

## Opinion No. 26-3882

April 24, 1926

**BY:** FRED E. WILSON, Attorney General

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

I have your letter of April 21st in which you request my opinion as to the validity of the five-year leases for oil and gas which are issued by your office.

I understand that the leases referred to are issued without advertisement and without attempting to conform to the terms of the Enabling Act with reference to public auction and public advertisement. I also understand that the lands covered by these leases constitute a portion of those lands granted by the United States to the Territory of New Mexico by an Act approved June 21, 1898, known as the "Ferguson Act" (30 Stat. 484). In my opinion, so far as your Office is concerned, and so far as the State of New Mexico is concerned, the question as to the validity of these unadvertised leases was removed from the realm of controversy by the case of *Neel v. Barker*, reported in 27 N.M. 605, and decided by our Supreme Court on January 5, 1922.

To my mind, there is no doubt as to what this case holds. It holds, unequivocally, that the restrictions and limitations of the Enabling Act, admitting the Territory of New Mexico to the Union, in regard to the sale, lease, conveyance, or contract of, or concerning any of the lands granted or confirmed by said Act, or the use thereof, or the natural products thereof, do not apply to a grant or lease to explore for oil and gas executed by the Commissioner of Public Lands of the State of New Mexico. In other words, a lease executed by you to explore for oil and gas on public lands of the State of New Mexico is in no way affected by the terms of the Enabling Act. This obviates any necessity for sale at public auction or public advertisement.

I know of no rule by which you can be guided that is safer to follow than the decision by our own court. In fact, I think it is clearly your duty to follow this decision of the Supreme Court, and not attempt to create and impose burdens upon the development of the state lands for oil and gas that would make development practically impossible.

It is possible and likely that some capable lawyers do not think the decision in the case of *Neel v. Barker* is a correct exposition of the law. However that may be, it is the law so far as your Office is concerned, and the State of New Mexico is committed to the policy therein announced, and I am quite sure that whatever power the State of New Mexico possesses will always be exerted in upholding leases executed in conformity therewith. So far as I am concerned, I fully agree with the rule announced in the case of *Neel v. Barker*, as well as the reasoning by which the court reached the conclusion it did.

I deem it unnecessary to advance any argument in support of the correctness of the decision in the case of *Neel v. Barker*. I feel that any discussion or question now as to

the validity of these leases is purely academic and leads one no where except to the broad field of aimless speculation.