

## **Opinion No. 57-149 (Substitute)**

July 19, 1957

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

**TO:** Mr. A. J. Garner, Assistant Director, Department of Game and Fish, Santa Fe, New Mexico

### **QUESTIONS**

#### QUESTIONS

What procedure should be followed by the Department of Game and Fish in leasing certain mine tailings belonging to said Department to a private individual, partnership or corporation, as lessee? The lands were purchased from a private party.

#### CONCLUSION

See opinion.

### **OPINION**

#### ANALYSIS

In answering the above question, we are substituting this opinion for our former Opinion No. 57-149, dated June 21, 1957, inasmuch as we believe that the former Opinion No. 57-149 is incomplete and in some respects erroneous, and for which the undersigned takes full responsibility. Accordingly, our former Opinion No. 57-149 is hereby withdrawn, over-ruled, and vacated.

Two statutes bear upon the question propounded by you. Section 53-4-3, N.M.S.A., 1953 Compilation, 1955 Supplement, reads as follows:

"The state game commission, except as herein limited is authorized to exchange, sell, lease, sublease or assign any interest in any lands and leases heretofore or hereafter acquired including but not limited to the sale or lease of timber, oil, gas, minerals or any other severable product of or interest in real estate, when, in the judgment of said commission, such transaction will be in the interest of the state game commission and said lands, leases, products or severable parts thereof, are, in the opinion of such commission, no longer necessary for the purposes for which such lands were acquired or where such lease or sublease will not materially interfere with or conflict with the use of such lands for the purpose for which they were acquired. The proceeds of any such sale, exchange, lease or assignment shall be converted into the game protection fund and disbursed as the other moneys in said fund are disbursed."

Section 6-1-8, N.M.S.A., 1953 Compilation, 1955 Supplement, is as follows:

"Any department, commission, agency or institutional board of this state is hereby empowered to sell or otherwise dispose of real or personal property belonging to such state department, commission, agency or institution, subject to the approval of the state board of finance. The state comptroller shall have the power to credit any payment received from the sale of any such real or personal property to whatever fund of such state department, commission, agency or institution as he deems appropriate. And the head of such department, or the president, or chairman of the commission, or the governing board of such agency or institution is hereby authorized to execute such deeds, leases, right-of-way easements, bills of sale or other documents necessary to convey all or any interest in said real or personal property, without warranty."

Under either Statute, the Department of Game and Fish clearly has authority to lease the above mentioned mine tailings. The question for reconciliation is reached, however, when we come to the problem of whether or not such lease must be approved by the State Board of Finance. Both Statutes quoted above were enacted by the 1955 Legislature, § 53-4-3 supra, being Chapter 86, and § 6-1-8 supra, being Chapter 229. You will observe that § 6-1-8 purports to be applicable to all departments, commissions, agencies, or institutional boards of the State; whereas § 53-4-3 relates only to the Game Commission. Accordingly, § 53-4-3 is a specific statute and § 6-1-8 is a general statute. We believe that the answer to your question is contained in § 53-4-3, being the specific, and thus governing, statute.

Accordingly, whether or not the lease should be executed is a question to be determined by the judgment and discretion of the Game Commission.

Since an oil and gas lease is not involved, Opinion of the Attorney General No. 5684, dated February 19, 1953, is not determinative. Nor does the Commissioner of Public Lands have any jurisdiction in the premises. See the lengthy treatment of such problem in Opinion of the Attorney General No. 5831, dated October 28, 1953.