

Opinion No. 80-10

April 8, 1980

OPINION OF: Jeff Bingaman, Attorney General

BY: J. Scott Hall, Assistant Attorney General

TO: Mr. Alex J. Armijo, Commissioner of Public Lands, State Land Office, Santa Fe, New Mexico 87503

STATE AGENCIES AND DEPARTMENTS

The Commissioner of Public Lands does not have exclusive right to execute leases on lands owned by the State, nor must a state agency other than the State Land Office use the statutory oil and gas lease form when leasing its land.

QUESTIONS

1. Does the Commissioner of Public Lands have the exclusive right to execute leases on lands owned by the State of New Mexico?
2. Must a state agency other than the State Land Office use the statutory oil and gas lease form, [Section 19-10-3 NMSA 1978] when leasing its land?

CONCLUSIONS

1. No.
2. No.

ANALYSIS

Article XIII of the New Mexico Constitution gives the Commissioner of Public Lands the power to dispose of all public lands, and Section 19-10-1 NMSA 1978 authorizes the Commissioner of Public Lands to issue oil and gas leases on "any lands belonging to the State of New Mexico." In addition, Section 19-10-3 NMSA 1978 states: "All leases issued by the Commissioner of Public Lands . . . shall contain the following terms and conditions . . . and shall be in substantially the following form . . ."

OPINION

Opinion of the Attorney General No. 56-84, dated February 19, 1953, interpreted Section 19-10-1, **supra**, as granting the Commissioner the exclusive right to execute all leases on any lands owned by the State of New Mexico. In light of this opinion, Section 19-10-3, **supra**, would seem to require that all leases issued by the Commissioner of

Public Lands conform to the terms and conditions specified in that section, including those leases covering lands owned by other state agencies.

The conclusion in Opinion No. 56-84 is, however, incorrect and is expressly overruled. Section 19-10-1, **supra**, does not grant the Commissioner the exclusive authority to issue all oil and gas leases on any lands owned by the state. This conclusion is mandated by our analysis of the following statutory and constitutional provisions:

First, Section 13-6-2 NMSA 1978 authorizes any state agency to sell or dispose of personal or real property belonging to it. An oil and gas leasehold is regarded as real property in New Mexico. **Johnson v. Gray**, 75 N.M. 726, 410 P.2d 948 (1966). Moreover, Section 17-4-3 NMSA 1978 expressly authorizes one state agency, the State Game Commission, to lease its oil and gas lands.

Second, Article XIII, Section 1 {¹²⁴} refers to ". . . all lands hereafter acquired . . ." and it would appear that the Commissioner would have authority over all lands belonging to the state no matter how acquired. However, in **Murphy v. State**, 181 P.2d 336 (Ariz. 1947), the Arizona Supreme Court interpreted the Arizona Enabling Act, which is identical to that of New Mexico, and held that the phrase appearing in the constitution and statutes, "all lands . . . otherwise acquired" by the state was not all inclusive. The court stated: "These words 'and all lands otherwise acquired by the state' refer to lands otherwise acquired by the state for the uses and benefits of the trust which was set up to create permanent funds for the support and maintenance of the institutions referred to in the Enabling Act."

Third, the statute creating the office of the Commissioner of Public Lands, Section 19-1-1, **supra**, provides that the Commissioner "shall have jurisdiction over all lands owned in this chapter by the state . . ." The chapter lists the institutions and funds to which "all moneys derived from state lands shall be deposited . . ." Section 19-1-17 NMSA 1978. The "state lands" referred to by Section 19-1-17, **supra**, are those ceded to the state by the federal government for the purpose of generating funds for specific trust beneficiaries.

Thus, the New Mexico Legislature intended the jurisdiction of the Commissioner of Public Lands to extend only so far as those lands acquired by the state pursuant to acts of Congress. The lease form specified in Section 19-10-3, **supra**, is required only for leases issued by the Commissioner of Public Lands. It, therefore, follows that the conformity requirement for lease forms found in Section 19-10-3, **supra**, does not extend to lands belonging to other agencies. To construe the Commissioner's "jurisdiction over all lands" to include oil and gas lands owned by other state agencies and to require leases issued under Section 19-10-3, **supra**, would result in the misallocation of the agencies' earned revenues to specific trust beneficiaries.

Consequently, it is the opinion of this office that the form for leasing oil and gas lands belonging to agencies other than the Office of the Commissioner of Public Lands need not comply with the terms and conditions of Section 19-10-3 NMSA 1978, even where

such leases are offered through the facilities of the Commissioner as an accommodation to another state agency.

ATTORNEY GENERAL

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