

Opinion No. 58-76

April 8, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

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

QUESTION

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"Under Chapter 53-4-3, do you recommend to the Commission that they advertise these tracts of land for sale through the State Purchasing Agent, or do you feel that the Commission may advertise locally, under their own name, and sell directly to the highest bidder?"

CONCLUSION

The Commission could do either, in its discretion. This office has no power to recommend on matters of policy.

OPINION

ANALYSIS

Under § 53-4-3, N.M.S.A., 1953 Compilation, 1957 Supplement, the State Game Commission is **itself** authorized to sell its lands, or interests therein, unfettered by the provisions of § 6-1-8, N.M.S.A., 1953 Compilation, 1957 Supplement. Opinion of the Attorney General No. 57-149 (Substitute), rendered July 19, 1957.

Nor is there anything in § 53-4-3, *supra*, which **requires** the proposed sale or other disposition to be referred to the State Purchasing Agent.

Of course, we are aware of the provisions of § 6-7-8, N.M.S.A., 1953 Compilation, reading as follows:

"The purchasing agent shall have power to transfer any supplies contracted for from any department where they are not needed to any other department where they are needed, and to direct the proper charges and credits to be made in the appropriations of the departments concerned. **He shall also have the power to sell at private sale any surplus or unneeded supplies or property in his hands owned by the state or any department thereof**, at a price not less than was paid for the same or may sell the same for less than cost thereof, to the highest and best bidder for cash, after advertising

the same in the manner provided by law for the sale of personal property upon execution, and shall deposit the money received therefor to the credit of the department or departments for and on account of which such unneeded supplies were purchased. He shall at all times keep in his office a current inventory of all movable equipment owned by the state." (Emphasis ours).

However, this statute does **not require** you to place the lands in question in the hands of the State Purchasing Agent for subsequent disposition by him. The language is permissive only, and under the terms thereof the State Purchasing Agent only may sell such property as is placed in his hands [ILLEGIBLE WORD] a state department for the purpose of sale. He has no right to [ILLEGIBLE WORD] property unless it is placed with him for disposition. Opinion of the Attorney General No. 4560, dated August 11, 1944. But the State Game Commission could, if it so desires, place the lands in question with the State Purchasing Agent for sale by him. This is, of course, a policy matter upon which this office is not entitled to express itself.

Referring again to § 53-4-3, supra, we believe it must be interpreted so as to favor its evident purpose, and in a manner consistent with the best interests of the State Game Commission. In accordance therewith, if the Commission chooses to itself sell the lands, it could, if it wanted, advertise the proposed sale, or otherwise notify prospective purchasers. But again, such is a matter to be determined by the Commission in its sound discretion.