

Opinion No. 5781-0A

November 23, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Honorable Robert D. Castner State Auditor Santa Fe, New Mexico

{*184} As a result of your request I have reconsidered Opinion No. 5781, dated July 15, 1953, in which this office ruled that the employees of the Commissioner of Public Lands were not subject to § 10-401, N.M.S.A., 1941 Compilation, as amended, generally known as the Personnel Classification Act.

As part of my reconsideration, I requested memorandum briefs from both of the attorneys in the Land Office and from yourself and Mr. Catron before making my decision. I have studied these memoranda and have checked the authorities cited therein.

I am also informed that regardless of my ruling, this matter will be taken to Court for judicial determination. A matter of this importance should certainly be so decided rather than by an opinion on this office.

I consider this matter a very close {*185} question but I feel that our original opinion is correct and that the authorities mentioned by you and Mr. Catron are not sufficiently in line to warrant a reversal of said opinion.

I agree with your authorities and your statements that the Land Commission is subject to "such regulations as may be prescribed by law". However, I do not believe this section of the Constitution intended that the administration of said lands, or any portion of said administration, could be taken away from the Land Commissioner by an act of the Legislature. § 2, Article 13 of the Constitution reads:

"The commissioner of public lands shall select, locate, classify and have the direction, 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."

It is our feeling that these "regulations as provided by law" must be directed to the Land Commissioner rather than to the Governor, or to some other government agency, as provided in § 10-401, N.M.S.A.

I might add, more-or-less as dictum, that our decision may have been different had the Legislature directed the Land Commissioner to establish a personnel classification system with the idea of equal pay for equal services, rather than giving this authority to some other agency completely outside of the Land Office.

For these reasons, and others already mentioned in our previous opinion, this office feels that the result reached in the previous opinion is correct so far as that opinion relates to the applicability of the personnel system to the Land Office. This should be considered as supplementary and modifying Opinion No. 5781.