

Opinion No. 20-2757

December 21, 1920

BY: HARRY S. BOWMAN, Assistant Attorney General

TO: Mr. N. A. Field, Commissioner Public Lands, Capitol Building, Santa Fe, New Mexico.

Right of Commissioner of Public Lands to Cancel Leases.

OPINION

Referring to your letter of the 11th inst., inclosing copy of school lease form used by your office and requesting an opinion regarding the validity of the last paragraph wherein it is provided that the Commissioner may cancel the lease for reasons other than fraud or collusion, I would advise you as follows:

As stated in your letter, there is no direct statutory authority for the incorporation of such provision in the leases, nor do I find any specific authority which would authorize the Commissioner to cancel the lease except for the reasons stated in the form submitted.

It would appear, however, that under the general authority of the Commissioner to perform the duties of the office, and in view of his broad authority in the management, care, control and disposition of state lands, and also the specific authority for making such rules and regulations as he may find necessary in order to carry on the business of the office, that such a provision as the one above mentioned would not be invalid.

It is possible that the validity of the provision would depend upon the disposition of the cases now pending in the Supreme Court wherein is involved the authority of the Commissioner to incorporate in contracts of sale of state lands a reservation of the mineral rights to the State, and possibly it will be necessary to await the final disposition of those cases before the question above can be answered with any certainty.

If the courts should uphold the authority of the Commissioner to incorporate such a reservation in the contract of sale, we believe it would be safe to advise that he also could cancel leases upon such grounds as he might deem proper, provided, of course, there was no violent abuse of his discretion in so doing.