

Opinion No. 67-95

July 27, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mrs. Effie Haldiman County Clerk Lea County P.O. Box 1507 Lovington, New Mexico

QUESTION

QUESTIONS

1. If more than one oil and gas lease is released by means of a single instrument, is the county clerk authorized to charge the recording fee prescribed by Section 71-1-10, N.M.S.A., 1953 Compilation or each lease released by the single instrument?
2. Are county clerks required to make lien searches at the request of individuals?
3. What is a county clerk authorized to charge for making a lien search?

CONCLUSION

1. No.
2. No.
3. See Analysis.

OPINION

{*138} ANALYSIS

In Opinion of the Attorney General No. 5808, dated September 1, 1953, it was held that if a number of oil and gas leases are released by one instrument, the county clerk may charge the prescribed recording fee for each lease released by the instrument. In Opinion of the Attorney General No. 65-234, dated December 8, 1965, we stated that as Section 71-1-10, *supra*, presently reads, Opinion No. 5808, *supra*, is obsolete.

Opinion No. 5808, *supra*, construed N.M. Laws 1953, Ch. 51, § 1 which began:

County clerks shall receive for recording the following fees:

Section 71-1-10, *supra*, (N.M. Laws 1959, Ch. 253, § 2) presently provides in part that:

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

* * * *

Standard form release of oil and gas lease -- 1.25 Nonstandard form release of oil and gas lease -- 1.50.

* * * *

In all cases where standard forms are prescribed, and nonstandard forms of **instruments** for which a flat fee is fixed {**139*} are recorded, a charge of twenty-five cents (\$.25) shall be made for each additional one hundred (100) words, or portion thereof, in excess of the length of the standard form prescribed, except when the instrument is photocopied. (Emphasis added)

Throughout the remainder of Section 71-1-10, supra the prescribed recording fee is determined by the number of words contained in each instrument to be recorded, the number of pages constituting each instrument to be recorded, or the number of acknowledgments contained in each instrument to be recorded. With the exception of releases of mortgages, deeds of trust, Chattel mortgages and conditional sale contracts, Section 71-1-10, supra, does not refer to the number of transactions affected by each instrument as being a factor in determining the fee to be charged for recording each instrument. Section 71-1-10, supra, specifically provides that the fee to be charged for release of mortgages, deeds of trust, chattel mortgages and conditional sale contracts is for **each** recorded mortgage or deed of trust released and for **each** filed chattel mortgage or conditional sale contract released. Opinion of the Attorney General No. 4434, dated January 5, 1944 is, therefore, not applicable to the question presented herein.

The fee prescribed in Section 71-1-10, supra, is a flat fee for recording each instrument releasing oil and gas leases. The fee is related to the number of instruments to be recorded, not to the number of oil and gas leases released by a single instrument.

A county clerk is, therefore, not authorized to charge the prescribed recording fee for each oil and gas lease released. The County clerk can only charge the prescribed recording fee for each instrument recorded, regardless of the number of oil and gas leases released by means of each instrument. Cf., Opinion of the Attorney General No. 62-33, dated February 9, 1962.

If a nonstandard form is used and is longer than the standard release of oil and gas lease form and the instrument is not photocopied, the county clerk must charge twenty-five cents for each additional one hundred words, or portion thereof, in excess of the length of the standard form. Section 71-1-10, supra.

We realize that the effect of this opinion is to cast a burden on county clerks because they must index and cross-index each oil and gas lease released in each instrument. Only the legislature, however, may make the desired changes in Section 71-1-10, supra, which will authorize county clerks to charge a recording fee for each oil and gas lease released by any one instrument.

If the photocopying process is used for recording instruments, the recording fee for recording an instrument containing more than one release of oil and gas leases is \$ 1.75 for the first page and \$ 1.00 for each additional page of the instrument. Opinion of the Attorney General No. 65-234, dated December 8, 1965.

In Opinion of the Attorney General No. 62-20, dated January 29, 1962, we concluded that neither the Uniform Commercial Code, as it is enacted in New Mexico, nor other statutes relating to the duties of county clerks require county clerks to conduct lien searches at the request of individuals.

Section 71-1-12, N.M.S.A., 1953 Compilation provides that county clerks shall be entitled to five cents for each year for each name searched against for deeds and mortgages and twenty-five cents for a search for judgments or for mechanic's liens. In Opinion No. 62-20, supra, we stated that the instruments required or permitted to be filed under the Uniform Commercial Code are not included within the class of instruments specified in Section 71-1-12, supra and that the Uniform Commercial Code does not prescribe a fee for searching the instruments filed pursuant {**140*} to it. We therefore concluded that no statutory fee is provided for searches of records filed pursuant to the Uniform Commercial Code.

By: Edward R. Pearson

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