

Opinion No. 44-4539

June 29, 1944

BY: EDWARD P. CHASE, Attorney General

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

In your letter dated June 23, 1944, you state that based upon Chapter 61, laws of 1939, the Governor and the Secretary of State purportedly conveyed an easement to the United States of a part of Section 16, Township 13 North, Range 25 East, in connection with the Conchas Dam Project in San Miguel County, New Mexico. You also state that this section is now leased to B. F. Walker on the regular form of lease, without any clause being inserted providing for cancellation upon thirty days notice.

You ask an opinion concerning three questions relative to Section 1, Chapter 61, Laws of 1939:

First, whether this section confers any authority upon the Governor and the Secretary of State to transfer any rights in State institutional lands.

Second, whether or not the 1939 Law confers any authority upon the Commissioner of Public Lands to dispose of any rights in said school section without payment therefor, as provided in Section 8-856 of the 1941 Compilation.

Third, whether the Commissioner, after giving thirty days notice, may cancel the existing grazing lease under the circumstances mentioned in your letter.

It is understood, from your letter, that the particular section involved is a part of institutional lands granted to the State and required to be administered under the Enabling Act by the Commissioner of Public Lands.

Section 1, Chapter 61, Laws of 1939, authorizes the conveyance of real estate interests by the proper officers of lands and real estate acquired under and by authority of Chapter 208, Laws of 1937, and has no reference whatever to institutional lands granted to the State. For that reason this law confers no authority upon the Governor and Secretary of State to transfer any rights in State institutional lands, and any transfer attempted to be made in this manner would be void. Based upon the same reasoning, the law does not authorize the Commissioner of Public Lands to dispose of institutional lands, and the Commissioner must be guided by the Enabling Act and Section 8-856 of the 1941 Compilation in granting easements for flowage purposes.

Section 8-847 of the 1941 Compilation provides for cancellation of leases by the Commissioner for violation of the terms, covenants or conditions of any lease covering State lands, or the non-payment of the rental when due. Since the facts stated in your

letter do not constitute violation of the covenants of the lease, nor non-payment of rental, I do not believe the Commissioner could cancel the existing grazing lease.

By C. C. McCULLOH,

First Asst. Atty. General