

## Opinion No. 45-4672

March 6, 1945

**BY:** C. C. McCULLOH, Attorney General

**TO:** Hon. Sam G. Bratton President, Board of Regents University of New Mexico  
Albuquerque, New Mexico

{\*31} You have requested an opinion from this office relative to the powers of the Board of Regents of the University of New Mexico.

It appears that the Board, through a donation, is the assignee of an oil and gas lease on federal lands and that an advantageous contract has been entered into with an oil company whereby the University may receive substantial sums by virtue of the donation and subsequent assignment of the oil and gas lease. However, the United States Land Office questions the power of the Board of Regents to acquire, own and dispose of this oil and gas lease.

Under the provisions of Art. 12, Sec. 13 of the Constitution of New Mexico, boards of regents for educational institutions are authorized, and the Legislature is directed to provide their powers and duties in connection with the control and management of the respective state institutions.

Sec. 55-2403 of the N.M. 1941 Compilation provides as follows:

"The management and control of said university, the care and preservation of all property of which it shall become possessed, the erection and construction of all buildings necessary for its use, and the disbursements and expenditures of all moneys, shall be vested in a board of five (5) regents."

Sec. 55-2404 of the N.M. 1941 Compilation provides as follows:

"The regents of the university and their successors in office shall constitute a body corporate under the name and style of, the Regents of the University of New Mexico, with the right, as such, of suing and being sued, or contracting and being contracted with, of making and using a common seal and altering the same at pleasure."

Sec. 55-2821 of the N.M. 1941 Compilation, which is applicable to the Board of Regents of the University of New Mexico, provides as follows:

"All of the said institutions, including the New Mexico Military Institute, shall be entitled to receive all the benefits and donations made and given to similar institutions of learning and charity in other states and territories of the United States, by the legislation of the Congress of the United States, or from private individuals or corporations, and for the benefit of {\*32} said institutions they shall have power to buy and sell or lease or

mortgage realty, and do all things that, in the opinion of the several boards, will be for the best interests of said institutions, and are in the line of its object."

As early as 1914, this office, in an opinion, held that the Board of Regents of the University of New Mexico had authority to convey real estate as the grantor; and in Opinion No. 1171, written Sept. 18, 1935, this office held that another state institution with similar powers and under a similar board of regents, had the power to sell and convey realty which it then owned.

It has been held by the Supreme Court of New Mexico that an oil and gas lease over a period of years and as long thereafter as oil and gas, or either, may be produced, is a conveyance of real property.

It would seem, from a reading of the statutes above quoted, that a board of regents of the University of New Mexico has broad general powers, and also has specific authority under Sec. 55-2821 above mentioned, to acquire, own and sell, lease or mortgage, real estate, and do all things in that connection which, in the opinion of the board, will be for the best interests of said institution.

For these reasons, I cannot understand why the Federal Land Office questions the assignment of the oil and gas lease to the Board of Regents of the University.