

## Opinion No. 42-4076

April 24, 1942

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Mr. Floyd W. Lee New Mexico Wool Growers Association Box 421 Albuquerque, New Mexico

{\*188} I have your letter of recent date relative to Senate Joint Resolution No. 8, a proposed amendment to the Constitution. You, in substance, request our opinion as to the purposes for which this amendment is proposed.

The livestock industry has long sought the security of long lease terms. Our Supreme Court in the case of *State ex rel McElroy vs. Vesley* 40 New Mexico 19, has held by reason of Section 10 of the Enabling Act and certain sections of our Constitution, that there is no right of renewal of grazing leases after the initial five year period. In other words, there is no absolute right of renewal because the Enabling Act provides that no lease shall be for a longer term than five years unless advertised and bid off at public auction in the same manner as when lands are sold -- an awkward and cumbersome procedure for a lease.

The oil and potash industries were confronted with a similar situation several years ago, and they sought and obtained an amendment to the Enabling Act and the New Mexico Constitution, whereby the Legislature was empowered to provide for the terms of the lease, the manner of appraisal, advertisement and competitive bidding, in lieu of the stringent provision of the Enabling Act. When the Enabling Act was amended to authorize an amendment of the New Mexico Constitution to permit the Legislature to authorize long term oil and gas leases, unfortunately those amendments were not made broad enough to include grazing and agricultural leases. Therefore, if the livestock industry is to become similarly situated, it becomes necessary to amend our fundamental law, the Enabling Act (a job for the Congress of the United States) and the State Constitution (a job for the people of New Mexico) so as to authorize the Legislature to enact a long term grazing and agricultural {\*189} lease law consistent with the interest of the institutional owners.

In short, the proposed constitutional amendment in question is intended to do for the livestock and agricultural industry what was done by a similar amendment for the oil and gas and mineral industries. In other words, some of the restrictions in the Enabling Act and the Constitution are removed so as to authorize the Legislature to speak as to what kind of lease should be had and how it should be obtained.

In your letter you ask what powers would be granted to the Land Commissioner in the following manner. I quote from your letter:

"1. Will he have power to lower the rentals from the present rate below the minimum of 3c.

2. Will there be any ceiling whatever on the life of the rentals.

3. Will he have power to lease the land not on an acreage basis, but on a carrying capacity basis such as is done by the Grazing Service and the Forest Service.

4. Will he have power to stabilize the grazing industry on State owned lands."

The proposed constitutional amendment in Senate Joint Resolution No. 8 does not grant the Commissioner of Public Lands any additional powers nor deny him any of his present powers. It simply authorizes the Legislature to have a wider latitude in providing for the kind of lease the grazing and agricultural industries shall have, and herein lies the answer to all four of your questions. The Legislature would hold within its bosom the answers to all your questions in the event the Enabling Act and the Constitution are amended as proposed herein. To my mind this is a good amendment, and one which should probably be passed and one which, if carried through properly will be of great benefit not only to private industry, but to the State as well.

In connection with this matter, it is my understanding that the House of Representatives of the Congress of the United States on March 16, 1942, passed a proper amendment to our Enabling Act, and that the same is now ready for the action of the United States' Senate.

Senate Joint Resolution No. 10 is also referred to by you in your letter. This resolution has absolutely nothing to do with Senate Joint Resolution No. 8, the livestock industry, nor the Commissioner of Public Lands. The purpose for which this amendment is proposed by Senate Joint Resolution No. 10 is patent on its face. I am at a loss as to how to elaborate on its provisions.

Trusting that the foregoing will be of some benefit and sufficiently answers your inquiry, I am

By HOWARD F. HOUK,

First Asst. Atty. General