

## Opinion No. 43-4282

May 10, 1943

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Mr. H. R. Rodgers, Commissioner of Public Lands, Santa Fe, New Mexico.  
Attention: Mr. George A. Graham, Attorney

In your letter dated May 10, 1943, you state that many outstanding purchase contracts will mature by 1945, and since these contracts bear 4% interest, it is believed that it is better to extend the contracts than to cancel the same, with a possible loss of revenue to the State. You therefore request an opinion concerning Chapter 36 of the Session Laws of 1941, as to whether this law violates the Enabling Act or the Constitution of the State of New Mexico. The pertinent section of this chapter is Section 1, which appears in the 1941 Compilation as Section 8-813, and is as follows:

"Any bona fide holder of a contract for the purchase of state lands, entered into under the provisions of Chapter 52 of the New Mexico Session Laws of 1917 (Sections 8-809, 8-810, 8-812), or any amendments thereof, who is not in default thereunder, may, at any time not less than thirty (30) days prior to the maturity date of such contract, and by paying the fees hereinafter in this act (Sections 8-813 -- 8-817) set forth, make application in writing to the commissioner of public lands, for an extension of such contract, or an adjustment of the manner of payments of any unpaid balances of the purchase-price; the commissioner of public lands, after investigation, may grant the same in case it appears that the interest of both the State of New Mexico and the holder of the contract will best be served by such extension; provided any extension hereunder shall be for such period of time as the circumstances justify, but in no case to exceed a period of time greater than that originally set forth in such purchase contract. (Laws 1941, Ch. 36, Sec. 1, P. 54.)"

Under Section 8-809 of the New Mexico 1941 Compilation, the Commissioner of Public Lands is authorized to sell State lands on a deferred payment basis of not to exceed thirty years. This law might well have provided for deferred payments upon the basis of a greater number of years, and an extension of an existing contract for not to exceed an additional thirty years would have the same effect for all practical purposes, as though the original law had authorized contracts not to exceed sixty years instead of thirty years.

I assume that the requirements of the Enabling Act as to a Publication of Notice, etc., were made at the time these contracts were made. If so, we have only the Constitutional questions to consider. Article 4, Section 32 of the New Mexico Constitution provides 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."

If these purchase contracts constitute an obligation or liability on the part of the purchaser to the State, then this section of the Constitution would seem to prohibit a postponement of such contracts.

You have enclosed a copy of the purchase contract which is used by the Land Office, in which the Commissioner of Public Lands agrees to sell, and the purchaser agrees to make certain payments, and to pay the taxes, but in which the only remedy provided is for a cancellation of the contract in case of default, thus it appears that there is no absolute obligation or liability on the part of the purchaser to make the payments which could be enforced in a civil suit carried to a judgment.

In passing upon a similar purchase contract, although perhaps by way of dictum, in the case entitled *Vesely v. Ranch Realty Co.*, 38 N.M. 480; 35 P. (2d) 297, our Supreme Court used this language:

"It requires some liberality of construction to find in these extinguished contracts an obligation or liability of the purchaser owed to the state. The state agreed to sell the land. The purchaser did not expressly agree to buy it. He agreed to make the payments promptly, it is true, and to pay the taxes. But the only remedy expressly reserved by the state for default was cancellation at the option of the commissioner, with retention of all payments of principal and interest, as liquidated damages."

It is, therefore, very doubtful whether the Court would hold that such a purchase contract is an obligation or liability contemplated by the above section of the Constitution, but if it should be so held, there is another section of the constitution which must be interpreted as being in *pari materia* with the section above quoted, which is Article 13, Section 2. This section vests the Commissioner with the direction, control, care and disposition of all public lands under such regulations as may be provided by law.

Section 8-813, together with Section 8-809, now constitute the provisions of law governing sale upon deferred payments of public lands by the Commissioner, and both are valid provisions which the Legislature is authorized to make in view of Article 13, Section 2 of the Constitution.

For the reasons above stated, I am of the opinion that the Commissioner of Public Lands has authority to extend the present form of purchase contract for a period of not to exceed thirty years or the term of the original contract, when it appears that the interests of the State and of the contract holder will both be best served by such extension, and that such extension will not violate the Enabling Act or the Constitutional provisions above mentioned.

By C. C. McCULLOH,

First Asst. Atty. General