

## Opinion No. 23-3730

August 17, 1923

**BY:** MILTON J. HELMICK, Attorney General

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

### **The Grazing Lands of the State May All Be Put In One Classification by the State Land Commissioner and the Minimum Rental Charged.**

No Reduction of Rental Can Be Allowed On Existing Leases. See Opinion No. 3705.

### **OPINION**

{\*88} Two questions are asked of this office: First, has the Commissioner of Public Lands legal authority to fix a three cent rental for state leases on grazing lands all over the state, and second, in case the three cent rate is fixed, can it be made to apply to the remainder of the term of existing leases so long as past due payments are not reduced.

In my opinion, the Commissioner of Public Lands has lawful authority to fix, by executive order, a rate of three cents per acre on leases of state grazing lands in every section of the state. By Chap. 14 of the Laws of 1921, it is provided that the rental to be charged for grazing lands shall be based upon the classification and valuation as determined by the Commissioner, but that in no event shall the rental be less than three cents per acre. It is true that this chapter would seem to contemplate a difference in classification and valuation of state lands throughout the state, but, on the other hand, there is nothing in the law to prohibit the Commissioner from placing all the grazing lands of the state in the same classification and charging the minimum rental of three cents. I am informed that under present conditions obtaining throughout the state, there is very little difference in the value of grazing lands. It is claimed by the livestock men of the state that virtually none of the state land is worth more than three cents an acre to them. The present poor condition of the range appears to extend to every portion of the state. Under these circumstances, if the Commissioner of Public Lands thinks that there is no material difference in the rental value of grazing lands throughout the state, I think he is authorized to place all the state lands in the same classification.

In answer to the second question, I will say that after careful consideration I have come to the conclusion that any reduction rental on state leases cannot apply to existing leases. I think that my opinion of May 9, 1923 covers the second question completely. In that opinion I called attention to Art. 2 of Sec. 19 and Art 4 of Sec. 32 of the Constitution of New Mexico and showed that under these constitutional prohibitions the Commissioner is powerless to release or diminish contractual obligations owing to the state or due the state. It has been suggested that these constitutional prohibitions would not interfere with the plan of requiring present {\*89} lessees to pay up to date at the old

rate and then be allowed to furnish the contract at the new reduced rate. I am afraid that this suggestion is not sound because the rentals fixed by existing contracts are clearly liquidated obligations to the state and the mere fact that they are not yet due does not change their character. The provisions of Art. 4, Sec. 32 are very stringent and it seems to me that they have the effect of absolutely prohibiting the Commissioner of Public Lands from modifying any existing contract by surrendering anything which the state is entitled to have under the terms of the instrument. For this reason, I think the Commissioner of Public Lands should be guided by my former opinion. I think the Commissioner of Public Lands is helpless to afford any reduction in rentals to lessees under existing valid contracts. Any reduction in the minimum rentals of state grazing lands can only be applied to new leases.