

Opinion No. 52-5509

March 5, 1952

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. Alfred W. Kaune State Bank Examiner Santa Fe, New Mexico. Attention Mr. Lawrence A. Tamme Securities Commissioner

{*221} This is in reply to your inquiry concerning the Blue Sky Permit No. 403 held by Mr. Harry S. Wright of Farmington, New Mexico. Along with your inquiry you enclosed a letter from Mr. Harry Wright to the Securities Commissioner explaining the nature of his operations. Mr. Wright advises that his business consisted solely of selling non-participating oil and gas royalties and that all of those royalties are his own property, that he makes no sales for others.

First, since this type of royalty constitutes something other than real property interests Mr. Wright does not come under the Real Estate Dealers' Licensing Law and there will be no necessity for him complying therewith.

The next point of inquiry must be as to whether or not the sale of these oil and gas royalties constitute the sale of a security so as to be within the purview of our Blue Sky Law. Section 50-1701 of our New Mexico Statutes Annotated 1941 defines the term "securities" and the term "speculative securities" as used in the Act. I quote from that section:

"The term 'speculative securities' as used in this act shall be taken to mean and include: . . . (7) any undivided interest or certificate of participation based on any undivided interest in oil royalties or in oil leases, where the value of such undivided interest or certificate of participation materially depends on proposed or promised future developments: Provided, that this shall not apply to undivided interests or certificates based upon undivided interest in oil royalties or in oil leases where the interest or certificate based upon such interest offered for sale or sold to any one purchaser exceeds one-sixteenth of the whole royalty or oil lease;"

One must conclude from this that if not otherwise exempt that the oil royalties sold by Mr. Wright are within the Act if the royalties sold are interests amounting to one-sixteenth or less. Assuming that the royalties sold by Mr. Wright do constitute interests amounting to one-sixteenth or less of the entire royalty interests in any one tract than the sales are covered by the Act unless otherwise exempt.

An examination of the Act reveals that there is no other exemption applicable to this type of speculative security; however, it is possible that Mr. Wright himself {*222} might be exempt from the purview of the Act under the provisions of Section 50-1714, New Mexico Statutes Annotated. That section states:

"This act shall not apply to the owner of any speculative security who is not the maker or issuer thereof, who shall acquire and sell the same for his own account in the usual and ordinary course of business, and not for the direct or indirect promotion of any enterprise or scheme within the purview of this act: Providing, that such ownership is in good faith. Repeated or successive sales of any such speculative security or securities shall be prima facie evidence that the claim of ownership is not bona fide, or is a mere shift or device to evade the provisions of this act:"

Since Mr. Wright in his letter states that he is the owner of the royalties which he sells we can assume that he is exempt from the Act unless Mr. Wright's ownership is merely a "shift or device to evade the provisions of this act." Having no information upon which to base any conclusion that Mr. Wright's ownership is other than bona fide I must conclude that he is a person exempt from the Act and therefore no Blue Sky Permit is required.

I must point out, however, that the opinion which I have rendered herein is based entirely upon the facts as stated by Mr. Wright in his letter to the Securities Commissioner.

I trust that this will answer your inquiry fully.