

Opinion No. 23-3705

May 9, 1923

BY: MILTON J. HELMICK, Attorney General

TO: Requested by: Hon. Justiniano Baca, Commissioner of Public Lands, Santa Fe, New Mexico.

Under the State Constitution the Land Commissioner Cannot Order Reduction of Rentals on Existing State Leases.

Regulations Made by the Land Commissioner Under the Authority of the Legislature Have the Force of Law.

The Prohibition Against Extinguishing an Obligation Owed to the State Contained in Sec. 32, **Art. 4 of the Constitution Does Not Apply Exclusively to Legislative Enactments.**

OPINION

{*55} This inquiry arises upon the following facts:

The former Commissioner of Public Lands by an executive order, ordered the reduction of rentals on new grazing leases as well as on the payment on grazing leases then in force between lessees and the State of New Mexico, and whenever payments had been made in accordance with the terms of the lease, the order authorized refunds of proportionate amounts. It appears that many lessees are writing to the Land Commissioner asking for refunds under this executive order. The question is asked whether or not such executive order authorizing reduction in rentals on existing leases is valid.

The inquiry naturally brings to mind two provisions of the State Constitution. Art. 2 of Sec. 19 reads as follows: "No expost-facto law, bill of attainder, nor law impairing the obligation of contracts shall be enacted by the legislature."

{*56} Art. 4, Section 32, reads as follows: "No obligation or liability of any person, association or corporation, held or owned by or owing to the state, or any municipal corporation therein, shall ever be exchanged, transferred, remitted, released, postponed, or in any way diminished by the legislature, nor shall any such obligation or liability be extinguished except by the payment thereof into the proper treasury, or by proper proceeding in court."

It seems to me that the executive order of the former Land Commissioner making a reduction of rentals on existing leases is clearly a remittance and a diminishment of an obligation owed to the state and is likewise an impairment of the obligation to the state

in a contract. It is true that the restrictions contained in both sections are addressed to the Legislature, but I think they apply also to executive orders made by the Land Commissioner which have the force of laws. It is not strictly and literally true that a law of the state in order to come within the constitutional restrictions must be in the form of a statute enacted by the Legislature in the ordinary course of legislature. Any enactment from whatever source originating to which a state gives the force of law is a law of the state within the meaning of the constitution. Any order of a legislative character made by an instrumentality of the state exercising delegated authority is a law of the state within the meaning of the contract clause of the constitution. (See 12 C. J. 990). This rule would include executive orders of the Land Commissioner of New Mexico because such rules are specifically authorized by Chap. 174 of the Laws of 1921.

For the foregoing reasons I am of the opinion that the executive order insofar as it attempts to reduce the rentals on existing leases is invalid and you are not authorized to allow any refunds to lessees thereunder.