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Department of Justice
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OPINION
of
FRED M. STANDLEY
Attorney General

No. 58-200
September 30, 1958

By: Joel B. Burr, Jr.
Assistant Attorney General

To: Stephen W. Bowen, President
Board of Commissioners of the
State Bar of New Mexico
Tucumcari, New Mexico

Question:

Does appearance by a layman, or an attorney in a representative capacity as an advocate in hearings before any commissioner, hearing officer, referee, board, body, committee or commission of the State of New Mexico, constitute the practice of law and require attorneys so engaged to be licensed in New Mexico or otherwise associated with resident counsel?

Conclusion:

Yes.

Analysis:

The pertinent statutory provisions of this State in reference to the practice of law are Secs. 18-1-8, 18-1-26, and 18-1-27 of the New Mexico Statutes Annotated, 1953 Comp., and 1957 Pocket Supplement.

Sec. 18-1-8, supra, creates a Board of Bar Examiners to pass upon the qualifications of applicants before they are admitted to practice law in the State.

Exhibit A

Sec. 18-1-26, supra, prohibits the practice of law in this State by any person unless he shall have first obtained either a temporary license, a certificate of admission, or associated himself with local counsel. This section provides in part as follows:

> "No person shall practice law in any of the courts of this state, except courts of justice of the peace, nor shall any person commence, conduct or defend any action or proceeding in any of said courts unless he be an actual and bona fide resident of the State of New Mexico, and unless he shall have first obtained a temporary license as herein provided, or shall have been granted a certificate of admission to the bar under the provisions of this chapter. No person not licensed as provided herein shall advertise or display any matter or writing whereby the impression may be gained that he is an attorney or counselor at law, or hold himself out as an attorney or counselor at law, and all persons violating the provisions hereof shall be deemed guilty of contempt of the court wherein such violation occurred, as well as of the Supreme Court of the state; Provided, however, that nothing in this act shall be construed to prohibit persons residing beyond the limits of this state, otherwise qualified, from assisting resident counsel in commencing, conducting or otherwise participating in any action or proceeding; * * *".

And lastly, Section 18-1-27, supra, likewise prohibits the practice of law without a valid license and provides for a penalty for the violation thereof. This section provides:

> "If any person shall, without having become duly licensed to practice, or whose licenses to practice shall have expired either by disbarment, failure to pay his license fee, or otherwise, practice or assume to act or hold himself out to the public as as a person qualified to practice or carry on the calling of a lawyer, he shall be guilty of an offense under this act (18-1-2 to 18-1-8, 18-1-24, 18-1-25, 18-1-27), and on conviction thereof be fined not to exceed five hundred dollars ($500), or be imprisoned, for a period not to exceed six (6) months, or both."

Thus, we note that there is no statutory provision in New Mexico defining what constitutes the "practice of law". Nor, to our knowledge, has the term been defined by the Supreme Court of this State. However, the reports are replete with cases in other jurisdictions in which the courts have been called upon to define the term.

In People v. People's Stock Yards State Bank, 344 Ill. 462, 176 N.E. 901 (1931), it is said:

> "Practicing as an attorney or counselor at law, according to the laws and customs of our courts, is the giving of advice or rendition of any sort of service by any person, firm or corporation when the giving of such advice or rendition of such service requires the use of any degree of legal knowledge or skill."

In Barr v. Cardell, 173 Iowa 18, 155 N.W 312 (1915), the Court said:

> "We are of the opinion that the practice of law. . was not confined to practice in the courts of this state, but was of larger scope, including the preparation of pleadings and other papers incident to any action or special proceeding in any court or other judicial body, conveyancing, the preparation of all legal instruments of all kinds whereby a legal right is secured, the rendering of opinions as to the validity or invalidity of the title to real or personal property, the giving of any legal advice, and any action taken for others in any matter connected with the law."

The following is the concise definition given by the Supreme Court of the United States as quoted by the South Carolina Supreme Court in State v. Wells, 191 S.C. 468, 5 S.E. 2d 181 (1939):

> "Persons acting professionally in legal formalities, negotiations or proceedings by the warrants or authority of their clients may be regarded as attorneys at law within the meaning of that designation as employed in this country."

In determining what is the practice of law, the courts have consistently said that it is the character of the acts performed and not the place where they are done that is decisive. Or phrased in a different manner, it is the character of the services rendered and not the denomination of the tribunal before whom they are rendered which controls in determining whether such services constitute the practice of law. State ex rel. Daniel v. Wells, 191 S.C. 468, 5 S.E. 2d 181 (1939); People ex rel. Chicago Bar Association v. Goodman, 366 Ill. 346, 8 N.E. 2d 941 (1937), Cert. Den. 302 U.S. 728; Stock v. P. G. Garage, Inc., 7 N.J. 118, 30 A. 2d 545 (1951); State ex rel. Johnson, Atty. Gen. v. Childe, 147 Neb. 527, 23 N.W. 2d 720 (1946); Carcner v. Conway, 234 Minn. 468, 48 N.W. 2d 788 (1951); Carey v. Thieme, 2 N.J. Super. 458, 64 A. 2d 394 (1949).

In disposing of the question in the case of Shortz v. Farrell, 327 Pa. 81, 193 A. 20, 21 (1937), the Court said:

> "In considering the scope of the practice of law mere nomenclature is unimportant, as for example, whether or not the tribunal is called a 'court,' or the controversy 'litigation', where the application of legal knowledge and technique is required, the activity constitutes such practice even if conducted before a so-called administrative board or commission. It is the character of the act, and not the place where it is performed, which is the decisive factor."

If this is the true test then, and we agree that it is, let us proceed to analyze the nature of the advocacy utilized by an attorney in conducting hearings before an administrative board or commission. It appears to take place in what may be called adversary administrative proceedings, and in the processing of claims by and against the state, as a more informal type of adversary proceeding.

In the constitutional sense, adversary administrative proceedings are the substantial equivalent of judicial proceedings. The same issues of law and argument carry over from an administrative proceeding on judicial review of the agency's determination. Moreover, the Supreme Court of the United States has held that administrative proceedings are subject to the constitutional requirements of procedural due process; that they are quasi-judicial in character, and are required to fit the cherished judicial tradition embodying the basic concepts of fair play. Morgan v. United States, 304 U.S. 1, (1938).

A study of the rules of practice adopted by various administrative bodies in this State reveals that the same basic system of mechanics is utilized as is found in judicial litigation. Choices must be made between causes of action and the drafting of pleadings. The conduct of a hearing before an administrative tribunal and the conduct of a trial in a purely judicial proceeding are for all practical purposes, the same. For example, in order to prove questions of fact in an administrative proceeding, witnesses must be qualified, examined and cross-examined, questions must be asked which, to some extent at least, must fit the rules of evidence. Documents must be proved and introduced into evidence as exhibits. Statutes and judicial decisions must many times be interpreted. Briefs are written and questions of law argued. Decisions are made which are based on findings of fact and conclusions of law. In addition, some statutes or rules of practice provide that the rules of evidence in certain administrative proceedings will, as far as applicable, be the same as the rules of procedure generally followed by the district courts. And it is not insignificant to note that language utilized in both administrative proceedings and judicial litigation are distinctly similar. Such terms as "complaints", "answers", "replies", "motions", "depositions", "subpoenas", "evidence", "offers of proof", "judicial" or "official notice", "briefs", "oral argument", and "findings of fact" are used in both proceedings.

Thus, if it is the character of the acts performed that is to govern us in determining what is the practice of law, the conclusion is inescapable that if a layman, or an attorney appears in a representative capacity as an advocate in hearings before any Commissioner, hearing officer, referee, board, body, committee or commission of the State of New Mexico which considers legal questions, applies legal principles and weighs facts under legal rules, and in that representative capacity files pleadings, qualifies, examines and cross-examines witnesses, proves and introduces exhibits into evidence or performs any of the other duties normally associated with an attorney requiring specialized training and skill, such layman or attorney is practicing law within the meaning of the term as it is used in the act.

As was indicated earlier in this opinion, our Supreme Court has never been called upon to decide this question. However, we are certainly not without authority in our position. In State ex rel Daniel, Atty. Gen., et al. v. Wells, supra, the Supreme Court of South Carolina was called upon to determine whether an appearance by an insurance adjuster as a paid

representative of an insurance company before a single commissioner in hearings before the South Carolina Industrial Commission, constituted the practice of law. The Court concluded that it did under a statutory provision which prohibited the practice of law in any court of the state by any person unless admitted and sworn in as an attorney.

The Court reviewed authorities from other jurisdictions and concluded that the correct test to be applied in determining what constitutes the practice of law, is to look at the character of the acts performed and not the place where they are done. In view of the test adopted, the Court carefully analyzed the procedure followed at such hearings. It found among other things that at such a hearing, the Commissioner ascertained disputed issues of law or fact, swore witnesses, and took testimony. Witnesses were examined and cross-examined. The commissioner was empowered to make awards based upon the evidence, together with a statement of his findings of fact, rulings and conclusions of law. A complete record was made of the case, and aggrieved parties given a right of appeal. Commenting upon this procedure, the Court said at pp. 184:

> "Examination and cross examination of witnesses require a knowledge of relevancy and materiality. Such examination is conducted in much the same manner as that of the Circuit Court. Improper or irrelevant testimony must be objected to, or otherwise it may be considered. Rice v. Brandon Corporation, 190 S.C. 229, 2 S.E. 2d 740. While findings of fact will be upheld by the Court if there is any evidence on which it can rest, it must be founded on evidence and cannot rest on surmise, conjecture or speculation. Rudd v. Fairforest Finishing Company, 189 S.C. 188, 200 S.E. 727. Depositions are taken under the procedure of the Circuit Court. The various decisions of this Court since this legislation was enacted illustrate the difficult and complicated questions which arise in the construction of the Act and its application. Facts must be weighed by the commissioner in the light of legal principles. The Hearing commissioner makes not only findings of fact, but states his conclusions of law."

The Court then held that such hearings were essentially of a judicial character and that the appearance at such hearings in a representative capacity constituted the practice of law.

It should be noted that the South Carolina statute prohibiting the practice of law without a license is extremely similar to our New Mexico statute compiled as Section 18-1-26, supra, in that in both statutes, the word "court" is used in the prohibition. In disposing of the question, the South Carolina Supreme Court quotes with approval the following language from the Pennsylvania case of Shortz v. Farrell, supra.

> "In considering the scope of the practice of law mere nomenclature is unimportant, as for example, whether or not the tribunal is called 'court' or the controversy 'litigation'."

The real question to be resolved according to the South Carolina Court is whether the duties performed require the application of legal knowledge or technique; that it is the character of the acts performed and not the place where they are performed which is the decisive factor.

In the Pennsylvania case from which the quoted language above is taken, the Court held that an appearance by an adjuster in administrative hearings held under the Pennsylvania Workman's Compensation Act, in which he examined and cross-examined witnesses, constituted the practice of law.

The Supreme Court of Illinois in the case of People ex rel. Chicago Bar Association v. Goodman, supra, upon similar facts, reached the same conclusion. In discussing what acts constituted the practice of law, the Court said:

> "It is immaterial whether the acts which constitute the practice of law are done in an office, before a court, or before an administrative body. The character of the act done, and not the place where it is committed, is the factor which is decisive of whether it constitutes the practice of law."

Petition for Writ of Certiorari in the above case was denied by the United States Supreme Court in 302 U.S. 728.

The Supreme Court of Ohio is likewise in accord with the position we have taken on this question. See Goodman v. Beall, 130 Ohio St. 427, 200 N.E. 470 (1936).

In the case of Stack v. P. G. Garage, Inc., supra, the plaintiff Stack, a licensed realtor appeared in a representative

capacity before the Hudson County Tax Board. The New Jersey Supreme Court in holding that Stack's actions constituted the practice of law, quoted with approval the following conclusion reached in the case of Tumulty v. Rosenblum, 134 N.J.L. 514, 48 A. 2d 850 (Sup. Ct. 1946):

> "The practice of law is not confined to the conduct of litigation in courts of record. Apart from such, it consists, generally, in the rendition of legal service to another, or legal advice and counsel as to his rights and obligations under the law. . . calling for. . . a fee or stipend, i.e., that which an attorney as such is authorized to do; and the exercise of such professional skill certainly includes the pursuit, as an advocate for another, of a legal remedy within the jurisdiction of a quasi-judicial tribunal. Such is the concept of R. S. 2:111-1, N.J.S.A., classifying as a misdemeanor the practice of law by an unlicensed person."

The Nebraska case of State ex rel. Johnson, Atty. Gen. v. Childe, supra, arose out of the appearance of one Childe before the Nebraska State Railway Commission in a proceeding entitled:

> "In the Matter of the Application of the Central States Motor Carriers' Association for authority to Establish Commodity Rates on Building and Fencing materials."

The conclusion reached by the Court is quoted below:

> "We conclude that in the proceeding before the Commission involved herein and the part taken by the defendant in his conduct thereof, there was involved a need of legal training, knowledge, and skill and constituted the practice of law. It was particularly required in the drafting of the petition, in the interpretation of the legislative powers with which the commission was clothed, in determining the power of the commission to make the order, in the making of a record in contemplation of a judicial review, in establishing the legal qualifications of witnesses to testify and the technical proffer of testimony in conformity to legal standards. In performing such services, and others noted in this opinion, in

> a representative capacity without license to engage in the practice of law, the defendant engaged in the illegal practice of law within the meaning of the rules announced in the former opinion in this case. State ex rel. Johnson v. Childe, 139 Neb. 91, 295 N.W. 381."

But for the sake of brevity, many more cases could be cited in support of our position in this matter. However, we feel the cases we have discussed are sufficient to point out the correctness of the conclusions we have reached.

In view of this conclusion, one further question merits discussion at this time. Inasmuch as there is no prohibition under our law against an individual representing himself, and, in the case of a corporation, it is necessary that its appearance be made through employees or representatives, it might be contended that an employee of a corporation was not acting for a client, but for his own employer. Similar contentions were made in State v. Wells, supra, Clark v. Austin, 340 Mo. 467, 101 S.W. 2d 977, 982 (1937); Shortz, et al. v. Farrell, supra, and Mullin-Johnson Company v. Penn. Mutual Life Insurance Company, 9 F. Supp. 175 (1934).

In Clark v. Austin, supra, the Court disposed of the contention as follows:

> "The law recognizes the right of natural persons to act for themselves in their own affairs, although the acts performed by them, if performed for others, would constitute the practice of law. A natural person may present his own case in court or elsewhere, although he is not a licensed lawyer. A corporation is not a natural person. It is an artificial entity created by law. Being an artificial entity it cannot appear or act, in person. It must act in all its affairs through agents or representatives. In legal matters, it must act, if at all, through licensed attorneys.
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> * * * * *
>
> If a corporation could appear in court through a layman upon the theory that it was appearing for itself, it could employ any person, not learned

in the law, to represent it in any or all judicial proceedings."

The Court also quoted with approval the following from Mullin-Johnson Company v. Penn. Mutual Life Insurance Company, supra:

"Since a corporation cannot practice law, and can only act through the agency of natural persons, it follows that it can appear in court on its own behalf only through a licensed attorney. It cannot appear by an officer of the corporation who is not an attorney, and may not even file a complaint except by an attorney, whose authority to appear is presumed; in other words, a corporation cannot appear in propria persona."

We are further of the opinion that the power granted to various administrative agencies to promulgate rules and regulations does not contemplate the power to permit laymen and lawyers who are not licensed to practice law in this State to perform functions in connection with the administration of the various acts which constitute the practice of law. State v. Wells, supra, State v. Childe, supra, Goodman v. Beall, supra.

By way of conclusion, it is the opinion of this office that a layman or an attorney who appears in a representative capacity as an advocate in hearings before any commissioner, hearing officer, referee, board, body, committee or commission of the State of New Mexico which considers legal questions, applies legal principles and weighs facts under legal rules, and in that representative capacity files pleadings, qualifies, examines and cross-examines witnesses, proves and introduces exhibits into evidence, or performs any of the other duties normally associated with attorneys requiring specialized training and skill, is engaging in the practice of law which is expressly prohibited without a license under the provisions of Sections 18-1-26 and 18-1-27, supra. It therefore follows that under the provisions of Section 18-1-26, supra, all foreign licensed attorneys must associate themselves with resident counsel before commencing, conducting, or otherwise participating in any such proceeding.

The law in this regard is neither unusual nor oppressive. Doctors of medicine, dentists, pharmacists, barbers, hairdressers, and others who engage in professions or skilled

trades, must show required preparation and fitness for their work, take examinations and procure licenses to practice. As the Court pointed out in State v. Wells, supra, a dual trust is imposed on licensed attorneys; they must act with all good fidelity to the courts and to their clients, and they are bound by canons of ethics which have been the growth of long experience and which are enforced by the Courts. Or as was said by Judge Matson in Gardner v. Conway, 234 Minn. 468, 48 N.W. 2d 788, 795;

> "The law practice franchise or privilege is based upon the threefold requirements of ability, charac- and responsible supervision." (Court's Emphasis).

FRED M. STANDLEY
Attorney General

Joel B. Burr, Jr.
Assistant Attorney General

BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION OF NEW MEXICO FOR
THE PURPOSE OF CONSIDERING:

CASE NO. 5807
Order No. R-5332

APPLICATION OF C & K PETROLEUM, INC.
FOR COMPULSORY POOLING AND A NON-STANDARD
UNIT, EDDY COUNTY, NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 a.m. on November 10, 1976, at Santa Fe, New Mexico, before Examiner Richard L. Stamets.

NOW, on this 30th day of November, 1976, the Commission, a quorum being present, having considered the testimony, the record, and the recommendations of the Examiner, and being fully advised in the premises,

FINDS:

(1) That due public notice having been given as required by law, the Commission has jurisdiction of this cause and the subject matter thereof.

(2) That the applicant, C & K Petroleum, Inc., seeks an order pooling all mineral interests in the Wolfcamp and Pennsylvanian formations underlying the N/2 of Section 13, Township 22 South, Range 26 East, NMPM, South Carlsbad Field, Eddy County. New Mexico.

(3) That the applicant has the right to drill and proposes to drill a well 1680 feet from the North line and 1980 feet from the East line of said Section 13 to be dedicated to a non-standard 336.6-acre unit.

(4) That there are interest owners in the proposed proration unit who have not agreed to pool their interests.

(5) That to avoid the drilling of unnecessary wells, to protect correlative rights, and to afford to the owner of each interest in said unit the opportunity to recover or receive without unnecessary expense his just and fair share of the gas in said pool, the subject application should be approved by pooling all mineral interests, whatever they may be, within said unit.

Exhibit B

(6) That the applicant should be designated the operator of the subject well and unit.

(7) That any non-consenting working interest owner should be afforded the opportunity to pay his share of estimated well costs to the operator in lieu of paying his share of reasonable well costs out of production.

(8) That any non-consenting working interest owner that does not pay his share of estimated well costs should have withheld from production his share of the reasonable well costs plus an additional 120 percent thereof as a reasonable charge for the risk involved in the drilling of the well.

(9) That any non-consenting interest owner should be afforded the opportunity to object to the actual well costs but that actual well costs should be adopted as the reasonable well costs in the absence of such objection.

(10) That following determination of reasonable well costs, any non-consenting working interest owner that has paid his share of estimated costs should pay to the operator any amount that reasonable well costs exceed estimated well costs and should receive from the operator any amount that paid estimated well costs exceed reasonable well costs.

(11) That $1,000 per month while drilling and $150 per month while producing should be fixed as reasonable charges for supervision (combined fixed rates); that the operator should be authorized to withhold from production the proportionate share of such supervision charges attributable to each non-consenting working interest, and in addition thereto, the operator should be authorized to withhold from production the proportionate share of actual expenditures required for operating the subject well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(12) That all proceeds from production from the subject well which are not disbursed for any reason should be placed in escrow to be paid to the true owner thereof upon demand and proof of ownership.

(13) That upon the failure of the operator of said pooled unit to commence drilling of the well to which said unit is dedicated on or before February 28, 1977, the order pooling said unit should become null and void and of no effect whatsoever.

IT IS THEREFORE ORDERED:

(1) That all mineral interests, whatever they may be, in the Wolfcamp and Pennsylvanian formations underlying the N/2 of Section 13, Township 22 South, Range 26 East, NMPM, South Carlsbad Field, Eddy County, New Mexico, are hereby pooled to form a non-standard 336.6-acre gas spacing and proration unit to be dedicated to a well to be drilled 1680 feet from the North line and 1980 feet from the East line of said Section 13.

PROVIDED HOWEVER, that the operator of said unit shall commence the drilling of said well on or before the 28th day of February, 1977, and shall thereafter continue the drilling of said well with due diligence to a depth sufficient to test the Pennsylvanian formation;

PROVIDED FURTHER, that in the event said operator does not commence the drilling of said well on or before the 28th day of February, 1977, Order (1) of this order shall be null and void and of no effect whatsoever; unless said operator obtains a time extension from the Commission for good cause shown.

PROVIDED FURTHER, that should said well not be drilled to completion, or abandonment, within 120 days after commencement thereof, said operator shall appear before the Commission and show cause why Order (1) of this order should not be rescinded.

(2) That C & K Petroleum, Inc. is hereby designated the operator of the subject well and unit.

(3) That after the effective date of this order and within 30 days prior to commencing said well, the operator shall furnish the Commission and each known working interest owner in the subject unit an itemized schedule of estimated well costs.

(4) That within 30 days from the date the schedule of estimated well costs is furnished to him, any non-consenting working interest owner shall have the right to pay his share of estimated well costs to the operator in lieu of paying his share of reasonable well costs out of production, and that any such owner who pays his share of estimated well costs as provided above shall remain liable for operating costs but shall not be liable for risk charges.

(5) That the operator shall furnish the Commission and each known working interest owner an itemized schedule of actual well costs within 90 days following completion of the well; that if no objection to the actual well costs is received by the Commission and the Commission has not objected within 45 days following receipt of said schedule, the actual well costs

shall be the reasonable well costs; provided however, that if there is an objection to actual well costs within said 45-day period the Commission will determine reasonable well costs after public notice and hearing.

(6) That within 60 days following determination of reasonable well costs, any non-consenting working interest owner that has paid his share of estimated costs in advance as provided above shall pay to the operator his pro rata share of the amount that reasonable well costs exceed estimated well costs and shall receive from the operator his pro rata share of the amount that estimated well costs exceed reasonable well costs.

(7) That the operator is hereby authorized to withhold the following costs and charges from production:

(A) The pro rata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished to him.

(B) As a charge for the risk involved in the drilling of the well, 120 percent of the pro rata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished to him.

(8) That the operator shall distribute said costs and charges withheld from production to the parties who advanced the well costs.

(9) That $1,000 per month while drilling and $150 per month while producing are hereby fixed as reasonable charges for supervision (combined fixed rates); that the operator is hereby authorized to withhold from production the proportionate share of such supervision charges attributable to each non-consenting working interest, and in addition thereto, the operator is hereby authorized to withhold from production the proportionate share of actual expenditures required for operating such well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(10) That any unsevered mineral interest shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest for the purpose of allocating costs and charges under the terms of this order.

(11) That any well costs or charges which are to be paid out of production shall be withheld only from the working interests share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

(12) That all proceeds from production from the subject well which are not disbursed for any reason shall be placed in escrow in Eddy County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership; that the operator shall notify the Commission of the name and address of said escrow agent within 90 days from the date of this order.

(13) That jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

PHIL R. LUCERO, Chairman

EMERY C. ARNOLD, Member

JOE D. RAMEY, Member & Secretary

S E A L

dr/

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION OF NEW MEXICO FOR
THE PURPOSE OF CONSIDERING:

CASE NO. 6289
Order No. R-5332-A

APPLICATION OF BILL TAYLOR FOR
ENFORCEMENT AND AMENDMENT OF
ORDER NO. R-5332, EDDY COUNTY,
NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 a.m. on August 9, 1978, and September 11, 1978, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NOW, on this 17th day of October, 1978, the Commission, a quorum being present, having considered the testimony presented and the exhibits received at said hearing, and being fully advised in the premises,

FINDS:

(1) That due public notice having been given as required by law, the Commission has jurisdiction of this cause and the subject matter thereof.

(2) That on November 30, 1976, upon the application of C & K Petroleum, Inc., hereinafter referred to as "C & K", the Commission issued its Order No. R-5332 pooling the N/2 of Section 13, Township 22 South, Range 26 East, NMPM, South Carlsbad Field, Eddy County, New Mexico.

(3) That this acreage was dedicated to the Carlsbad "13" Well No. 1 located in Unit G of said section.

(4) That C & K was appointed the operator of the well by Order No. R-5332, and Bill Taylor, hereinafter referred to as "Taylor", was and is an interest owner in said well.

(5) That on July 5, 1978, Taylor filed an application for "operator's accounting, regulation and order compliance; operator removal; protection of royalty and interest owner's correlative rights; and Commission amendment of Order No. R-5332."

(6) That this cause came on for hearing on August 9, 1978, and September 11, 1978.

(7) That C & K failed to furnish the Commission and each known working interest owner an itemized schedule of estimated well costs after the effective date of Order No. R-5332 and within 30 days prior to commencing the well in accordance with Order (3) of said order.

(8) That Taylor was therefore not afforded the opportunity to pay his share of estimated well costs to the operator in accordance with the terms of said Order No. R-5332 in lieu of paying his share of reasonable well costs out of production.

(9) That Taylor should be afforded the opportunity to pay his share of reasonable well costs now in lieu of paying the same out of production.

(10) That although Taylor objected to well costs as submitted by C & K, including tubing costs, the evidence presented shows that actual well costs total $551,903.87.

(11) That said well costs of $551,903.87 are reasonable costs for the subject well.

(12) That within 30 days from the effective date of this order, Taylor should have the right to pay his share of the actual well costs to the operator in lieu of paying his share of said costs out of production; further, that if he pays his share as provided herein, he should remain liable for operating costs but should not be liable for risk charges.

(13) That no evidence was presented showing that C & K has failed to afford Taylor or other interest owners in the unit the opportunity to recover their just and fair share of the gas from the Carlsbad "13" Well No. 1, and there is no evidence that correlative rights have been impaired.

(14) That no evidence was presented showing that C & K has caused waste by its operation of the well.

(15) That although certain of the accounting and operational procedures employed by C & K in the past appear to have been less than satisfactory, these have apparently now been corrected.

(16) That although the evidence in this case establishes that C & K has been grossly lax in the observance of certain Division rules and orders, particularly as they relate to the filing of forms and reports, and the establishment of an escrow account in accordance with Order (12) of Order No. R-5332, the Commission cannot find this to be grounds for removal of C & K as operator of the well at this time, and it should be permitted to continue as operator, pending further order of the Commission or Division.

(17) That Taylor's request that C & K be removed as operator should therefore be denied.

IT IS THEREFORE ORDERED:

(1) That the application of Bill Taylor for removal of C & K Petroleum, Inc., as operator of the Carlsbad "13" Well No. 1 located in Unit G of Section 13, Township 22 South, Range 26 East, NMPM, South Carlsbad Field, Eddy County, New Mexico, is hereby denied.

(2) That within 30 days from the effective date of this Order, Bill Taylor shall have the right to pay his share of the actual well costs of $551,903.87 to the operator of said Carlsbad "13" Well No. 1 in lieu of paying his share of said costs out of production, and should he pay his share as provided above, he shall remain liable for operating costs but shall not be liable for risk charges.

(3) That all provisions of Order No. R-5332 not in conflict herewith shall remain in full force and effect.

(4) That jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

PHIL R. LUCERO, Chairman

EMERY C. ARNOLD, Member

JOE D. RAMEY, Member & Secretary

S E A L