

Opinion No. 62-33

February 9, 1962

BY: OPINION OF EARL E. HARTLEY, Attorney General Thomas A Donnelly, Assistant Attorney General

TO: Mr. James C. Compton, District Attorney, Ninth Judicial District, Portales, New Mexico

QUESTION

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Where a number of assignments of an oil and gas lease are affected by means of one instrument to several different individuals or firms, is the county clerk authorized to make a separate charge for each assignment of an interest in the lease?

CONCLUSION

No. A separate charge should not be imposed for each individual assignment of a fractional interest of an oil and gas lease where such is included within one instrument.

OPINION

ANALYSIS

As pointed out in the facts stated in your letter of inquiry, in some instances blanket assignments of individual oil and gas leases have been filed with the county clerk of Roosevelt County, New Mexico, and wherein one lease and interest thereunder is assigned to a number of separate individuals or firms by means of one legal instrument.

Section 71-1-10, N.M.S.A., 1953 Compilation, provides in respect to the recording fee chargeable for any assignment of oil and gas mining leases, as follows:

"County clerks shall receive for recording the following fees where the instrument is not photocopied:

* * *

Standard form assignment of oil and gas mining leases 1.50

Non-standard form assignment of oil and gas mining leases 1.75

* * *

Under the provisions of the above cited statute, the statutory fee specified therein has application to each instrument recorded with the county clerk and not to the number of assignees or assignors specified within such instrument. It is apparent from a close reading and construction of Sec. 71-1-10, N.M.S.A., 1953 Comp., supra, that the fees designated therein for recording, are based upon the type of instrument sought to be recorded, not the number of fractional assignments of an oil and gas lease effected by means of one instrument.

Section 71-1-10, N.M.S.A., 1953 Comp., is silent as to any allowances of additional recording fees based upon the number of parties to an oil and gas lease assignment, and although it is apparent that in instances wherein a number of assignees to an oil and gas lease are named in one instrument, that such will cast an additional burden upon county clerks, necessitating additional indexing and cross-indexing of the names appearing in such legal instrument, no provision is expressly provided by such statute to permit the charging of additional recording fees in such instances, based upon each individual grantee appearing therein. And, amendatory legislation would be necessary to effect such change in recording fees.

In the situation presented for determination, such appears analogous in part to instances wherein a deed to a particular tract of realty is executed by a grantor designating numerous grantees either as tenants in common or as joint tenants. In such case only one fee would be properly chargeable for the filing of the instrument of conveyance despite the number of grantees appearing therein.

Under prior Attorney General's Opinion No. 5808, September 1, 1953, it was held that where a number of releases of oil and gas leases are placed on one form or instrument, the county clerk may charge a fee for each separate lease sought to be released under such single instrument. Such opinion was founded upon the reasoning that legislative intent was to permit a charge by a county clerk for each release of an oil and gas lease regardless of whether or not the releases were placed on a single form. In Attorney General's Opinion No. 4434, January 5, 1944, a separate fee was declared proper for the release of each recorded mortgage effected by a single instrument.

As we interpret the provisions of Sec. 71-1-10, N.M.S.A., 1953 Comp., however, a distinction may be drawn between such former opinions, and the situation presented herein involving blanket assignments of fractional interests in an oil and gas lease to several individuals or firms. In the latter situation, the assignments relate to and affect fractional interests in the same property, and where effected by means of a single instrument only one recording fee would be properly chargeable.

It is generally recognized that statutes authorizing clerks to collect fees for their services are strictly construed. **Reese v. Cleburne County**, 35 So. 879, 139 Ala. 299; **State ex rel May v. Fussell**, 24 So. 2d 804, 157 Fla. 55.

As stated in 76 C.J.S., "Records", Section 20, at page 125, no fees may be charged for recording which are not clearly specified by law. This section sets out in part:

"The fee fixed by statute for filing a paper covers every act necessary to be done in order to complete a legal filing thereof, and no fee may be charged for doing anything in connection with the paper not necessary to a valid filing. Where a statute provides the fee which may be charged for recording an instrument, such a fee is an arbitrary charge. Under such a statute it is the duty of the recording officer to charge such fee for recording every instrument, and no officer has authority to change the fees or to depart from the terms prescribed. . ."

We therefore conclude, based upon the above authorities and interpretation, that where blanket assignments of oil and gas leases are effected by means of one instrument to several named individuals or firms, only one filing fee is chargeable for recording such instrument.