

Opinion No. 51-5445

October 15, 1951

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. Elliott S. Barker State Game Warden Santa Fe, New Mexico

{*152} On September 6, 1951, you wrote this office asking for an opinion as to whether the State Game Commission may sell the mineral rights to Commission lands, while reserving the surface rights. You also asked whether the Commission may execute oil leases covering any of these lands.

It is my opinion that it is not within the power given to the State Game Commission by the New Mexico statutes to sell these mineral rights or to execute oil leases. The pertinent portions of the statutes to be considered are §§ 43-401 and 43-403, N.M.S.A., and these two provisions must be construed together. In my opinion, it is clear that § 43-401 gives the Commission power to acquire and develop land only for the purpose of protecting, propagating and preserving fish and game. § 43-403 gives the Commission the right under certain circumstances to sell or exchange lands and leases. This latter section reads as follows:

"The State Game Commission except as herein limited is authorized to exchange or sell any lands and leases heretofore or hereafter acquired when, in the judgment of said Commission, said lands are no longer necessary or useful for the purposes hereinabove recited. The proceeds of any such sale shall be converted into the Game Protection Fund and disbursed as the other monies in said fund are disbursed."

It is inescapable in my opinion that just as § 43-401 gives the Commission power to acquire land for fish and game purposes only, § 43-403 gives the Commission power to sell only those lands or leases "no longer necessary or useful" for such purposes. Obviously, any acquisition by the Commission of mineral interests is merely incidental to the acquisition of lands for the purposes enumerated in § 43-401. It is my opinion therefore that the language of § 43-403 cannot and should not be so liberally construed as to authorize the Game Commission. to sell mineral rights or to execute oil leases. This is no part of the Commission's proper function and cannot be said to be a power implied by the statute.

In my opinion, the Legislature in the enactment of the laws now codified {*153} in §§ 8-1101 et seq., N.M.S.A., has made it clear that the Commissioner of Public Lands is to have the exclusive power to execute oil leases. Furthermore, although it is established that the Commissioner of Public Lands may sever surface rights from mineral rights and reserve the one and sell the other (see State ex rel Otto v. Field, 31 N.M. 120), no such power vests in the State Game Commission, as I have stated above.