

Opinion No. 44-4508

May 10, 1944

BY: EDWARD P. CHASE, Attorney General

TO: Mr. George A. Graham, Attorney, State Land Office, Santa Fe, New Mexico

We are in receipt of your letter of May 3, 1944, in which you state that it has been the practice of the Land Office to grant right-of-way easements for road purposes over lands already covered by oil and gas leases. You ask our opinion as to whether or not such right-of-way easements are valid.

Section 8-1103 of the 1941 Compilation, which section is the form of oil and gas lease, provides, in part as follows:

"The said lessor * * * does grant * * * to the said lessee. exclusively, for the sole and only purpose of exploration, development and production of oil and/or gas thereon * * *, together with rights-of-way easements and servitude for pipelines, telephone and telegraphic lines, tanks, powerhouses, stations, gasoline plants and fixtures for producing, treating and caring for such products, and housing and boarding employees, and any and all rights and privileges necessary incident to or convenient for the economical operation of said land for oil and gas * * *"

By virtue of this form of lease the Land Office grants only the specified rights to the lessee. All other rights and interests in the land not having been granted are retained by the lessor. Thus the State Land Office may grant to other persons any rights and interests that do not conflict with the rights and interests therefore granted by virtue of an oil and gas lease. However, the Land Department can grant only such rights and interests as do not conflict with their previous lease. Whether or not such conflicts would exist would depend upon the circumstances involved in each individual tract of land.

Trusting the foregoing sufficiently answers your inquiry, I remain,

By ROBERT W. WARD,

Asst. Atty. General