

**OPINION
50-137**

September 7, 1950 (OPINION)

PROPERTY

RE: Execution of Oil and Gas Leases

Your letter of September 5th, 1950 is at hand.

You state that you recently forwarded to the register of deeds of Dickey County a gas and oil lease on certain property in Dickey County and that the register returned it to you unrecorded for the reason that it had not been executed and acknowledged by the lessee.

It is our opinion that a gas and oil lease, so-called, is governed by the same rules of law as govern leases of any other real property. Our statute, section 47-1001, provided: "An estate in real property, other than an estate at will or for a term not exceeding one year, can be transferred only by operation of law or by an instrument in writing, subscribed by the party disposing of the same or by his agent thereto authorized in writing."

American Jurisprudence states the rule as follows:

"To render a written lease valid and binding on the lessor, it is not essential that it be signed by the lessee. * * *Moreover, in the absence of statutes to the contrary, it is equally well established that it is not essential to the validity of a lease for the purpose of binding the lessee that it be signed by the lessee, provided he accepts the lease and acts thereunder, which acceptance is generally shown by taking possession or by paying the rent."

32 AM. Jr. 59, sec. 37.

Corpus Juris Secundum states the rule as follows:

"As a general rule the signature of the lessor is necessary in order to give operative effect to the lease" and:

"While the absence of the signature of the lessee, under some circumstances, render the lease inoperative, in general the acceptance of the lease will bind the parties, especially where the lessee enters into possession, even though the lease is not signed by the lessee."

While, as a general rule, it is best for the protection of both parties, that the lease be signed by both, it is our opinion that a lease executed and acknowledged by the lessor only is valid and entitled to be recorded.

ELMO T. CHRISTIANSON

Attorney General