

Opinion No. 80-13

April 18, 1980

OPINION OF: Jeff Bingaman, Attorney General

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TO: Mr. Alex J. Armijo, Commissioner of Public Lands, State Land Office, P.O. Box 1148, Santa Fe, New Mexico 87501

TIMBER

The Commissioner of Public Lands may implement a permit or similar type program for the removal of dead and down firewood from New Mexico State trust lands.

QUESTIONS

May the Commissioner of Public Lands implement a permit or similar type program for the removal of dead and down firewood from New Mexico state trust lands?

CONCLUSIONS

Yes.

ANALYSIS

Article XIII, Section 2 of the New Mexico Constitution provides that

"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."

OPINION

Although the Commissioner's authority over public lands is considerable, **State ex rel. Otto v. Field**, 31 N.M. 120, 241 P. 1027 (1925), he is nevertheless limited by federal and state laws regarding the particular disposition of these trust lands.

Section 10 of the Enabling Act [36 Stat. 557] provides that no sale or contract for the sale of any timber or natural products of lands granted to the State shall be made except in the manner and after the notice by publication provided for in sales and leases of the lands themselves. Timber generally denotes trees of a size suitable for manufacture into lumber for use of building and allied purposes and does not include saplings, brush, fruit trees, or trees suitable only for firewood or decoration. **M & I Timber Co. v. Hope Silver-Lead Mines, Inc.**, 91 Idaho 638, 428 P.2d 955 (1967).

The dead and down firewood found on state trust lands is primarily juniper and pinon not fit for building or construction. Moreover, Section 19-11-10 NMSA 1978 distinguishes firewood from timber by stating that "[n]o down, large growth, and matured timber, except such as is fit only for firewood shall be sold at less than two dollars (\$2.00) per thousand feet, board measure, . . ." Thus, the conditions which govern the sale of timber need not be applied to the disposition of firewood.

Section 19-8-12 NMSA 1978 states that the commissioner may execute leases for the disposition of products of state lands "not otherwise provided for in this chapter, {^{*133}} upon such terms and conditions as he may deem for the best interests of the state, not repugnant to law." No provision is made for the disposition of firewood. Dead and down firewood found on state trust lands is not only a fire hazard but inhibits new timber growth. Thus, the removal of dead and down firewood would benefit the land and would be in the best interest of the state and the state trust lands.

Accordingly, the Commissioner would be authorized under Section 19-8-12, **supra**, to implement a fee lease program for the removal of dead and down firewood from state trust lands. Under Section 10 of the Enabling Act, short term leases, for a period of five years or less, need not be advertised.

ATTORNEY GENERAL

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