

Opinion No. 43-4299

May 24, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Mr. C. E. Hollied, Chairman, State Park Commission, Santa Fe, New Mexico

We are in receipt of your letter of May 11, 1943, and the inclosed letter from Mr. W. W. Nichols, of Clovis, New Mexico, with regard to the sale of that area between Clovis and Portales known as Eastern New Mexico State Park.

You ask our opinion as to whether or not sale of this land can be made without permission of the Legislature.

You state in your letter that you believe this area was made a park by an act of the Legislature in 1935. I have checked the session laws for that year and as far back as 1923, but have been unable to find any acts specifically making this area a park.

The State Park Commission was created by Chapter 57 of the laws of 1935, being Sections 4-101 to 4-119 of the 1941 Compilation. By Section 4-113 lands theretofore donated or granted to the State of New Mexico or its Governor for State park purposes were to be approved, ratified and accepted as State parks and placed under the jurisdiction of the State Park Commission. It may well be that the Eastern New Mexico State Park came into being in this manner.

The above mentioned act is the only one on our books dealing with the powers of the State Park Commission or relating to State parks. Nowhere in this act is authority given to the State Park Commission or to the Governor, in whose name title to parks is to be vested, under Section 4-112, to convey title to any of the State parks.

The author, in 50 C. J., 1139 says:

"Only such lands and such quantities may be disposed of by, or acquired from, the state as are within the statutory or constitutional provision authorizing disposal or acquisition."

In view of the foregoing, it is my opinion that neither the Governor nor the State Park Commission has authority to convey the Eastern New Mexico State Park without authorization from the Legislature.

Trusting that the foregoing sufficiently answers your inquiry, I am

By ROBERT W. WARD,

Asst. Atty. General