

**VOLUME NO. 33**

**Opinion No. 30**

**LEASES - coal mining, deposits; coal mining, rents and royalties; Sections 81-504, 81-510, and 81-1712, Revised Codes of Montana, 1947.**

- HELD:**
- 1. The amount of the deposit for a coal mining lease cannot be less than the monthly royalty payment due the state and not less than fifty dollars (\$50) in any case.**
  - 2. Rents and bonuses shall be treated as royalties for coal mining leases and be credited to the permanent fund arising from the grant to which the land under each fund belongs.**

Mr. Ted Schwinden, Commissioner  
State Lands and Investments  
State Capitol  
Helena, Montana 59601

September 15, 1970

Dear Mr. Schwinden:

I am in receipt of your letter concerning an interpretation of certain sections of the Revised Codes of Montana dealing with the receipt and disposition of moneys on coal lease sales.

For the purpose of this opinion I have framed your questions in the following manner:

1. What are the requirements concerning money deposits for royalty payments upon the granting of an application for a coal mining lease?
2. What funds should be credited for rental payments and bonuses received under coal mining leases?

These questions may be respectively answered as follows:

Section 81-504, Revised Codes of Montana, 1947, contemplates deposits, for royalty payments, being placed with the board of land commissioners upon the granting of an application for a coal mining lease.

The application for a coal mining lease is to be accompanied by an estimate of the amount of coal to be mined during the first year of the lease and an estimate of the amount to be mined for each subsequent year. Upon the granting of the application for a coal mining lease, section 81-504, R.C.M. 1947, requires that a deposit be made by the applicant. This deposit must not be less than the royalty payment due the state from one (1) month's production and the deposit in no case can be less than fifty dollars (\$50). The afore-mentioned royalty payment is that royalty payment to be made on the estimated average production of coal for one (1) month. This estimated average production is based not necessarily on the first year's production, rather on production once it has commenced.

This same section states that if the royalty payment falls below the amount of the original cash deposit, the deposit shall be reduced by a sufficient amount so as to guarantee an income equal to amount of the cash deposit, or at least fifty dollars (\$50). The amount of money taken from the original cash deposit is combined with the actual royalty payment made to the state, to insure an income at least equal to the amount of the original cash deposit. If the deposit is reduced at any time, then the lessee is required to replenish the deposit to its original amount at the beginning of the next production year. If, however, the

royalty payment made on any given year's production exceeds the amount of the deposit, then the deposit shall remain intact for the subsequent year. This method then guarantees a certain minimum income to the state each year.

The coal mining lease in use at the present time contemplates rental payments in addition to deposits. These rental payments may not be used in lieu of the deposit required by section 81-504, R.C.M. 1947.

Section 81-510, R.C.M. 1947, states:

“All fees, royalties, bonuses and penalties collected under coal mining leases shall be credited by the commissioner to the same funds that such receipts under oil and gas leases on such lands would be credited under the provisions of this act; and in the case of coal mining leases, rentals, and bonuses, if any shall be considered as royalties.”

Upon a first reading of this statute it may appear to be internally inconsistent. However, upon a closer study of the provisions it is to be noted that the latter part of the section directs that rentals and bonuses shall be treated as if they were royalties for a determination as to which fund shall be credited.

Section 81-1712, R.C.M. 1947, is the section dealing with the disposition of proceeds and royalties under oil and gas leases and states in part: “. . . all moneys collected as royalties and bonuses shall be credited to the permanent fund arising from the grant to which the land under each particular lease belongs. . . .”

The legislature desired that all royalties, rentals and bonuses under coal leases be treated the same and credited to the permanent fund arising from that particular grant.

**THEREFORE, IT IS MY OPINION:**

1. That upon the granting of a coal mining lease a deposit based upon the royalty payments due on the estimated average production for one month, or fifty dollars, whichever is greater, must be made with the board of land commissioners. The estimated average production shall be based not necessarily on the first year's production, rather on production once it has begun.
2. That coal lease rents and bonuses shall be treated as royalties and shall be credited to the permanent fund arising from the grant to which the land under each particular fund belongs.

Very truly ours,

**ROBERT L. WOODAHL**  
Attorney General