

Opinion No. 31-31 Sup.

January 28, 1931

BY: E. K. Neumann, Attorney General

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

{*33} We have this date held conversation with the Honorable Emmett Patton in regard to the opinion rendered by this office on January 27th, with reference to the sale of state lands in the Hobbs Oil Field set for April 2nd, at Lovington, and it is our understanding from such conversation that you desire additional information.

The Constitution of the State of New Mexico in Article 13 section 2 provides, that the Commissioner of Public Lands shall select, locate, classify and have the direction, control, care and disposition of all public lands under the provisions of the Act of Congress relating thereto and such regulations as may be provided by law.

The State Land Office was created by virtue of chap. 32 of the State Laws of 1912 now cited as {*34} section 132-101 New Mexico Statutes Annotated 1929 Compilation and this act provides that the executive officer of the Land Office should be the Commissioner of Public Lands and gives such Commissioner jurisdiction over all state owned lands together with the management, care, custody, control and disposition thereof. Other sections of said chap. 32 gave the Commissioner of Public Lands the power to make rules and regulations for the control, management, disposition, lease and sale of state lands.

It will be recalled that in the former opinion we cited the case of State of New Mexico, ex rel Otto vs. Field 31 N.M. page 120. We wish to add that this case held and is authority for the proposition that the jurisdiction of the Commissioner invests him with absolute dominion over state land.

The manner of sale of state lands is set forth in the Enabling Act in section 10 and the state may only sell when it shall have complied with the conditions set forth therein.

We are unable to find any provision either constitutional or statutory which makes it mandatory upon the Commissioner to sell any land and in view of all the provisions and in view of the holding in the case of State vs. Field supra giving the Commissioner absolute dominion over state lands and the broad general powers of the Commissioner, we believe that such sales are discretionary with that official and that in the exercise of his discretion he has the power to withdraw such advertisement and notice of sale as he deems to be for the best interest of the State.

In other words supplementing our former opinion that the Commissioner had the power of proceeding with the sale as advertised we believe he may also refuse to proceed if he deems such action wise, expedient or necessary for the interest of the state.

By Frank H. Patton,

Asst. Att'y General