

Opinion No. 43-4425

December 14, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Honorable H. R. Rodgers, Commissioner of Public Lands, State Land Office, Santa Fe, New Mexico. Attention: George A. Graham, Attorney

In your letter dated December 7, 1943, you refer to Chapter 87, Laws of 1943, pertaining to waiving the drilling and development by an oil and gas lessee as to lands used or taken for use by the government for military purposes, you request an opinion relative to two questions, as follows:

(a) "Whether or not the taking by the Government, during the primary term, of lands covered by leases, extends the primary term for the duration and six months, or whether, under the terms of the lease, the secondary term coming up becomes effective in accordance with the lease provisions.

(b) "Is the time the statute becomes effective the date of the Government's order of taking possession, or is it the date of approval by the Commissioner of the lessee's application for extension?"

Chapter 87, Laws of 1943, provides, in part, as follows:

"If such use by the United States begins during the primary term of any such lease, such primary term shall be extended for a period of time equal to the period of such use and six months thereafter; and if such use by the United States begins during the secondary term of any such lease, such secondary term shall be extended for such period of use and six months thereafter. In all cases, the lessee shall be obligated to continue the payment of the rental provided in said lease, at the rate which is in effect at the time the United States takes possession as aforesaid."

In view of this language it seems clear that if the use by the government, either through agreement or by court order, begins during the primary term, the rentals assessed at the time of the beginning of such use by the government continue in effect at the rate for the primary term, and if the use begins during the secondary term, the rentals continue at the rate in existence for the secondary term for the period of such use and six months thereafter.

In answer to your second question the last sentence in the above mentioned quotation from Chapter 87 seems to answer this question. The rate which is in effect at the time the United States takes possession is the rate that continues in effect during the period of use by the government. The waiver by the Commissioner seems to be discretionary and when the same is given it relates back to the date use is taken by the government,

to determine the rentals which should be paid during the period of use by the government.

By C. C. McCULLOH,

First Asst. Atty. General