

Opinion No. 31-52

February 11, 1931

BY: E. K. Neumann, Attorney General

TO: Mr. P. A. Steffian, Chief Clerk, Land Office, Santa Fe, New Mexico.

{*42} This letter is in answer to your inquiry as to whether the Commissioner of Public Lands is authorized to grant leases on public lands to individuals for townsite purposes.

In my opinion, this question involves a construction of Sections 132-112 and 132-174 of the New Mexico Statutes, Annotated, 1929 Compilation, which reads as follows:

132-112. "All lands owned by the state shall be subject to lease **as provided by law.**"

132-174. "Whenever any of the state lands shall be valuable or desirable for townsite purposes, the commissioner may cause or permit the same to be subdivided into suitable tracts, or surveyed into lots and blocks, with the usual reservations for streets, alleys and public purposes, and shall cause appraisalment of such lands to be made and prescribe rules and regulations for the use and occupancy thereof, and may lease or sell such lots, blocks and subdivisions in accordance with law."

In my opinion, Section 32-174 is the method provided by law for leasing or selling state lands desirable for townsite purposes, and the commissioner is not authorized to sell or lease state lands for such purposes by any other method. If the commissioner could lease or sell lands for such purposes by some other method than that designated by the legislature, this Section would seem to be ineffective, and in the construction of statutes,

"is is presumed that the legislature intends to impart to its enactments such a meaning as will render them operative and effective, and to prevent persons from eluding or defeating them. Accordingly, in case of any doubt of obscurity, the construction will be such as to carry out these objects." (Black on Interpretation of Laws, Second Edition, page 132).

While Section 132-174 in some respects may be considered as merely directory, yet when such conditions exist as are mentioned therein, and the commissioner decides to lease or sell state lands for townsite purposes, it is my opinion that the Section is mandatory in so far as it establishes the procedure for such purposes.

"When a fair interpretation of the statute, which directs acts or proceedings to be done in a certain {*43} way, shows that the legislature intended a compliance with such provisions to be essential to the validity of the act or proceeding, or when some antecedent and prerequisite condition must exist prior to the exercise of the power or must be performed before said other powers can be exercised, then the statute must be regarded as mandatory." (Black on Interpretation of Laws, Second Edition page 538).

Having adopted this interpretation of the two statutes referred to, I am of the opinion, that the application to which my attention has been called should be denied.

By: Quincy D. Adams,

Asst. Atty. General