

Opinion No. 47-5056

July 23, 1947

BY: C. C. McCULLOH, Attorney General

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

{*72} Receipt is acknowledged of your letter dated July 22, 1947 attached to the file containing Oil and Gas {*73} Lease No. B-6968 to the Texas Company, together with the Application and the Stipulation for an extension of the Lease for a period of one year under the provisions of Paragraph 16 of Section 1, Chapter 111, Laws of 1945, and you inquire whether or not, upon the ceasing of drilling operations on this lease, prior to the expiration of the one year extension, the lessee is entitled to any refund of a part of the annual rental paid in advance..

The file shows that the annual rental on the extension was paid April 15, 1947, and that in June 1947 the well was abandoned and drilling operations ceased. There is no provision under Chapter 111, Laws of 1945, for a refund of moneys paid in advance.

The general law pertaining to refunds appears in Sections 8-858 to 8-861 incl., of the 1941 Compilation, and these sections authorize refund only of moneys erroneously paid on account of any lease or sale of said lands, and require the person seeking the refund to file his claim with the Commissioner. Thereupon, the Commissioner is required to investigate the facts and endorse his approval or disapproval on said claim and file the same with the District Court of Santa Fe County.

The Court is given jurisdiction to determine the validity of such claims. However, in the instant case, the annual payment was voluntarily made and in my opinion there could be no claim of erroneous payment.

In the case entitled: Staplin v. Vesely, 41 N.M. 543, it is stated that money voluntarily paid, with knowledge of the facts, cannot be recovered.

It is therefore my opinion that the lessee involved is not entitled to any refund, and in no event could the Land Commissioner make a refund without a court order so providing.