

## Opinion No. 34-716

January 22, 1934

**BY:** E. K. NEUMANN, Attorney General

**TO:** Honorable Frank Vesely, Commissioner of Public Lands, Santa Fe, New Mexico.

{\*108} Your letter of January 19th regarding rental to be charged upon renewals of leases issued under Chapter 125 of the Laws of 1929, has been received.

You refer to Section 2 of said Chapter, which provides that "The leases shall provide for the payment of a reasonable annual rental to be fixed by the Commissioner and designated in the lease, which shall not be less than \$ 100.00 for the first year for all the lands in any lease."

Reference is also made to Section 3 of said Chapter, reading in part as follows:

"Lessees and assignees of oil and gas leases on state lands who have not made a discovery of oil or gas in paying quantities within five years from the date of the lease and who are not in default in complying with the terms of their leases shall be given the preference over any and all other applicants for a new lease upon said lands at the {\*109} rentals prevailing in the district in which the lands are situated \* \* \*."

Section 3 of Chapter 18 of the Laws of 1931, provides as follows:

"The legal owners of all leases issued by the Commissioner of Public Lands prior to the effective date of this amendment, containing provision or provisions, for preference right to a new lease, or extension of the term thereof upon the expiration of the initial five year term, and where valuable discoveries of the oil and gas have not been made, shall have an absolute preference right to such new lease or extension, upon the terms and conditions provided in such leases without paying a bonus therefor, and in the exercise of such preference right the provisions of Chapter 125 of the 1929 Session Laws and of this Act relating to sales made upon competitive bidding by sealed bids, or at public auction, shall not apply in any case, but all such renewals, extensions or new leases made pursuant to such preference rights shall be only for a term of five years and as long thereafter as oil and gas in paying quantities, or either of them, is produced from the leased premises, and without further preference right to renewal or extension for successive terms."

The question is whether upon applications for renewals the Commissioner must charge the \$ 100.00 for the first year's rental on the renewal or whether he will merely charge the prevailing rate in the district.

In view of the state of the law itself, it is my belief that under such situation as outlined in your letter, the \$ 100.00 provision need not be considered on such renewals, but that

the prevailing rate in the district may be applied. I do not believe the \$ 100.00 Clause is applicable to the first year on such renewals. This conclusion is strengthened by the facts set forth in your letter and, it is believed, the Commissioner would be justified and within the law in only requiring the rental at the prevailing rate in the district.

By: FRANK H. PATTON,

Asst. Attorney General