance of general laws providing for such disposition, or until the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state.

(3) No land which the state holds by grant from the United States which prescribes the manner of disposal and minimum price shall be disposed of except in the manner and for at least the price prescribed without the consent of the United States.

(4) All public land shall be classified by the board of land commissioners in a manner provided by law. Any public land may be exchanged for other land, public or private, which is equal in value and, as closely as possible, equal in area.

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Subsection 1 provides that all lands of the state, including land which was granted by congress, are public lands. Subsection 2 provides that no public lands shall be disposed of except pursuant to the law providing for disposition (Chapter 9, Title 81, R.C.M. 1947), or until the full market value is paid the state. Subsection 3 provides that the state must follow the requirements of the federal grant in disposing of granted land, unless congress consents to waive the requirements.

Senate Bill 3747 would waive the federal requirements on the disposition of the prison site. The land would still be public land of the state of Montana, however, and as such would be subject to the requirements of subsection 2. In other words, the land must be disposed of pursuant to Chapter 9, Title 81, **supra**.

It is obvious that Chapter 9, Title 81, **supra**, (Sale of State Land), did not contemplate the sale of units such as the old prison site. Various sections of Chapter 9 require sale at public auction (81-909), sale in tracts not exceeding five acres of lands within three miles of any town (81-905), notice of sale (81-910), and sale at not less than appraised value (81-912). These requirements would prevent the transfer of the old prison to the City of Deer Lodge. It is my understanding that the Department of State Lands is currently drafting legislation to provide for the special circumstances that obsolete state institutions present. If enacted as a general law, this legislation would fulfill the requirements of Article X, Section 11, subsection 2 of the 1972 Montana Constitution. Without this legislation, the prison would have to be sold in accordance with the existing provisions of Chapter 9, Title 81. This would defeat the contemplated transfer to the City of Deer Lodge.

**THEREFORE, IT IS MY OPINION:**

In order for the state to transfer title of the state prison and connected lands to the City of Deer Lodge, legislation authorizing this type of transaction must be enacted by the Montana Legislature.

Very truly yours,  
ROBERT L. WOODAHL  
Attorney General