

Opinion No. 55-6215

July 6, 1955

BY: RICHARD H. ROBINSON, Attorney General

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

Re: M-4144 - Lea County Airport

OPINION

Your request for opinion dated June 27, 1955, has been received.

You state that the Land Office has leased certain lands to the County of Lea. This lease is for a term of five years and was not advertised or sold at public auction. The lease contains the following provision:

"IT IS FURTHER UNDERSTOOD AND AGREED, That this lease may be renewed for a like term of five years at the option of the Lessee, which option must be exercised at least Thirty (30) days prior to the expiration of the term herein."

Your questions are: 1. Does the renewal clause above give lessee an absolute right of renewal? 2. If not, what is the extent of the lessee's right of renewal?

Your first question is answered in the negative. In **State vs. Vesely**, 40 N.M. 19, 52 P. 2d 1090, it was held that such a clause in a lease for this type of state lands would not give an absolute right of renewal. In that case the Court said:

"We do not hold, therefore, that the statute in question is void, but we do hold that there cannot exist, by virtue of any statute that has been or can be passed by the Legislature, an absolute right of renewal of such lease under any terms or conditions, for it would violate the Enabling Act."

To the same effect is the case of **Ellison vs. Ellison**, 48 N.M. 80, 146 P. 2d 172.

The second question, although incapable of a precise answer may best be answered in the words of the Court in **State vs. Vesely**, supra.

". . . In view of the Enabling Act and section 132-114, Comp. St. Ann. 1929, quoted, we hold that the Legislature did not intend such right of renewal to be absolute, but as the Supreme Court of Arizona held so we hold; that it is used in the sense of a **better or superior right** -- a question for investigation and the exercise of judgment and discretion by the Commissioner of Public Lands.

"In case of conflicting applications the Commissioner of Public Lands should investigate all applications using discretion and judgment, and award the lease should there be contests or more than one application therefor, to the one who has the better right under the facts of the case" (Emphasis supplied)

Further, Section 7-8-16, N.M.S.A., 1953, gives the counties a preference to lease state lands. Also, and for whatever it may be worth, it is our understanding that the records of the State Land Office indicate that a city, county or school district has never been denied a renewal of a lease such as the one in question when such renewal has been duly requested.

Thus, although the County of Lea has no absolute right to renew its lease under the provision contained therein, it is our feeling that so long as it makes due application for renewal every five years, that County may be reasonably sure that the lands in question will be leased to it.

I trust this helps answer your inquiries.

By: Santiago E. Campos

Assistant Attorney General