

Opinion No. 53-5650

January 30, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: E. S. Walker State Land Commissioner Santa Fe, New Mexico

{*37} In your letter dated January 26, 1953, you have requested an opinion relative to the construction of Paragraph 16 of an oil and gas lease authorized under Chapter 111, Laws of 1945. The facts involved are as follows:

Prior to the expiration of a secondary term, application was made and approval given for drilling operations on one location and the drilling operations were actually begun. Subsequently, at a depth of approximately 4,400 feet, oil was obtained and pumping operations were begun and extended over a period of several months in which time oil was produced and royalties paid to the State thereon. After a period of a few months, the production was found to be not in paying quantities commercially and application was made and approval granted to drill in the same hole to a depth of approximately 7,600 ft. This drilling operation terminated January 14, 1953, and within the 20-day period provided under Section 16, the company or its agent contemplates making application and obtaining approval to drill approximately 3,000 ft. deeper in the same well.

You request an opinion concerning the legality of this additional drilling and whether or not such drilling would extend the lease to cover the period of such drilling under Clause 16.

This office has held, in Opinion No. 5230 and also in an opinion of even date, that drilling operations may not be made upon a second well in the event the approved operation is completed without production where the drilling operations have not been begun on the second well prior to the expiration date of the second term. However, in the present instance, a different situation appears in that the drilling operations and temporary production is all from the same well. Had the lessee failed or refused to make an adequate test of the extent of production at the 4,400 ft. level and continued to drill to the contemplated depth, there is no question but what the term of the lease would have been extended pursuant to Paragraph 16 thereof. The fact that drilling operations were temporarily discontinued and pumping and some production occurred for a reasonable period of time should not, in our opinion, prevent the lease from remaining in effect nor prevent further drilling operations on the same well. Under the terms of Paragraph 16, we believe such operations will have the effect of extending the term of the lease until such operations are completed.

We feel that it is the public policy as shown by the oil and gas leasing laws to promote development and production of oil and gas and that it was not contemplated by the legislature that a lessee be deprived of his right to develop fully a well begun in good

faith merely because he was attempting to determine the extent of the production possible at a depth less than he contemplated drilling in order to test the productivity of the area.

By: C. C. McCulloh

Assist. Attorney General