

Opinion No. 45-4729

June 4, 1945

BY: C. C. McCULLOH, Attorney General

TO: George A. Graham, Attorney New Mexico State Land Office Santa Fe, New Mexico

{*80} We are in receipt of your letter of May 21, 1945, concerning Chapter 111 of the Laws of 1945, amending Section 8-1103 of the 1941 Compilation which provided the form of oil and gas leases. In connection with this section, you asked the following question:

"If an application is made for a continuation of a lease, does such application cover only that part of the lease described in the application or does it include the whole lease and any assignments thereof?"

Paragraph 16 of Section 1, Chapter 111 provides in part as follows:

"If the **lessee** shall have maintained this lease in accordance with the provisions hereof and if at the expiration of the secondary term provided for herein oil or gas is not being produced on said land but **lessee** is then engaged in bona fide drilling or reworking operations thereon, **this lease** shall remain in full force and effect so long as such operations are diligently prosecuted and, if they result in the production of oil or gas, so long thereafter as oil and gas in paying quantities or either of them is produced from said land;"

The answer to your question depends upon the construction of this section. By paragraph 7 of the oil and gas lease form, the lessee is given the right to assign the lease in whole or in part. This section then provides that:

"Upon approval in writing by the lessor of an assignment, the assignor shall stand relieved from all obligations to the lessor with respect to the lands embraced in the assignment and the lessor shall likewise be relieved from all obligations to the assignor as to such tracts, and the assignee shall succeed to all of the rights and privileges with respect to such tracts and shall be held to have assumed all of the duties and obligations of the assignor to the lessor as to such tracts."

In view of this section, it is seen that upon the assignment of the lease, the lessee (hereinafter referred to as assignor) is relieved of all duties under the lease as to the assigned portion. The Land Commissioner is relieved of all obligations {*81} of the assignor as to the assigned portion. The assignee succeeds to and becomes vested with all of the rights and privileges of the assignor as to such portion. By virtue of paragraph 16, supra, one of the rights held by the assignor is the right to continue the lease in force after the termination of the secondary term as long as drilling or rework operations continue.

In view of the foregoing, it is my opinion that the assignee having succeeded the assignor in the right to continue under section 16, may do so as to his portion without any concurrence by the assignor. On like theory, the assignor no longer having any rights in the assigned portion and the Land Commissioner no longer having any duties to him, the assignor could not continue the lease as to the assigned portion, but only as to that portion of the mother lease still held by him.

By ROBERT W. WARD,

Asst. Atty. General