

Opinion No. 33-600

May 19, 1933

BY: FRANK H. PATTON, Asst. Attorney General

TO: Honorable Frank Vesely, Commissioner of Public Lands, Santa Fe, New Mexico.

{*51} Your letter of May the 18th refers to provision in form of lease "36-B," which provides in effect that the rate shall be one cent per acre for the first year and that said rate of one cent per acre should continue throughout the life of the lease, provided an oil well was drilled within the first year but, if no such well was drilled during such first year, then the rental should thereafter be at the rate of \$ 100.00 per section.

Such assignment also contains the following provision:

"It is agreed that the Assignee shall succeed to all the rights, benefits and privileges granted the Lessee by the terms of said lease as to the lands above described, **except that it is agreed that said Assignee shall be entitled to no exemption from rentals on account of any well or wells commenced in accordance with the terms of said lease unless said wells shall be located on some portion of the lands covered by this assignment.**"

You have presented, by your letter, the question whether or not assignees, under the above quotation, are now entitled to refunds, they having paid at the rate of \$ 100.00 per section, in cases where a well had been drilled upon the parent lease but not upon the portion covered by the assignment.

In our opinion, no such refund should be allowed, as it seems clear to limit the smaller fee in cases of assignment to instances where the well was drilled upon some portion of the lands covered by the assignment.

We also believe this has been the construction of former Land Commissioners and suggest that all such applications for refund be refused.