

Opinion No. 44-4542

July 3, 1944

BY: EDWARD P. CHASE, Attorney General

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

In your letter dated June 28, 1944 you state that the Land Office grazing lease contains the following covenants.

"It is understood and agreed that this lease is made for the sole use and benefit of the lessee and no sublease or under lease shall be made by the said lessee without the written consent of the Commissioner."

A person holding a state grazing lease, takes cattle of others on a per head basis. The lessee retains possession of the premises and handles and manages the live stock so taken along with his own cattle. You inquire whether such a transaction is in violation of the provisions of the standard form of grazing lease having the above mentioned covenants. The transaction above mentioned is not a sublease or underlease since the premises remain in the possession and under the control of the lessee and I am of the opinion that the premises continue to be used for the sole use and benefit of the lessee regardless of the fact that he may profit to some extent from the use of the premises in taking other live stock for grazing thereon.

The lease does not require that the lessee use the premises for his live stock only, but allows him to take other live stock for grazing on the premises under his management and control if he so desires.

By C. C. McCULLOH,

First Asst. Atty. General