

Opinion No. 36-1484

December 9, 1936

BY: FRANK H. PATTON, Attorney General

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

{*38} We have your letter of December 8, 1936, in which you ask the following question: "May the State Land Office issue a carbon dioxide lease where there already exists upon the same tract an oil and gas lease issued by the State?"

Chapter 18, Laws of 1931, which amends certain sections of Chapter 132, Article 4 of the 1929 Compilation, authorizes the Commissioner to execute and issue in the name of the State as lessor "leases for the exploration, development and production of oil and **natural gas** from any lands belonging to the State of New Mexico." There is no doubt in my mind but that this law only has reference to natural gas although in other parts of the statute the general term "oil and gas" is used.

The question is therefore resolved into whether or not the term "natural gas" includes "Carbon dioxide." Carbon dioxide is a gaseous substance which recently has been used for the manufacture of dry ice. It is a non-combustible. Natural gas is highly combustible and is generally used as a fuel. In the case of Carbide and Carbon Chemicals Corporation vs. Texas Company, 21 Fed. (2nd) 199, natural gas is defined as "a mixture of a number of different hydrocarbons each one having a definite chemical composition, or, in other words, a definite number of hydrogen and carbon atoms to the molecule."

In the case of Mussellem vs. Magnolia Petroleum Company (Oklahoma) 231 P. 526, the following reference is made to natural gas. "In volume 2 of 'American Petroleum Industry' by Bacon and Hamor, certain definitions are given of natural gas that are as follows: Generally it is a gaseous product arising from petroleum wells. It is divided into two classes, dry natural gas and wet natural gas."

From all of the foregoing it is my opinion that natural gas is different and distinct from carbon dioxide gas and that an oil and gas lease issued under the provisions of Chapter 18, Laws of 1931, conveys no right to explore, develop, or produce carbon dioxide. Consequently, I think that the Commissioner of Public Lands may issue a carbon dioxide lease on lands already subject to an oil and gas lease issued under the provisions of Chapter 18, Laws of 1931.

By: QUINCY D. ADAMS,

Asst. Atty. Gen.