

Opinion No. 42-4172

October 23, 1942

BY: EDWARD P. CHASE, Attorney General

TO: Mr. H. R. Rodgers Commissioner of Public Lands Santa Fe, New Mexico

{*266} By your letter of October 3, 1942, you have called our attention to the opinion of the New Mexico Supreme Court, Cause No. 4683, filed September 23, 1942, entitled Belle Lusk v. First National Bank and Barney W. Wilson, and have requested this office to advise you as to the effect thereof upon:

A. The provision in the original lease, "that no sublease or under-lease (written or verbal) shall be made by the said lessee without the **written consent** of the Commissioner, and any violation of this agreement and understanding will subject the lease to cancellation."

B. The power of the Commissioner of Public Lands to approve assignments of leases as collateral security, provided for by Chapter 51, Laws of 1937.

C. The temporary permit dated September 9, 1941 to Jim Hall.

In answer to question A, it seems to me that the court did not disregard the provisions of the original lease, but merely sustained the findings of fact made by the trial court, to the effect that there was no sub-lease or under-lease. Inasmuch as the provisions in the lease prohibited only the sub-leasing or under-leasing without written consent, I must conclude that the provision hereinabove quoted was not disregarded by the Supreme Court.

As to the question B, our answer is in the negative, your attention being called to page 6 of the opinion of the court, here quoted for your information.

"It is not a violation of law to assign a lease and thus release state lands thereunder, as collateral security. Appellees claim and the court found, that the transaction between them amounted to an assignment, but the bank still holding legal title to the lease as security for the payment of other obligations owing from from Wilson. The act specifically permits assignments of such leases as collateral security. See Chap. 126, Laws of 1933 as amended, by Chap. 47 Laws of 1935. The fact that appellee bank had not actually executed the written assignment and release to Wilson, does not alter the case, and, although the act provides for the manner and method of making such assignments of state land leases, and for the recording in the office of the Commissioner, it does not provide that an assignment made in a manner not in strict compliance with the act shall render the same subject to cancellation. In any event, the Commissioner did not undertake to cancel because of an irregular assignment. The {*267} contest was prosecuted upon the ground that there was no assignment, which

would be permissible, but a sub-leasing which is not permissible, and which would subject the lease to cancellation under proper procedure."

In answer to question C, you will note that the temporary permit to Jim Hall automatically expired with the filing of the opinion in this cause or, at least, said permit will expire when the time has elapsed within which the parties may file a motion for a rehearing.

You also asked whether or not the Commissioner of Public Lands was obligated by the court decision to issue a lease to either the appellee or to anyone else.

Our answer to this inquiry is that the Commissioner of Public Lands, under the broad constitutionally delegated discretionary power, is not obligated to issue a lease to either the appellee or anyone else.

Trusting that the foregoing sufficiently answers your inquiry, and returning your file herewith, I am

By GEO. H. HUNKER, Jr.,

Asst. Atty. General