

## Opinion No. 45-4761

July 21, 1945

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

**TO:** Honorable John E. Miles Commissioner of Public Lands Santa Fe, New Mexico

{\*111} In your letter dated July 20, 1945, you enclose a letter from Vilas P. Sheldon, Chief Engineer of the Loco Hills Pressure Maintenance Association Inc., in which, among other things, he states that the Loco Hills Pressure Maintenance Association is spending considerable amounts of money in re-pressuring the Loco Hills field to assure ultimate recovery of all the oil and gas possible. He states that at the present time the federal government is allowing a subsidy of 17 [cents] per barrel to producers in this field, and he requests the Land Commissioner to assist the Association by refunding or remitting the amount of its royalty interest in the subsidy payments.

This office recently ruled that subsidy payments on oil production amounted to an increased price to the producer of that amount and that the state was entitled to its share of the royalty on such subsidy payments. The private royalty owners no doubt should consider favorably the proposition presented by the Association in that undoubtedly the ultimate recovery of oil will be increased. However, you as a public official and trustee of the public lands are limited by the prohibition contained in the state Constitution.

Article 4, Section 30 of the state Constitution provides as follows:

"Except interest or other payments on the public debt, money shall be paid out of the treasury only upon appropriations made by the legislature. No money shall be paid therefrom except

upon warrant drawn by the proper officer. Every law making an appropriation shall distinctly specify the sum appropriated and the object to which it is to be applied."

Article 4, Section 32 of the Constitution provides as follows:

"No obligation or liability of any person, association or corporation, held or owned by or owing to the state, or any municipal corporation therein, shall ever be exchanged, transferred, remitted, released, postponed, or in any way diminished by the legislature, nor shall any such obligation or liability be extinguished except by the payment thereof into the proper treasury, or by proper proceeding in court."

It seems to be clear from these constitutional prohibitions that you cannot either refund the royalty interest in the subsidy payments nor remit the amount to the Association.

It might be possible for the Legislature to appropriate money for such purpose if the same is considered as a protection of the state's lands and property, rather than the {\*112} enhancement of the value thereof under authority of Lake Arthur Drainage District v. Field, 27 N.M. 183, but at the present time you have no authority to comply with the request of the Association.