

Opinion No. 31-20

January 21, 1931

BY: E. K. Neumann, Attorney General

TO: Hon. J. F. Hinkle, Commissioner of Public Lands, Santa Fe, New Mexico.

{*27} I have before me your letter of the 15th instant, wherein you ask whether or not the Commissioner of Public Lands has the power to plug abandoned oil or gas wells and pay such expense out of the State Lands Maintenance Fund. The situation being that certain of such wells have long gone unplugged, the owners and operators of which are not to be found or are insolvent, so that the expense of plugging in conformity with law cannot be recovered from them.

Sections 97-201 to 97-204, of the Code, inclusively, provide the manner in which oil and gas wells, which have been abandoned, shall be plugged to protect the oil and gas bearing sands, charging the owner, operator or lessee of such wells with the duty of so doing. Section 97-203 thereof provides that any person injured by the failure of any operator or owner to plug an abandoned well, may, after notice, proceed to plug such well and recover the costs thereof from the person or persons who failed to do so in the same manner as other debts are recovered, and shall have a lien upon all fixtures, machinery and leasehold interest of the owner or operator. This right would, in my opinion, belong to the Commissioner, as well as anyone else, in order to protect the lands of the state, giving apparently an adequate remedy to recover the costs. Under the conditions, however, there is no real remedy, so that the costs would of necessity fall upon the person doing the work.

If it appears to the Commissioner that there is real danger to any state lands by reason of any wells remaining unplugged, it is my opinion, that it is not only the right of the Commissioner but his duty to plug such wells to protect the lands under his control. He should proceed according to law (Sec. 97-203) and attempt to recover the costs from the owner or operator. If such recovery cannot be had, it is my opinion, that the Commissioner can pay such costs out of the State Lands Maintenance Fund, in the manner as other payments out of such fund are made according to Section 132-107 of the Code.

It might be well to budget this item in the appropriation for the Land Office, if it is a matter which will be of any great cost in the future, though such is not absolutely necessary, in my opinion, as I have pointed out hereinabove. No doubt the future can be taken care of by proper current supervision of matters and a condition like the present one be avoided.