

Opinion No. 42-4094

May 27, 1942

BY: EDWARD P. CHASE, Attorney General

TO: Mr. George A. Graham, General Counsel State Land Office Santa Fe, New Mexico

{*201} In your letter of May 21, you refer to Chapter 234, Laws of 1939, and request an opinion as to whether or not the aforesaid law is controlling or the laws of descent and distribution are controlling, where a lessee dies possessed of an oil and gas lease and an undivided interest in the lease is decreed by the court to the heirs of deceased lessee.

From the data submitted, it appears that the aforesaid question has arisen in connection with probate proceedings filed in the Probate Court of Dona Ana County in the matter of the estate of R. G. Breland, deceased. From the file, I note that R. G. Breland died on December 27, 1940, and at the time of his death was possessed of oil leases No. B-7144-3 and B-815-8. The administrator of his estate paid rentals on the aforesaid leases for the years 1941, and the estate of decedent was finally closed on October 17, 1941. The court in its final decree, decreed an undivided one-third interest in the entire estate of decedent to three heirs whom the court found to be the sole and only heirs of said decedent.

In view of the foregoing facts, we passed to the crux of your question, which in short is: May the Land Commissioner recognize the order of the probate court decreeing and undivided one-third interest in and to the above described leases to the three heirs of the decedent by reason of the provisions of Chapter 234, Laws of 1939? Let us review the pertinent portion of Chapter 234, Laws of 1939, which reads as follows, to-wit:

"All leases issued under the provisions of this act shall be assignable in whole or in part; Provided, however, that no assignment of an undivided interest in the lease or any part thereof, or any assignment of less than a legal subdivision shall be recognized or approved by the commissioner."

I do not believe it could be consistently argued that there is not an inheritable interest in such oil leases as herein involved. This being true, can it be said that the above quoted portion of Chapter 234, Laws of 1939, was meant or intended to prohibit the court from decreeing such interests or the Commissioner of Public Lands from recognizing the same? We think not. It occurs to the writer that under the circumstances as herein related that the interest of the decedent in the said lease passed by operation of law rather than by "assignment" as the latter term is used in the 1939-act, supra.

Assuming, however, that this is an assignment, it is necessarily by operation of law. An assignee by operation of law may, under certain circumstances, have greater rights than a voluntary assignee. Thus, in *Erwin v. United States* 97 U.S. 392 it was held that

the act of February 26, 1853 (Revised Statutes, Section 3477) nullifying an avoiding all transfers and assignments of any claim upon the United States applied only to cases of voluntary assignments of demands against the Government, and that it did not embrace cases where there had been a transfer of title by operation of law. In arriving at this conclusion the Supreme Court of the United States had the following say:

"The act of Congress of Feb. 26, 1853, to prevent frauds upon the treasury of the United States, which was the subject of consideration in the **Gillis Case**, applies only {**202*} to cases of voluntary assignment of demands against the government. It does not embrace cases where there has been a **transfer of title by operation of law**. The passing of claims to heirs, devisees, or assignees in bankruptcy is not within the evil at which the statute aimed; * * *

I believe the same reasoning to apply to the instant situation as was applied by the Supreme Court of the United States in the Erwin case, supra. I therefore conclude that the provisions of Chapter 234 of the Laws of 1939, prohibiting the assignment of an undivided interest in an oil and gas lease does not apply in such a case as the instant one, where the undivided interest in the leases has necessarily passed by operation of law. I am of the opinion, however, that once the deceased' interest in an oil and gas lease is, by operation of law, vested in his heirs, that the heirs may not assign their undivided interest to any third party except in accordance and in full conformity with the provisions of Chapter 234, of the Laws of 1939.

In closing, I wish to add, that the 1939 act was, in my opinion passed to prohibit the accompanying evils which result in unlimited voluntary assignments of undivided interests in oil leases, especially so, when such leases get into the hands of unscrupulous lessees. The act was not, in my opinion, passed to prohibit such interests from vesting in heirs of a deceased lessee nor to prohibit the Commissioner from recognizing or approving such decreed interests.

By HOWARD F. HOUK,

First Asst. Atty. General