

Opinion No. 33-646

September 8, 1933

BY: E. K. NEUMANN, Attorney General

TO: Dr. E. H. Wells, State Geologist, Socorro, New Mexico.

{*75} Your letter of August 30, 1933, which relates in detail the situation now existing in McKinley County in connection with the county oil and gas inspector, has been received.

You also recite the facts in connection with the sale of certain personal property for taxes. This property {*76} was owned by the San Juan Coal and Oil Company and upon the sale was purchased by the Ringle Development Corp. The notice of sale of distrained property specified certain property described therein and also contained the following language: "One gas engine and any other personal property within the County of McKinley, State of New Mexico."

You desire to know, first, whether this includes a number of shallow wells in the Seven Lakes area of McKinley County, which were drilled by the San Juan Coal and Oil Company. In our opinion, an oil well is not personal property but on the other hand it is a part of the realty. If it was intended that this clause include equipment of these wells, then such intention has been defeated for the reason that the property to be sold must be described and the attorney for the State Tax Commission has informed me that the State of New Mexico would claim no interest in property sold under such a vague description. Therefore, it is our opinion that no title passed under this sale either to the oil wells proper, mentioned by you, or to any equipment of such wells and not described in the notice of sale.

You also desire information upon the responsibility of McKinley County and the State Geologist in connection with the plugging of wells on privately owned land in said county. After an examination of the entire act creating the office of State Geologist, it is our opinion that, after the Board of County Commissioners has exercised its discretion and appointed a County Oil and Gas Inspector with the approval of the State Geologist, responsibility for the execution of the laws, rules and regulations in connection with oil and gas matters rests primarily with those officials.

It is definitely provided in Section 97-104 of the New Mexico Statutes, Annotated, 1929 Compilation that the rules and regulations prescribed by the State Geologist shall also apply to all privately owned or leased lands in the state and it shall be the duty of the County Commissioners to enforce the same. The Board of County Commissioners may designate such authority to the State Geologist or to an inspector of the United States Bureau of Mines, but until this is done the duty rests upon the Board of County Commissioners.

Strength is given to our contention by virtue of the provisions of Sections 97-106 and 97-108 of the 1929 Compilation.

Trusting the foregoing has sufficiently answered your inquiries, I am

By: FRANK H. PATTON,

Asst. Attorney General