

### County Clerk and Recorder—Method of Recording Assignment of Royalties on Oil Lands.

The County Clerk and Recorder should index assignments of royalties on oil lands both under "Assignment of Leases" and under "Deeds."

Edgar J. Baker; Esq.,  
County Attorney,  
Lewistown, Montana.

My dear Mr. Baker:

I have a letter from your County Clerk inquiring as to whether assignment of royalties on oil lands should be indexed both under "Assignment of Leases" and under "Deeds," as has been the practice in his office.

The statutes prescribing the duties of the County Clerk with reference to indexing is found in Section 3033 of the Revised Codes of 1907. Subdivisions 1, 2, 11 and 12 of this section make the following provisions regarding the keeping of index records:

"1. An index of deeds, grants and transfers, and contracts to sell or convey real estate, labeled 'Grantors,' each page divided into four columns, headed respectively: 'Names of grantors,' 'Names of grantees,' 'Date of deeds, grants, transfers or contracts,' and 'Where recorded.'

"2. An index of deeds labeled 'Grantees,' each page divided into four columns, headed respectively: 'Names of grantees,' 'Names of grantors,' 'Date of deeds, grants, transfers or contracts,' and 'Where recorded.' \* \* \*"

"11. An index of assignments of mortgages and leases, labeled 'Assignments of mortgages and leases—assignors,' each page divided into five columns, headed respectively: 'Assignors,' 'Assignees,' 'Instruments assigned,' 'Date of assignment,' 'When and where recorded.'

"12. An index of assignments of mortgages and leases, labeled 'Assignments of mortgages and leases—assignees,' each page divided into five columns, headed respectively: 'Assignees,' 'Assignors,' 'Instruments,' 'Date of assignments,' 'When and where recorded.'"

In connection with the transfers of oil interests, it frequently happens that the interest or a portion thereof retained by the land owner is assigned, and this would undoubtedly be required to be indexed in accordance with Subdivisions 1 and 2, *supra*. By similar forms of assignment portions of the interest obtained by the lessee, namely, a leasehold interest, are transferred, and interests of this nature should be indexed under Subdivisions 11 and 12, *supra*. However, the terms "royalty" and "leasehold interest" are not accurately distinguished in general usage, and are used practically interchangeably in connection

with dealings in oil land interests. Any practice, therefore, other than the one that the County Clerk has been following, namely, indexing such assignment under both "Assignment of Leases" and under "Deeds," would call for an exercise of judgment on his part as to which class the instrument in question might fall within, thus placing upon him responsibility for the correctness of his decision. The better practice would, therefore, be to index such instruments under both heads as has been the practice.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.