

**OPINION
53-96**

September 29, 1953 (OPINION)

OIL AND GAS

RE: Leasing by County

We are in receipt of your letter of September 22, 1953, in which you request our opinion relative to an interpretation of chapter 232 of the 1951 Session Laws, as amended.

You state that a railroad has discontinued operating in your county and has quit claimed to the county certain small tracts varying from one to twelve acres, variously located throughout the county.

These tracts of land have been would back to the owners of the land adjacent to such tracts and in so doing the county has reserved one half of the mineral interests. Now the county wishes to lease for oil its mineral interest in the small-acre tracts.

Your question is whether or not the leasing must be conducted through public sale as provided by section 2 of chapter 232.

We must agree that where the county proposes to lease the small tracts for drilling purposes, the side must be conducted to comply with section 2 of chapter 232.

However, section 6 as amended by chapter 228 of the 1953 Session Laws provides, subsection 1, that "where the acreage or minerals rights owned by political subdivisions is less than the minimum drilling unit under well spacing regulations, non-operative oil and gas leases may be executed through private negotiations. . . ."

We understand this to mean that a county, or other public corporation covered by this Act, may lease tracts of land smaller than the minimum forty-acre drilling unit through private negotiation so long as the lease contains a non-drilling or non-development clause. This type of lease, while unimportant of itself, may have considerable value to an oil company which wishes to drill in a certain area and at the same time wishes to protect itself against possible outstanding leasing rights in the area of the drilling operation.

There appears to be little or no authority bearing upon a definition of the term "non-operative." We understand, however, that this term has a commonly accepted definition in the oil and gas industry and this is synonymous with non-drilling or non-development.

It is our opinion, therefore, that initial non-operative leases may be executed through private negotiation in the case of tracts of land less than the minimum drilling unit under well spacing regulations.

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Attorney General