

Opinion No. 55-6194

June 16, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. C. N. Morris, Assistant District Attorney, Fifth Judicial District, Carlsbad, New Mexico

This is in reply to your letter of June 6, 1955 in which you requested an opinion from this office concerning the authority of Eddy County to lease 80 acres of land not now being utilized for any governmental function. We are of the opinion that under Section 15-36-1, N.M.S.A., 1953 Compilation, Subsection 3, reading as follows;

"To sell and convey any real or personal estate owned by the county and make such order respecting the same as may be deemed conducive to the interests of the inhabitants."

that Eddy County would have the authority to lease for minerals the land you mention in your letter.

We call your attention to the fact that the Courts in deciding questions such as these have made a distinction between the ownership of land for governmental purposes and the ownership of land in a proprietary sense. **63 ALR** beginning at 614, and supplemented in **133 ALR** at 1241. If the land is not being used for any governmental purpose, then we feel that a lease could be executed.

Since the New Mexico Supreme Court has decided that an oil and gas lease conveys "real property," (**Terry vs. Humphrey**, 27 N.M. 564,) it is our opinion that this mineral lease should be executed under the provisions of Section 15-46-3 and Section 15-46-4 of the New Mexico Statutes Annotated, 1953 Compilation, which provide means of sale of property by a county at public auction, under the supervision of a District Court. Following these provisions would provide protection to the County Commissioners.

Trusting that this will answer your question, we remain

By: Paul L. Billhymer

Assistant Attorney General