

## Opinion No. 31-31 Sup.

January 27, 1931

**BY:** E. K. Neumann, Attorney General

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

{\*33} This office is in receipt of your letter of January 26, enclosing letter from the Honorable Emmett Patton and in which correspondence you request an opinion as to whether it is permissible for you to sell certain state lands in the Hobbs oil field and upon which there are now producing oil wells.

The sale has been set for April 2, at Lovington. The advertisement of sale is in proper form and one clause therein, provides as follows: "All minerals on the said lands are reserved to the state and the Commissioner reserves the right to reject any and all bids."

Section 132-141, provides in part that state lands known to contain valuable minerals, petroleum, or natural gas in paying quantities \* \* \* shall not be sold, but may be leased as provided in this chapter.

In questions regarding the control and disposition of state lands we must, of course, be guided first, by the Enabling Act and in section 10 of the Act, there has been set forth the manner of advertising and sale, and the Enabling Act does not place any restriction upon the right to dispose of mineral land except, as to the manner of such advertising and sale.

In the case of State of New Mexico, ex rel Otto vs. Field cited in 31 New Mexico, page 120, numerous provisions of our statute with reference to state lands have been discussed and construed together with the general discussion of the Enabling Act, and the powers and duties of the Commissioner of Public Lands and the rights of the state to control and dispose of such lands.

In this case the court was of the opinion that the Legislature contemplated that the commissioner might sever the surface rights from the mineral rights and reserve the one and sell the other and it is therefore, held in this case that the prohibition against the selling of mineral lands (section 132-141) of the 1929 Compilation,) which was formerly section 5218 of the 1915 Code, was a prohibition on the sale of the mineral content and not the surface.

It is the opinion of this office that the holding in this case is correct and that therefore, the Commissioner of Public Lands may proceed with the sale as advertised.

By Frank H. Patton,

Asst. Att'y General