

Opinion No. 56-6533

October 26, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: F. Gordon Shermack, Commissioner of Securities, State Banking Department,
Santa Fe, New Mexico

Reference is here made to your letter of September 21, 1956, in which you request an opinion from this office concerning the applicability of the New Mexico Securities Act of 1955 to certain transactions involving alleged assignments of oil and gas leases covering fractional, undivided interests.

Just for the record, we should like to here state that the delay involved in issuing this opinion was due to lack of information concerning the type of contractual relationship between the parties involved, and also, a difference of opinion in this office, based on this information lack.

We understand the facts to be as follows:

A corporation wishes to sell, on a contract basis, fractional, undivided interests in an oil and gas lease proposed to be acquired by that corporation. The purchaser and the corporation enter into an agreement providing that the sum of money paid by the purchaser be placed in bank escrow; that in exchange for the stated sum, the purchaser will receive a set percentage of said lease; that an assignment of said interest will be made when the corporation, solely in its own discretion, decides the property to be secured should be drilled; that if for any reason said drilling is not commenced within 120 days, said stated sum shall be refunded to the purchaser without further responsibility on the part of the corporation; further that said sum may be returned to the purchaser at the option of the corporation except if drilling is actually commenced; that the corporation has an exclusive right to sell the products of said well, if any.

The question raised is whether a transaction as above described comes within the purview of § 2 (g) of the 1955 Securities Act, which contains an exception to the classification of "security" in the case of certificates of interest in oil, gas or other mineral rights when such "certificates of interest are oil royalties, mineral deeds and work interests."

It is the opinion of this office that, inasmuch as the transaction above described is a defeasible contractual relationship, that it does not come within the exception of the above quoted section.

May we state in passing that this is by no means a criticism of the practice contemplated here, or of the individuals involved. Quite the contrary, we commend the

sincerity of the inquiry, especially in light of the fact that it is our understanding that a procedure the same or similar to this has been in practice locally for some time.

By Howard M. Rosenthal

Assistant Attorney General