

Opinion No. 31-38

January 29, 1931

BY: E. K. Neumann, Attorney General

TO: Mr. John E. Miles, Sec. State Tax Commission, Santa Fe, New Mexico.

{*37} Your letter of January 28th, requesting an opinion as to whether {*38} or not the owner of royalty interest of a producing well is liable to the operator of the well for the production tax as provided for in section 97-401, New Mexico Statutes Annotated, 1929 Compilation has been received.

Referring to said section 97-401 we find that every owner or operator of any oil or gas well which produces oil or gas during any three months period shall at certain specified times make and forward a return to the State Tax Commission, said return to cover the operation of each oil well and gas well during a certain period, and showing the name and address of the owner or operator, the location and description of the property, the total quantity of oil and gas produced and on hand at the end of each of such period, the current market value at the place of production, and any royalty paid or due on account of such production and to whom payable.

Section 97-402 provides that from this return and from other information available the State Tax Commission shall determine the net value of the quarterly output.

The value under this section is made the market value at such well, less any royalty paid or owing the United States or to any Indian tribe or Indian being wards of the United States, or the State of New Mexico, less a further deduction of 50% as allowance for production costs and amortization.

In our opinion these two sections must be read together and inasmuch as the first section requires the report of the total amount of oil produced, it would seem from consideration of the second section that the only exemption by way of royalty would be on that part paid or owing the United States or to any Indian tribe or Indian that is a ward of the United States, or of the State of New Mexico.

In other words the value of production is upon the total amount produced less the deduction as specified in section 97-402 and we, therefore, advise that the owner of the royalty interest is liable for the production tax to the extent of such royalty.

By: Frank H. Patton,

Asst. Atty. General