

Opinion No. 25-3873

December 5, 1925

BY: JAMES N. BUJAC, Assistant Attorney General

TO: Requested November 30, 1925, by State Corporation Commission, Santa Fe, New Mexico.

Oil leases are property as contemplated by § 940, New Mexico Statutes, Annotated, Codification of 1915, and can, therefore, be accepted in payment of Capital Stock in accordance with the provisions of said § 940.

OPINION

Your request is substantially as follows:

Can oil leases be purchased by corporations and stock issued therefor as property?

§ 939, New Mexico Statutes, Annotated, Codification of 1915, as far as applicable to the instant case, reads:

Nothing but money shall be considered as payment of any part of the capital stock of any corporation organized under this Article, except as hereinafter provided in case of the purchase of property * * *

This section was amended by Chapter 19, Session Laws of 1921, but the amendment did not change the above provision. The matter of the issuance of stock for property purchased is governed by § 940, New Mexico Statutes, Annotated, Codification of 1915, which reads as follows:

"Any corporation formed under this article may purchase mines, manufactories or other property necessary or proper for its business, or the stock of any company or companies owning, mining, manufacturing or producing materials, or other property necessary or proper for its business, and issue stock to the amount of the value thereof in payment therefor, and the stock so issued shall be full-paid stock and not liable to any further call, neither shall the holder thereof be liable for any further payment under any of the provisions of this article; and in the absence of actual fraud in the transaction, the judgment of the directors as to the value of the property purchased shall be conclusive; and in all statements and reports of the corporation to be published or filed this stock shall not be stated or reported as being issued for cash paid to the corporation, but shall be reported in this respect according to the fact."

So that the question to be decided is whether or not oil leases is such property as is contemplated by the above quoted section.

Our Supreme Court, in the case of Terry V. Humphreys, 27 N.M. 565, has held that "an oil and gas lease for a period of five years, or as long thereafter as oil and gas, or either of them, is produced from said land by the lessee, conveys 'real property' * * *" and this seems to be the construction placed upon oil leases by the courts of a great number of states, and also the Federal Courts.

That being the case, it is my opinion that oil leases are such property as that contemplated by § 940, supra, and, therefore, that said oil leases can be accepted in payment of capital stock under the provisions of the aforementioned section.