

Opinion No. 54-5890

January 20, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Commissioner of Public Lands Mr. E. S. Walker State Lands Office Santa Fe, New Mexico

{*326} In your letter of December 31, 1953, you request our opinion as to certain questions involved when easements and rights of way are to be secured across lands of the State of New Mexico which are subject to purchase contract pursuant to Sections 8-801 et seq., 1941 Compilation. The questions asked are as follows:

1. Which of the parties has the right to grant easements and rights of way across the land under contract?
2. Is this right to grant easements absolute in the particular party or must the consent of the other party be obtained?
3. Once a valid easement or right of way is granted, what disposition is to be made of the sums received in payment for said easement or right of way?

This office concurs in Attorney General's Opinion No. 677 dated October 31, 1933, referred to by you in your request, wherein it was stated:

{*327} "As to question No. 2, any arrangement that can be worked out with the contract purchaser may be valid. In other words, the Land Commissioner may be guided by the opinion heretofore mentioned, but the purchaser must in some manner be satisfied so as to effectively remove his claims and rights under his contract.

"A careful examination of the usual contract of purchase of state lands, used by the Land Office, excluded only 'valid existing rights, easements, rights of way and reservations'."

In addition, however, it would seem to us that as a practical matter the money be applied to the purchase contract or held in suspense until the contract purchaser completes his contract obligations.

By: Walter R. Kegel

Assist. Attorney General