

Opinion No. 48-5130

February 19, 1948

BY: C. C. McCULLOH, Attorney General

TO: Hon. John E. Miles, Commissioner of Public Lands, State Land Office, Santa Fe, New Mexico. Attention /- Mr. Geo. A. Graham, Attorney.

{*131} We are in receipt of your letter of February 19, 1948 in which you recite the following facts:

"The SW1/4, S1/2SE1/4 of Section 21, Township 16 South, Range 35 East, and E1/2NE1/4 of Section 34, Township 16 South Range 35 East, was duly advertised and offered for sale as one tract termed Tract No. 18. The sale was held on Jan. 10, 1948, and the above described land was awarded to the highest bidder. Before the oil and gas lease was actually issued it was found that the E1/2NE1/4 of Section 34 was included in an earlier lease and was therefor not open or subject to sale. This error apparently was typographical since the tract books disclosed that the E1/2 NW1/4 was open and doubtless was the land intended to be offered."

In view of this situation, you ask several questions.

Your first question is as follows:

"1. In consideration of the above fact-statement, may this office issue a lease upon the land advertised and thus cloud the title of the holder of a prior lease, the successful bidder having offered to immediately release and quitclaim back to the State the acreage in conflict?"

I see no reason why the State Land Office could not execute a lease covering the entire acreage. The lease would have no effect as to that acreage previously leased. As a practical matter, you should, however, be certain that a reconveyance of the conflicting portion is immediately entered so as to protect the original lease.

Your second question is as follows:

"May we award that part of Tract 18 which is not in conflict to the successful bidder returning to him that part of his remittance covering the conflicting acreage?"

Unless the bid was such that the bid for the part of the tract not in conflict would not have been the highest and best bid, I can find nothing in the statutes which would prevent the Land Commissioner from taking this action.

Your third question is as follows:

"Can we include with the non-conflicting acreage of the tract the E1/2NW1/4 which was intended to be advertised and which is open on the Land Office books, but in fact not advertised?"

By Section 8-1109 of the 1941 Compilation it is provided that "No oil and gas leases upon any state lands within said restricted district shall be made except upon competitive bidding by sealed bids or at public auction as hereinafter provided."

By Section 8-1110 of the 1941 Compilation the procedure for Notice and Sale is set out.

{*132} In view of these provisions, it is my opinion that the Land Commissioner would not have the authority to issue a lease on any land which was not advertised, even though it be assumed that the Land Commissioner intended to advertise it.

Your fourth question is as follows:

"Are we required under the facts above to reject the previously accepted bid by reason of the advertising error in Tract No. 18 and readvertise all of the acreage. In this respect the tract was bid in at a very respectable figure."

I find nothing in the statute which would require the Land Commissioner to reject the bid, unless the bid worked out so that it was not the highest and best bid for the non-conflicting acreage.

Your fifth question is as follows:

"We also would like your advice as to the responsibilities of this office in these monthly sales of oil and gas leases and if we are required to substantially comply or strictly comply with the statutes with respect to errors of description."

Of course you should comply with the provisions of the statutes to the best of your ability. However, as a state officer, you could not be held liable for an error, unless it was done intentionally or through gross negligence.

I trust the foregoing sufficiently answers your inquiry.

By ROBERT W. WARD,

Asst. Atty. General