

Opinion No. 52-5604

October 29, 1952

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. Guy Shepard Commissioner of Public Lands Santa Fe, New Mexico

{*315} This is in reply to your letter of September 24, 1952, in which you requested advice as to what procedure to follow in declaring the size of restricted areas for oil and gas leasing.

You state that under the 1931 Law the Land Commissioner is authorized to create restricted districts for oil and gas leasing, but that there does not seem to be anything in the Law that gives you authority to decrease a restricted district once it is created. I first call your attention to Art. 13, Section 2 of the New Mexico Statutes Annotated, 1941 Compilation, which reads as follows:

"(Duties of land commissioner.) -- The commissioner of public lands shall select, locate, classify, and have the direction, {*316} control, care and disposition of all public lands, under the provisions of the acts of congress relating thereto and such regulations as may be provided by law."

Sections 8-1108 and 8-1109 NMSA, 1941 Compilation, read as follows:

"8-1108. Rental -- Limits -- First year -- Rental districts -- Alteration -- Maximum size of lease -- Rent where lease crosses district line -- All leases issued by the Commissioner of public lands shall provide for an annual rental to be paid by the lessee, the amount thereof to be fixed by the commissioner, but in no case shall the same be less than five cents (5 [cents]) nor more than one dollar (\$ 1.00) per acre, except during the secondary term of the leases provided for herein; provided the first year's rental for any lease, except leases issued pursuant to relinquishment under section 8 (§ 8-1115) of this act, shall not be less than one hundred (\$ 100) dollars.

It shall be the duty of the commissioner to classify and divide all state lands subject to lease hereunder into districts to be known as 'rental' districts, and thereupon prescribe the rental per acre to be paid under leases to be made upon lands in the respective rental districts, and upon such division shall post in a conspicuous place in the state land office a description of such districts and the rental prevailing in each; provided, however, the commissioner may, from time to time, alter or change the boundaries of such districts, or redistrict all of said lands, and increase or diminish the rental prevailing in each, but any change in the boundaries of the districts, or amount of rental, shall not become effective until ten (10) days after giving notice thereof by posting a description, or list, of such changes, in a conspicuous place in the state land office.

Not more than six thousand, four hundred (6,400) acres of land may be embraced within any one lease, and where part of the lands in any lease are situated in one rental district and part thereof in another, or other districts, the lessee shall be required to pay the rental prevailing in the district wherein part of the lands affected are situated having the highest rental."

"8-1109. Restricted districts -- Methods of leasing -- Added area -- Notice -- Rental. -- There is hereby created a restricted district comprising townships 3 to 15 south inclusive, ranges 34 to 39 east inclusive; townships 16 to 20 south inclusive, ranges 28 to 39 east inclusive; and townships 21 to 26 south inclusive, ranges 34 to 39 east inclusive N.M.P.M. 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. No lands within the boundaries of said restricted district shall be eliminated therefrom by the commissioner, but the commissioner may, from time to time, when in his judgment the interest of the state requires such action, extend the boundaries thereof and create other restricted districts or areas, within which oil and gas leases may be made only upon competitive bidding by sealed bids or at public auction. Notice of the extension of the boundaries of said district, or of the creation of other districts, shall be given in the same manner as provided for giving notice of change in rental districts, as provided by section 4 (§ 8-1108) of this Act. Nothing contained in this Act (§§ 8-1101, 8-1103, 8-1105, 8-1108 -- 8-1111, 8-1115) shall be construed as requiring a uniform annual rental to prevail over the entire area embraced in any restricted district. The commissioner, {*317} may, when it is deemed for the best interests of the state, fix the annual rental to be paid under the terms of each lease covering lands in any restricted district at the time notice of sale thereof is given, as hereinafter provided, without regard to the rental prevailing in the district in which the lands offered for lease are situated, and in such cases the provisions of section 4 (§ 8-1108) hereof, except those relating to the maximum and minimum rental, shall not apply."

Under Section 8-1114 NMSA, 1941 Compilation, which reads as follows:

"Rules and regulations -- Amendment -- Rescission -- Effective date. -- The commissioner is hereby authorized and required to prescribe and publish for the information of the public, all rules and regulations necessary for carrying out the provisions of this act (§§ 8-1101, 8-1103, 8-1105 -- 8-1118), and he may amend or rescind any rule or regulation promulgated by him under the authority contained herein; provided however, that no rule or regulation or amendment of same, or any order rescinding any rule or regulation shall become effective earlier than fifteen (15) days after the promulgation of same, and a copy of the proposed rule, regulation, amendment or other shall be posted in a conspicuous place in the office of the commissioner for a period of **at** least fifteen (15) days prior to the taking effect of same."

the Land Commissioner is given statutory power to amend or rescind any rule or regulation promulgated by him under the authority contained herein, but in doing so the procedure to be followed is set out in Section 8-1114 NMSA, 1941 Compilation. The

procedure as to restricted districts which applies in this case is set out in Section 8-1108 NMSA, 1941 Compilation herein above quoted.

In the case of State et al, vs. Field (now Baca) State Commissioner of Public Lands, 31 N.M., p. 120, 231 Pac. 1025, the Supreme Court provides ample authority for the proposition that by implication the Land Commissioner has power to rescind or abolish any rules and regulations which he has specific statutory authority to adopt. It is my opinion, in order to rescind an order, he must do so with all the dignity of its original adoption and as provided by Section 8-1108, which sets forth the procedure for each adoption.

It is therefore my opinion that by necessary implication the Land Commissioner has authority to rescind orders promulgated by him adding lands to restricted districts for oil and gas leasing, and that the procedure to be followed in withdrawing any lands from a restricted district for oil and gas leasing is substantially the same as set out in Section 8-1108 NMSA, 1941 Compilation.

Trusting that this fully answers your inquiry, I remain