

## Opinion No. 53-5651

January 30, 1953

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** E. S. Walker State Land Commissioner Santa Fe, New Mexico Re: Oil and Gas Lease B-9894

{\*38} Prior to the first of the year, the former attorney for the Land Office requested an opinion from this office concerning the above entitled oil and gas lease, which request was apparently inadvertently misplaced and we are just now answering the same after ascertaining from Mr. Schultz that the opinion is still desired. The facts are as follows:

A certain oil company has a lease which includes Section 16 as authorized by Chapter 111, Laws of 1945. Prior to the expiration of the secondary term of the lease, application was made and approval granted for drilling a well which was commenced before the expiration date and is now in the process of being drilled. The company also filed notice of intention to drill a second well on the leased premises but the drilling operations on the second well have not been commenced and were not commenced prior to the expiration of the secondary term of the lease. The company proposes to complete drilling operations on the first well and make a deep test, however, if it should result in a dry hole, the company contemplates immediately proceeding to start drilling operations on the second well, providing the lease remains in full force and effect for that purpose.

You request an opinion under the foregoing facts stated, briefly as to the legality of drilling operations on the second well.

In Opinion No. 5230, dated July 12, 1949, this office had a similar situation, the only difference being that the application for drilling the second well was not filed and approved before the expiration date of the secondary term. In that opinion it was held that upon completion of the first well, which was approved and operations begun prior to the expiration date of the secondary term, assuming that the first well was a dry hole, that the second well could not be drilled and the lease automatically terminated. We agree with that opinion and with this language therein: "this proviso (referring to Section 16) limiting and providing for the method of the extension of the lease is clear and concise and permits the extension of the lease beyond the secondary term to the time that it takes the lessee or assignees to conclude the bona fide drilling that he is actually engaged in at the expiration of the secondary term of the lease." In view of this language, and our concurrence therein, it is our opinion that since drilling operations on the second well involved in the present instance was not begun prior to the expiration date of the secondary term of the lease that upon completion of the first well without production, the lease terminates and the second well may not be legally drilled.

By: C. C. McCulloh

Assist. Attorney General