

Opinion No. 37-1597

April 14, 1937

BY: FRANK H. PATTON, Attorney General

TO: Mr. Carl B. Livingston State Land Office Santa Fe, New Mexico

{*73} This is in answer to your letter of April 13th wherein you make inquiry as to the amount of annual rental to be charged to an assignee of an oil and gas lease and upon the secondary term.

{*74} We understand from the law and from the practice in your office that original oil and gas leases are issued for a term of five (5) years at a certain rental and authority for assignments is found in paragraph 7 of the form of lease which is set forth in Chapter 18 of the Session Laws of 1931.

In paragraph 4 of said lease form we find provision for payment of the annual rental in advance with the provision that the amount of said annual rental on any assignment shall in no event be less than \$ 6.00.

Provision for renewal of the lease is found in paragraph 15 of the lease form and this is to the effect that if the lessee shall have failed to make discovery of oil or gas in paying quantities during the primary term of the lease, the lessee may continue the lease in full force and effect for an additional term of five (5) years * * * by paying each year in advance double the rental provided for the primary term * * *.

You are particularly concerned in regard to the amount of annual rental to be charged to the assignee upon the secondary term.

It is our belief that it is the intention of the law and that it is in line with the usual rules of law that the assignee be considered from the standpoint of the original lessee. In other words, that the assignee stand in the shoes and in the same position of the original lessee. Certainly so far as administration of the public land laws of this state is concerned, this has been the rule of practice and there has been what is known as departmental or administrative interpretation to this effect.

In the assignment of 40 acre tracts as provided by the statute from the original lease, there can be no doubt but that the annual rental, so far as the primary term is concerned, shall in no event be less than \$ 6.00. If this is true as to the primary term, it would seem that under the provisions of paragraph 15 of the lease, and to which we have hereinabove made reference, that upon the renewal, or perhaps we should say the secondary term, the assignee should be required to pay double this amount which would be \$ 12.00

Apparently it is the intention of the act to provide a certain figure to cover annual rental and for administrative reasons to provide a minimum rental charge and in 40 acre tracts we can see no other alternative than that upon the secondary term, double the minimum charge so far as the 40 acre tracts are concerned, must apply and this is therefore our opinion.