

Opinion No. 26-3878

February 17, 1926

BY: FRED E. WILSON, Attorney General

TO: Hon. E. B. Swope, Commissioner of Public Lands, Santa Fe, New Mexico.

In re: Grazing lease No. 26392 of J. F. Branson.

OPINION

I am in receipt of your letter of February 11 in reference to the above matter in which you call my attention to a former opinion of the Attorney General construing § 32 of Article 4 of the Constitution. You seem to be under a misapprehension as to the opinion of Ex-Attorney General Helmick that you refer to, as well as to the correct meaning and application of Article 4, § 32 of the Constitution.

The only opinions rendered by Attorney General Helmick on this subject were No. 3705, 3730 and 3762.

Opinion No. 3705, dated May 9, 1923, held that under the State Constitution the Land Commissioner cannot order reduction of rentals on existing state leases. This applies to existing leases and not to leases which have been relinquished to the state with the consent of the Commissioner.

Opinion No. 3730, in so far as it related to Article 4, § 32, of the Constitution, held again that no reduction of rental can be allowed on existing leases. In opinion No. 3762, dated March 21, 1924, and modified on March 28, 1924, it was held that the Commissioner of Public Lands may grant assignments of a portion of a purchase contract, providing he safeguards the right of the State in the transaction. None of these opinions referred to construes § 32, Article 4 of the Constitution as preventing the Commissioner from approving a relinquishment to the State, or an assignment of a lease, as provided by Chapter 73 of the Session Laws of 1915.

When the lessee asks the consent of the Commissioner to permit him to relinquish his lease before the expiration of the term, the Commissioner may consent or withhold his consent. If good reasons exist which appeal to the discretion of the Commissioner showing that the lessee should be permitted to relinquish to the State, the Commissioner has power to permit such relinquishment. If the result of permitting the lessee to relinquish would be, in the opinion of the Commissioner, against the State's interests, the Commissioner should withhold his consent to the relinquishment. However, if the Commissioner, in the exercise of his discretion, consents to the relinquishment on the part of the lessee, the statute provides that the lease shall be cancelled. This relieves the lessee from the payment of any promissory notes executed by him for rental subsequent to the date the lease is cancelled. If, after cancelling the

lease, the Commissioner entered into a new contract with a third party for less rental per acre than the State was receiving for the former lease, that is no concern of the former original lessee, and he should not be expected to pay the difference in the rental as between the old lease and the new. Of course, the ability of the Commissioner to obtain the same rental for a new lease as he obtained on the old is a matter which the Commissioner will doubtless consider in determining whether or not to consent to the relinquishment of the original lease.

In cases where a lease is relinquished with the consent of the Commissioner for reasons that appear good to the Commissioner, there is no obligation due the State in so far as the unpaid promissory notes are concerned which were given for the period subsequent to the cancellation. As stated you in my letter of February 10, when the original contract is made the statute permitting relinquishment to the State becomes a part of the contract, and the notes given in payment of the rentals for the entire term do not become obligations due the State if the contract is cancelled in accordance with its terms and the statute above mentioned.

You state that the only question you were concerned in at this time was as to whether you had any right to insist in demanding payment on an obligation that had been cancelled by a former Commissioner, and you state further that at the present time, under no circumstances would your office approve a relinquishment of any lease on which obligations or rentals had not been paid in full.

You certainly have the right to insist upon payment of any obligation, even though it had been cancelled by a former Commissioner, but the trouble is that you are calling something an obligation which is not such. When a man enters into a contract with the State to take a lease for a period of five years and executes his promissory notes covering the rental for said years, where his contract specifically provides or rather where the statute specifically allows him the right to relinquish the contract, with the consent of the Commissioner, the promissory notes are not obligations due the State if the lessee relinquishes the lease and the Commissioner approves same before the expiration of the term.

I do not desire to be understood as attempting to minimize the importance of your evident desire to fully protect the State. That is commendable. But I hope I have made clear the difference between reducing the rental provided for in an existing lease, and in attempting to collect rental on a lease after same has been cancelled by the Commissioner, and the lessee deprived of the use of the land.