

Opinion No. 43-4397

October 18, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Honorable H. R. Rodgers, Commissioner of Public Lands, State Land Office, Santa Fe, New Mexico

In your letter dated October 15, 1943, you state that certain purchase contracts covering state lands were entered into in past years, with individuals, containing the usual reservation of rights-of-way and authority to grant the same over said lands. Subsequent to the date the contracts were entered into the Santa Fe Railroad was granted rights-of-way over lands covered by several of said contracts and the former Commissioner of Public Lands, with the approval of the contract purchaser, credited the purchase contract for the acreage covered in the rights-of-way and adjusted the payments under the contracts. Subsequently the railroad company abandoned the line and re-conveyed the acreage to the state. You are wondering whether the contract holders and the Land Office may re-calculate both the acreage and payments, in accordance with the terms of the original purchase contracts.

From an examination of the files in your office it is apparent that there are two general classes of transactions followed by former land commissioners in conveying rights-of-way to the railroad. In the first type of transaction the contract purchaser assigned to the railroad his interest in the contract covering the acreage involved in the right-of-way, and by payment of the contract price the railroad would have acquired the right to receive a patent for the acreage. However, the railroad company did not want a patent and only purchased and paid for a right-of-way. If the railroad company will clear the record by an assignment back to the contract purchaser of its interest in the contract covering the acreage involved, the contract could be re-calculated to conform with the original contract, and upon full and final payment, a patent covering the acreage in the original contract could be issued.

Under the second type of transaction the contract purchaser was required to relinquish the acreage involved in the right-of-way to the state and thereupon the land commissioner granted a right-of-way to the railway and subsequently the railway granted such right-of-way back to the state.

Since the state has authority to grant rights-of-way over any state lands included in a purchase contract, the relinquishment from the contract purchaser was unnecessary and the transaction amounted merely to a modification of the original contract to exclude the acreage covered by the right-of-way under a mistake of fact by both the land commissioner and the contract purchaser that the right-of-way was permanent. There is nothing to prevent a rescission of the modification of the contract by mutual agreement between the state and the contract purchaser, and such a rescission would have the result of placing the parties in status quo and re-instating the original purchase

contract. 17 C. J. S., Contracts, Sec. 440. Under this type of transaction the commissioner, with the consent of the contract purchaser, could re-calculate the acreage and payments and accept the corrected payments and issue a patent upon final payment, in accordance with the terms of the original contract.

By C. C. McCULLOH,

First Asst. Atty. General