

Opinion No. 45-4659

February 10, 1945

BY: C. C. McCULLOH, Attorney General

TO: Honorable John E. Miles Commissioner of Public Lands State Land Office Santa Fe, New Mexico. Attention: George A. Graham

{*20} In your letter dated February 9, 1945, you inquire whether the Commissioner of Public Lands is authorized to withhold from oil and gas leases acreage shown to be open on the tract books of your office in unrestricted areas; and if he has authority to reject applications, what time he has in which to accept or reject the same.

Section 8-1112 of the 1941 Compilation provides as follows:

"Nothing contained in this act (Sections 8-1101, 8-1103, 8-1105 -- 8-1118) shall be construed as requiring the commissioner to offer any tract or tracts of land for lease, but the commissioner shall have power to withhold any tract or tracts from leasing for oil and gas purposes if in his opinion the best interests of the state will be served by so doing."

Since the Commissioner is a sort of business manager of state lands, and has broad discretionary powers, and in view of the specific authority contained in this section, there seems to be no question but that he has discretion and authority to withhold state lands from oil and gas leases, and to reject any and all applications therefor when, in his opinion, such action is for the best interests of the state. Until such time as an application is accepted there can be no lease contract with the state, and the commissioner is free to reject such application.

In your second question, you refer to Paragraph 5 of the standard form of oil and gas lease prescribed in {*21} Section 8-1103 of the 1941 Compilation. You state that in the past it has been customary for lessees to file a release of his lease, and as soon as the acreage appears to be open on the tract books, to make an application for a new lease, and thereby avoid entering into the secondary term of the prior lease, which would involve higher rentals. You inquire whether the Commissioner may reject such applications and void such releases.

Section 8-1103, subsection 5, gives the lessee an absolute right to surrender and cancel his lease upon the conditions contained in said section. When the lessee does so, the Commissioner cannot refuse to accept the release, but he can refuse to accept the application for a new lease made by the same party, and can leave the matter open for a reasonable time, in which all interested persons may have an opportunity to obtain a new lease on the land.