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LAW LIBRARY ARIZONA ATTORNEY GENERAL

Dec. 4, 1961
Letter Opinion
No. 62-2-L

REQUESTED BY: Hon. Bert J. Colter
State Senator
Springerville, Arizona

OPINION BY: ROBERT W. PICKRELL
The Attorney General

QUESTIONS: 1. If the State Legislature had passed Senate Bill No. 254, as introduced in the 25th Legislature, First Regular Session, would it in any way conflict with that part of the Enabling Act which provides for the disposal of State lands?

2. If this Bill, including amendments offered, was placed on the ballot as an Initiative Measure at a general election, and it passed, what effect would that have on the law as established in the Enabling Act?

3. Would either of the above supercede the State land law as written into the Enabling Act?

CONCLUSIONS: 1. Yes.
2. None. The Enabling Act may not be altered or amended by any act of the State of the people of the State, in this situation.
3. No.

Senate Bill No. 254, as introduced in the First Regular Session of the 25th Legislature, in its essentials, authorized sale or lease of State lands for a public purpose at auction to the highest and best bidder of the public agencies bidding, defined public purpose and set a maximum sales price of \$10.00 per acre and a maximum lease rental of 10 cents per acre.

The Judiciary Committee amendments to the Bill removed the maximum on both sales price and lease rental.

By Section 28 of the Enabling Act, the lands under discussion are held in trust to be disposed of in whole or in part only in the manner provided in the Enabling Act. The manner provided by the Enabling Act is that the lands "shall not be sold or leased in whole or in part except to the highest and best bidder at a public auction" with certain exceptions as to leasing which are

not material to this discussion as the Bill provided for public auction whether for sale or lease. A further requirement of said Section 28 is that "all lands, leaseholds, timber and other products of land before being offered, shall be appraised at their true value and no sale or other disposal thereof shall be made for a consideration less than the value so ascertained." The important inquiry would then appear to be, what is a public auction? Definitions are available from the cases and other authorities; several such definitions being as follows:

State vs. Miller, 160 p. 513, 515, 52 Mont. 56, "'all sales of State land shall be at public auction' (Sec. 38, Act 1909), and this means a sale to the highest and best bidder with absolute freedom for competitive bidding."

Black's Law Dictionary (3rd Edition) defines "public auction" as "a sale of property at auction, where any and all persons who choose are permitted to attend and offer bids"

Black's Law Dictionary (4th Edition) defines "auction"- "a public sale of land or goods, at public outcry, to the highest bidder." Perry Trading Co. vs. City of Tallahassee, 128 Fla. 424, 174 So. 854, 857, 111 ALR 463.

Black's Law Dictionary (4th Edition) defines "public" as "open to all; notorious . . . not limited or restricted to any particular class of the community." People vs. Powell, 280 Mich. 699, 274 N.W. 372, 373, 111 ALR 721.

QUESTION 1:

On the basis of these definitions and the Enabling Act requirements, it is our opinion that Senate Bill No. 254, as introduced, would violate the requirement of public auction to the highest and best bidder in that there is not a true public auction both the bidders and the amounts of the bids being restricted and that the placing of a maximum sales price and a maximum lease rental would violate the requirement appraised at true value and no sale, or other disposal, for a consideration less than the value so ascertained. Senate Bill No. 254, as amended, would still violate the requirement of public auction in that the bidders are restricted.

QUESTION 2:

This question has been answered by the Supreme Court of Arizona in the case of Boice vs. Campbell, 30 Ariz. 424 at page 428, where the Court says ". . . any limitation upon the disposition of public land provided in the Enabling Act is absolutely binding on the State of Arizona, unless the Congress of the United States may consent to a change, and any statute or amendment to the State Constitution in conflict therewith is null and void."

QUESTION 3:

This question is also answered by the case of Boice vs. Campbell,

Hon. Bert J. Colter, State Senator

Dec. 4, 1961
Page 3

supra, in the foregoing quotation.

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62-2-L