

Opinion No. 13-981

January 24, 1913

BY: FRANK W. CLANCY, Attorney General

TO: Mr. T. E. Hinshaw, Lake Arthur, N. M.

OIL AND GAS.

Discussion of Chapters 25 and 81, Laws of 1912, upon the subject of oil, gas or artesian wells.

OPINION

{*146} Your letter of the 18th instant was duly received but the matter was one as to which I have but little knowledge and I have tried to get some information before writing you so as to write more intelligibly than I otherwise might, but even now I do not feel entirely certain of my ground in connection with what you ask.

You enclose a printed form of "Oil and Gas Lease" as to which you call attention to parts of two paragraphs, by the first of which the lessee who is to drill wells on the leased land is given the privilege of removing from the land "all buildings, tanks, pipe lines, engines, boilers, rigs, tools, casing and derricks," and by the second of which the owner is given the privilege, in case the wells do not produce oil or natural gas, of retaining the "wells for the water they may yield by paying for the casing and gate valve necessary to case it in compliance with the artesian well law of New Mexico." You ask whether the owner if he should elect not to retain such a well and pay for casing, would be responsible to the state for the lawful casing of the well, and whether the failure of the lessee to leave the well in lawful condition would be held as a lien against the land, or would the well driller's bond be held for security against such damage. You also ask whether the lessee would be permitted under the law to plug the well and pull the casing therefrom.

As far as I am able to discover the only statutes that can have any bearing on this subject are Chapters 25 and 81 of the Laws of 1912. Chapter 25 is the one which regulates the casing of oil and gas wells and the plugging of the same when abandoned. The first section provides that the wells shall be cased with good and sufficient casing so as to exclude all surface or fresh water from the lower {*147} part of the well, and the second section provides that before drawing the casing if the well is to be abandoned, the owner must fill the well with sand or rock sediment to a depth of 10 feet above the top of the oil or gas-bearing rock, and drive therein a wooden plug at least two feet in length, and after drawing the casing he must fill in on top of the plug sand or rock sediment to the depth of five feet and then drive another plug, after which there must be at least 20 feet of sand or rock sediment above that plug. The third section makes the person whose duty it was to plug or fill up the well, responsible for

any damages caused by failure to comply with the act; and the fourth section makes any "person, owner, driller or operator" violating the provisions of the act guilty of a misdemeanor. This last section would seem to put the owner on the same level with the driller and operator, and section two refers solely to the owner of the well. As far as this act is concerned there is no question of there being any lien on the land for any damages caused, but Section 3 gives "a lien upon the fixtures and machinery and leasehold interests of the owner or operator of such well."

Section 8 of Chapter 81 would be applicable to an oil or gas well, although the act is generally on the subject of artesian wells. That section refers to "all wells of every description and for every purpose that shall be put down to the artesian stratum or basin shall be cased" with drive pipe of weight and dimensions prescribed, and also contains a proviso that lighter pipe in weight may be used for the surface casing, "and when such surface casing is once set in a well it shall not be removed." This prohibition as to the removal of surface casing would seem to be applicable to such wells as are contemplated by your blank form of contract if they are put down in an artesian district to the artesian stratum or basin. Section 7 of the same act requires the giving of a bond by any well-driller not only of artesian wells within any known artesian district, but of any "well orifice", and the driller would be responsible under that bond for damages, but although this might be true the owner and lessee might also be responsible.

If I have correctly understood your questions I think the foregoing answers all you have asked.

I return the blank form of lease as requested.