

Opinion No. 45-4750

July 13, 1945

BY: C. C. McCULLOH, Attorney General

TO: Honorable John E. Miles Commissioner of Public Lands Santa Fe, New Mexico.
Attention: George A. Graham, Attorney

{*102} Replying to your letter of July 7, 1945, requesting an opinion upon the following question: May the Commissioner of Public Lands, when offering to lease State Oil and Gas lands, advertise and offer to lease upon the basis of the State receiving more than one-eighth royalty from the highest and best bidder.

Section 8-1110 of the N.M. 1941 Compilation appears to be the controlling provision relating to the above question and, because of the length of this section, we quote only so much thereof as appears necessary:

"The commissioner shall hold a public sale of oil and gas leases upon lands which may be open to lease and embraced within the restricted district, or districts, created, and which may be created under the preceding section, on the 10th day of each month, or, on the next business day following where the 10th falls on Sunday or a legal holiday and shall offer for lease such lands in designated tracts to the highest and best bidder therefor. All sales of leases upon competitive bidding, or at public auction, shall be governed by regulations issued by the commissioner **not in conflict** with the provisions of this act (Sections 8-1101, 8-1103, 8-1105 -- 8-1118)."

Section 8-1101 of the N.M. 1941 Compilation provides as follows:

"The commissioner of public lands hereinafter referred to as the "commissioner" is hereby {*103} authorized to execute and issue in the name of the state of New Mexico, as lessor, leases for the exploration, development and production of oil and natural gas, from any lands belonging to the state of New Mexico, or held in trust by the state under grants from the United States of America, and including lands which have been or may hereafter be sold by the state with reservations of minerals in the land, such leases to be issued upon such terms and conditions as the **commissioner may deem to be for the best interests of the state, and not inconsistent** with the provisions of chapter 125, of the Session Laws of 1929 (Sections 8-1101, 8-1103, 8-1105 -- 8-1118), and amendments thereto;"

It appears that the Legislature, in enacting the above statute, recognized the powers granted the Commissioner in the Enabling Act and the Constitution of New Mexico (Section 2, Article 13), and unless those powers were restricted by legislation; "that executive officer was, by the Legislature, in 1912, invested with jurisdiction over the public lands, except as may be otherwise specifically provided by law." (In *State ex rel Otto v. Field*, 31 N.M. 120, at Pages 176, 177.)

Section 8-1103 of the N.M. 1941 Compilation (amended by S. B. 195, S. L. 1945) provides limitation on term, rental and other rest [Illegible Word], and provides a one-eighth royalty without limitation as to what additional royalty the Commissioner might require from "the highest and best bidder", "or for the best interest of the state."

Section 8-1105 of the N.M. 1941 Compilation provides that there is no "conflict" or "inconsistent" provision in this section which would limit the Commissioner to receive royalty in addition to the one-eighth minimum.

Section 8-1118 of the N.M. 1941 Compilation provides no limitations on leasing.

I have carefully considered all the provisions of the above sections, Enabling Act, Constitution, and other sections relating to oil and gas leases, and it is my opinion that the Commissioner of Public Lands has authority to advertise, offer and lease oil and gas lands upon the basis of the State receiving more than one-eighth royalty from the highest and best bidder "as the Commissioner may deem to be for the best interests of the State."

By THOS. C. McCARTY,

Asst. Atty. General