

Opinion No. 53-5806

August 28, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Honorable E. S. Walker Commissioner of Public Lands State Land Office Santa Fe, New Mexico

{*214} On March 23, 1953, in Opinion No. 5708 this office ruled that production or drilling operations anywhere within a unit area would perpetuate a state lease, any portion of which was committed to the unit, as to all tracts embraced within the lease even though such tracts were not included in the unit area.

Facts have been called to our attention which present a problem not considered in that opinion. We feel that the construction reached in the opinion is correct unless the unit agreement by its terms limits, restricts or changes the terms of the lease in which event a unit agreement, approved by the Land Commissioner, would prevail over the lease where the terms in the unit agreement are different.

It has been called to our attention that since the 1951 amendment of Section 3, Chapter 88, Laws of 1943, appearing as Section 8-1140 of the 1941 Compilation, p.s., a number of forms of unit agreements in use in the State contain language similar to that appearing in Section 18 (g) of the form of unit agreement used by the Federal government in connection with oil and gas leases, in substantially the following language:

"Any lease having only a portion of its lands committed hereto shall be segregated as to the portions committed and the portions not committed, and the terms of such lease shall apply separately to such segregated portion commencing as of the effective date hereof. * * *"

In view of the fact that Section 8-1140 of the 1941 Compilation, p.s., authorizes the Commissioner to approve an executed unit agreement to amend any oil and gas lease embracing state lands within the area included in such agreement so that the provisions of such lease so far as they apply to lands within such area will conform with the provisions of such agreement, and in view of the fact that such approval by the Commissioner is by law effective to conform the provisions and extend the terms of such lease as to lands within such area, to the provisions and terms of such agreement, it is our conclusion that where the unit agreement specifically provides that the portions within the unit area shall be segregated from the portions outside the unit area, the terms of the lease shall apply separately to such segregated portions.

In that event the production or drilling in the unit area would not {*215} perpetuate that portion of a state lease outside such unit area. The segregation of the portion within from the portion outside the unit area, in effect, amounts to the issuance of new leases

covering the respective portions and it is our further opinion that production or drilling on the portion of the State lease within the unit area thus segregated would not perpetuate the portion of the lease outside the unit area notwithstanding **State ex rel Shell Petroleum Corp. vs. Worden, 44 N.M. 400, 103 P. 2d 123**, or Ch. 161 Laws of 1951.

This opinion may be considered as supplementing the previous opinion No. 5708 written to you on this question.