

Opinion No. 45-4767

August 10, 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

{*116} Replying to your letter of August 8, 1945, requesting an interpretation of the following section of the 1941 Compilation, as amended by Senate Bill No. 140, the records do not show that this bill carried an emergency clause.

"The commissioner is hereby authorized to cancel any lease issued as provided herein for nonpayment of rentals or nonperformance by the lessee of any provision or requirement of the lease; Provided, however, that before any such cancellation shall be made the commissioner must mail to the lessee or assignee by registered letter, addressed to the post-office address of such lessee or assignee {*117} shown by the records of the office of the commissioner, a notice of intention to cancel said lease, specifying the default for which the lease is subject to cancellation, and if within thirty (30) days after the mailing of said notice to the lessee or assignee he shall remedy the default specified in such notice, then no cancellation of the said lease shall be entered by the commissioner but otherwise the said cancellation shall be made and all rights of the lessee or assignee under the lease shall thereupon terminate. The mailing of the notice as provided in this section shall constitute notice of the intention of the commissioner to cancel the lease and no proof of receipt of such notice shall be necessary or required. **All notices required to be given hereunder on account of failure to pay rentals shall be mailed within ninety (90) days after said rentals shall have become delinquent, and as to all leases under the terms of which rentals are delinquent as of the effective date of this amendment said notices shall be mailed within ninety (90) days from the effective date hereof.**"

I interpret the statute as it now stands to mean that the commissioner "shall" mail notices on rentals within 90 days after they become delinquent, and no alternative is provided. On "nonperformance", other than rentals, the time of giving notice is within the commissioner's discretionary authority.

The two provisions in the amendment appear confusing and ambiguous. It is my opinion that the mailing of all notices on rentals within the 90-day period will be in compliance with the amendment.

By THOS. C. McCARTY,

Asst. Atty. General