

## **Opinion No. 58-80**

April 10, 1958

**BY:** OPINION OF FRED M. STANDLEY, Attorney General 02,05,50 Robert F. Pyatt,  
Assistant Attorney General

**TO:** Homer C. Pickens, Director, Department of Game and Fish, Santa Fe, New Mexico

### **QUESTION**

#### QUESTION

The State Game Commission proposes to take a lease on Eagle Nest Lake. Certain expenses necessarily incidental thereto compel the Commission to charge a special fee for fishing in the lake. After fees are collected, the same would be deposited with the State Treasurer, to the credit of the Game Protective Fund, and 50% of said fees would then be vouchered out, under regular procedures, as rentals under the above lease. Stocking of fish would be by the lessor.

Is such legal, either in the above case or in cases of other municipally owned lakes?

#### CONCLUSION

Yes.

### **OPINION**

#### ANALYSIS

The above fees would be in addition to the license fees provided by § 53-3-6, N.M.S.A., 1953 Compilation 1957 Supp. At first blush, it might be thought that the schedule of license fees therein provided would be exclusive for public hunting and fishing. Under the instant circumstances, however, we do not think so, but in so holding, this office is not to be taken as generally holding that the statutory schedule of hunting and fishing license fees may be exceeded at the will of the Department of Game and Fish.

Our reason for approving the proposal is found upon § 53-4-1, N.M.S.A., 1953 Compilation. It provides:

"The state game commission of the state of New Mexico is hereby authorized and empowered to acquire by purchase, gift, bequest or lease; and to hold, develop and improve lands for fish hatcheries, game farms, game refuges, bird refuges, resting and nesting grounds, field stations, dams, lakes, ditches, flumes, water ways, pipe-lines, canals, rights-of-way, trails, roads and for all purposes incidental to the propagation,

preservation, protection and management of the game, birds, fish and wildlife of the state of New Mexico."

In our opinion, such is a broad grant of power to the State Game Commission. First, it includes the express power to acquire lands (including lakes) by lease for fish and game purposes. Such necessarily includes the power to pay rentals (within fiscal limits) to continue the lease, and keeping in mind the nature of the statute, we believe it may be fairly implied that the State Game Commission would have authority to impose fees or other charges to help defray the expenses necessitated by the lease and operations thereunder, particularly where, as here, the fees charged and collected are directly related to the rentals paid the lessor.