Opinion No. 43-4210

January 13, 1943

BY: EDWARD P. CHASE, Attorney General

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

In your letter dated January 9th, 1943, you refer to an opinion of this office dated February 1, 1934, being number 720 with respect to the Unitization principle to State Institutional Lands. In that opinion it was held that under the provision of the Enabling Act the Commissioner of Public Lands could not enter into a complete Unitization Agreement in leasing State Lands for mineral purposes.

Since there exists no special statutory authority for such agreements by the Commissioner you inquire whether the Legislature has the power to give the necessary authority by statute to the Commissioner to enter into such agreements and you expressly ask three questions, which will be set forth in their proper order below.

1. "Can the Legislature authorize the Commissioner of Public Lands to enter into a unitization agreement where every effort is made to see that the state received, under such agreement its fair share of the recoverable oil in place under its lands?"

The former opinion above referred to apparently only considered the Enabling Act and did not consider Article 24 of the Constitution, which was added by an Amendment by a vote of the people on November 6, 1928, and which was consented to by Congress under an Act of June 9th, 1926, appearing in 44 St. at L. 715.

Article 24 provides as follows:

1. **"(Contracts for the development and production of minerals on state lands.)** Leases and other contracts, reserving a royalty to the state, for the development and production of any and all minerals on lands granted or confirmed to the state of New Mexico by the act of congress on June 20, 1910, entitled "An Act to enable the people of New Mexico to form a constitution and state government and be admitted into the Union on an equal footing with the original states," may be made under such provisions relating to the necessity or requirement for or the mode and manner of appraisement, advertisement and competitive bidding, and containing such terms and provisions, as may be provided by act of the legislature; the rentals, royalties and other proceeds therefrom to be applied and conserved in accordance with the provisions of said act of congress for the support or in aid of the common schools, or for the attainment of the respective purposes for which the several grants were made. (As added Nov. 6, 1928.)"

Under the broad terms of this constitutional provision there seems to be little question but that the Legislature may authorize the Commissioner to change the terms and

provisions of mineral leases and other contracts thereby authorizing Unitization Agreements relative to state lands.

The United States Supreme Court has upheld the validity of an Oklahoma law authorizing the Corportion Commission to provide for well-spacing and drilling units and providing for a compulsory sharing of royalties among all royalty owners in a unit. This law did not violate the Fourteenth Amendment and the appeal was dismissed for want of a federal question.

The Supreme Court quoted with favor a finding of the Corporation Commission relative to the advantages of the Unit System as follows:

"That the same would tend to effect the proper drainage of oil from said pool, and would result in uniform withdrawal and in the greatest ultimate recovery of oil, and would best conserve reservoir energy, and would protect the relative rights of the leaseholders and royalty owners in said common source of supply."

Patterson v. Stanolind Oil and Gas Co., 305 U.S. 376, 83 L. Ed. 231.

This language aptly states the advantages that might be obtained in this State by entering into such agreements provided the Legislature placed the proper safe guards around such authority in order that the best Engineering and Geological advice available would be obtained, and that the best interests of the State would be protected by the conservation of oil and gas. It is, therefore, my opinion in answer to this question that the Legislature could give such authority.

2. "Can the state, by such unitization agreement in any way modify the rental fixed in a lease, and"

As a general proposition I do not believe the existing lease agreements could be modified by a reduction of rentals without violation of Article 4, Section 32 of the Constitution. However, it would be possible for a leaseholder to surrender his lease and obtain a new lease containing a unitization agreement and possibly modified rentals without violating this constitutional provision. Legislation, however, would be required to give the leaseholder protection and a preference right in obtaining the new lease where he voluntarily surrenders the existing lease.

Leonard v. Vesely 39 N.M. 33, 38P2 1112.

3. "Can a state lease be held after the expiration of its primary term where royalty being paid, but production is from a well or wells not on the lease itself but on an area operated as a unit with a state lease."

It is my opinion that this question might be answered in the affirmative for the same reason as given in answering question number one. That is, valid legislation authorizing such procedure would be possible.

By C. C. McCULLOH,

First Asst. Atty. General