

9. (RULES AND REGULATIONS FOR GEOLOGICAL AND GEOPHYSICAL SURVEY PERMITS - W. O. 1855.) The following report was presented to the Commission:

"At the meeting of February 9, 1956 the Commission requested the Western Oil and Gas Association and directed the staff to present full analyses of the problems attendant to specification of any geological or geophysical exploration survey permit requirement that exploration results be made available to the Commission for utilization in the classification of State lands considered for oil and gas lease offer under the Public Resources Code. On April 4, 1956 the Western Oil and Gas Association reported on the status of consideration of this subject as follows:

'State Lands Commission
State Capitol Building
Sacramento, California

Gentlemen:

'The Western Oil and Gas Association refers to the question which your Commission recently put to the Association as follows:

"If a company holds a permit for geophysical exploration and core drilling on lands not under lease offshore, should that company be required to make available to the Commission the results of that geophysical exploration and core drilling, or under what circumstances should this information be required to be made available, if at all?"

'The Association has been working for some time and is still actively working on an answer to this question, and in order to enable the Association to continue its efforts it is requested the Commission allow us until May 15, 1956, to present an answer to the Commission's question.

'In the meantime, it is requested that core drilling operations and geophysical exploration on tide and submerged lands be continued in accordance with the Interim Regulations adopted by the Commission on August 16, 1955.

'Yours very truly,

/s/ John W. Hancock

John W. Hancock
President'

"On March 27, 1956 Opinion No. 969 of the Office of the Legislative Counsel was published in the Assembly Daily Journal relating to the

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power of the State Lands Commission to offer for bid oil leases on tide and submerged land 'not within the known geologic structure' without first making surveys so determining. A copy of the full opinion is attached. Also, on April 5, 1956 further opinion on this same subject was requested from the Office of the Attorney General, a copy of which request is also attached followed by a copy of the reply under date of April 6, 1956."

UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED, IT WAS RESOLVED AS FOLLOWS:

THE COMMISSION ASSENTS TO THE REQUEST OF THE WESTERN OIL AND GAS ASSOCIATION TO ALLOW UNTIL MAY 15, 1956 FOR THE PRESENTATION OF THE REPORTS AND ANALYSES ON THE PROBLEMS OF SPECIFICATION OF GEOLOGICAL AND GEOPHYSICAL EXPLORATION SURVEY REQUIREMENTS RELATING TO AVAILABILITY OF DATA RESULTING FROM EXPLORATIONS UNDER SUCH PERMITS.

Attachments:

- Opinion of Legislative Counsel of 2/7/56
- Request for Informal Opinion of 4/5/56
- Informal Opinion of 4/6/56

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OPINION OF LEGISLATIVE COUNSEL

State of California
Office of Legislative Counsel
Sacramento, California

February 7, 1956

Honorable Allen Miller
205 Mission Building
San Fernando, California

Tideland Oil Leases - #969

Dear Mr. Miller:

QUESTION

You have asked if the State Lands Commission has the power to offer for bid, oil leases on tide and submerged lands "not within a known geologic structure," without first making surveys so determining.

OPINION

It is our opinion that such a survey would not be required in all instances. Where the commission has any reasonable basis for determining that the lands are "not within a known geologic structure," we believe that the courts will uphold that determination whether or not a survey was made.

ANALYSIS

The provision to which your question is directed is contained in Section 6827 of the Public Resources Code. That section prescribes the royalties to be specified by the State Lands Commission in offering for bid oil or gas leases on state tide and submerged lands. The amount of the royalty differs, based on whether or not the lands are within a known geologic structure of a producing oil or gas field. The commission is required to make the determination as to whether the lands are within such a known geologic structure.

The determination involves, of course, the exercise of the judgment, a discretionary matter. Such a determination, if not arbitrary, capricious or fraudulent, will be sustained by the courts, generally speaking, if there is any reasonable basis to support it. (Bank of Italy (1926), 200 Cal. 1; McDonough v. Goodcell (1939), 13 Cal. 2d 741; 2 Cal. Jur. 2d 377) However, unless there are facts that justify the commission's conclusion, the act of making the determination is arbitrary (McDonough v. Goodcell (1939), 13 Cal. 2d 741).

Thus, we believe that the determination by the commission that certain tide and submerged lands are not within a known geologic structure will

Honorable Allen Miller - p. 2 - #969

be sustained if there exist facts on which such a determination can be reasonably based. As to whether or not a survey would be required to obtain facts would depend on the circumstances and, conceivably, where no facts were available and no other means of securing them was possible, a survey would be necessary. However, if facts exist on which to base the determination, the manner in which they are obtained is immaterial to the validity of the determination.

Very truly yours,

Ralph N. Kleps
Legislative Counsel

By
George H. Murphy
Deputy

GHM:es

Honorable Edmund G. Brown, Attorney General
Department of Justice
600 State Building
Los Angeles 12, California

File No. W. O. 396.38

Date: April 5, 1956

Attention: Mr. Walter S. Rountree
Assistant Attorney General

Subject: Request for
Informal Opinion

From: State Lands Commission

Section 6827 of Chapter 1724, California Statutes of 1955, reads in part as follows:

"When state lands, including tide and submerged lands, offered for lease by the commission are lands within the known geologic structure, as determined by the commission, of a producing oil or gas field at the date of issuance by the commission of an invitation to bid for an oil and gas lease thereon, the commission shall specify a fixed royalty on oil of not less than 16-2/3 percent or a sliding scale royalty commencing at not less than 16-2/3 percent up to a maximum percentage specified in the invitation to bid to be paid on the average production of oil per well per day under such lease, ..."

Elsewhere in Section 6827 the following statement is made:

"When state tide and submerged lands offered for lease by the commission are lands not within the known geologic structure, as determined by the commission, of a producing oil or gas field at the date of issuance by the commission of an invitation to bid for an oil or gas lease thereon, the commission shall specify a flat-rate royalty to be paid under such lease of 12 1/2 percent in kind, or of 12 1/2 percent of the current market price or the price received for the production removed or sold from the leased land, ..."

It would appear that the State Lands Commission, before offering tide and submerged lands for an oil or gas lease thereon, must determine the category of said lands.

Situations have arisen where definite information is not available to the Commission as to whether the lands involved lie within the known geologic structure of a producing oil and gas field.

Under these circumstances, may the Commission make a determination to the effect that said lands are not within the known geologic structure of a producing oil and gas field?

RUFUS W. PUTNAM
Executive Officer

RWP:JS

SUBMITTED IN DUPLICATE

c.c. - Mr. Frank J. Mackin, Assistant Attorney General, L. A.

Colonel Rufus W. Putnam
Executive Officer
State Lands Commission
302 State Building
Los Angeles 12, California

Date: April 6, 1956

File No.: W. O. 396.38

Subject: Determination by
Commission as to whether tide
and submerged lands are within
a known geologic structure of
a producing oil and gas field.

From: Department of Justice

Under date of April 5, 1956, you inquire as to whether the State Lands Commission may make a determination as to whether state tide and submerged lands are within or without the known geologic structure of a producing oil or gas field in cases where "definite information is not available to the Commission" on the subject.

Section 6827 of the Public Resources Code (Stats. 1955, Ch. 1724, Sec. 7) requires such a determination by the Commission in order that the invitation for bids for an oil and gas lease on said lands may specify the royalties prescribed in said section. Different royalties are prescribed, dependent upon whether the lands are determined to be within or without such a geologic structure.

A determination of this nature cannot be grounded upon mere conjecture or surmise. You state that situations have arisen where "definite information" is not available to the Commission. The term "definite" is relative and is a matter of degree, the extent of which depends upon the circumstances of a situation. If definite information were understood to mean positive assurance, such information could only be obtained by the actual drilling of an oil or gas well, - and even then the knowledge gained might be subject to uncertainties as to the extent and character of the geologic structure. Whether the structure, if one were found to exist, would constitute a part of "the known geologic structure of a producing oil or gas field" might still remain in doubt. This is what is required to be determined by strict construction of the language. But it is our belief that it was not the intent of the legislature that the determination need be based upon exact or indisputable knowledge. The maximum that could be gained even through the expenditure of millions by the State for exploratory surveys would not furnish such knowledge.

However, a determination must have a reasonable degree of factual basis for its support. Our information is that core samples from drillings and records of geophysical explorations would constitute the most reliable data. In the absence of such information, it is possible that opinion evidence of experts in the fields of geology and geophysics might afford a reasonable basis upon which a determination might be made.

The legislature has committed the making of this determination of finding to the Commission. This involves the exercise of its judgment. In this exercise it must not act "arbitrarily, capriciously or fraudulently", and to avoid arbitrary action there must be sufficient factual basis for its conclusion. (McDonough v. Goodcell (1939), 13 Cal. 2d 741, 748-749.) It is the general rule that the courts will not interfere with the exercise of such judgment or discretion except in the case of an abuse thereof.

/s/ Everett W. Mattoon
EVERETT W. MATTOON
Assistant Attorney General

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