



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Bascom Giles
Commissioner, General Land Office
Austin, Texas

Dear Sir:

Opinion No. 0-1750

Re: Does the failure to drill an offset well on land leased under Section 8 of Chapter 271, Acts of 1951, in the time provided therein automatically terminate the lease; if not, does the Commissioner of the General Land Office have any discretion in forfeiting a lease thereunder?

You submitted to us leases Nos. 24076 and 24077, executed by the Commissioner of the General Land Office on November 21, 1958, under the provisions of Section 8, Chapter 271 of the Acts of May 29, 1951, and the Acts of the 56th Legislature, Chapter 19, page 51, Second Called Session, and requested an opinion from this department as to whether or not the failure to drill an offset well as provided in the statute and in the leases would ipse facto terminate the leases or was it necessary for the Commissioner of the General Land Office to take some action before the forfeiture became effective, and if it was necessary for the Land Commissioner to take some action before the forfeiture became effective, then whether or not the Land Commissioner had any discretion to withhold the forfeiture upon assurance of compliance in the future with the offset provisions.

In order to answer your question, it is necessary to trace the pertinent legislation on the matter

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and determine the intention of the Legislature. Chapter 19 of the Acts of the 36th Legislature, Second Called Session of 1919, page 51, Section 9 has the same provisions as Article 5359 of the Revised Civil Statutes of 1925, namely, that the lessee under the act shall in good faith begin an offset well within 60 days after the completion of a commercial well on adjoining property within 1,000 feet of the land leased.

Section 12 of said act provides as follows:

"If the owner of a lease should fail or refuse to make the payment of any sum due either on an area or royalty on the production within thirty days after same shall become due, or if such owner or his authorized agent should knowingly make any false return or false report concerning production, royalty, or drilling, or if such owner should fail or refuse to drill any offset well or wells in good faith as required by this Act and the rules and regulations adopted by the Commissioner of the General Land Office, or if such owner or his agent should refuse the proper authority access to the records pertaining to the operations under this Act, or if such owner or his authorized agent should knowingly fail or refuse to give correct information to the proper authority, or fail or refuse to furnish the log of any well as provided herein, such lease shall be subject to forfeiture by the Commissioner of the General Land Office and when sufficiently informed of the facts which authorize a forfeiture, the Commissioner of the General Land Office shall forfeit same, and the area shall be subject to lease again to another than to such forfeiting owner after due advertisement; provided, such forfeiture may be set aside and the lease and all rights thereunder reinstated before the rights of another intervene upon satisfactory evidence of future compliance with the provisions of this Act and the rules and regulations authorized to be adopted for the purpose of executing its provisions."

Chapter 81 of the Laws of the 36th Legislature, Second Called Session, page 249 is what is commonly known as the Relinquishment Act. Section 4 thereof, which is

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Article 5370 of the Revised Civil Statutes, 1925, provides as follows:

"If the persons aforesaid, who own or control land included in this Act, should fail or refuse to begin such drilling of offset wells thereon within the time required or fail or refuse to drill such well or wells diligently and in good faith or fail or refuse to drill such well or wells to the depth necessary for the purpose intended, or fail or refuse to use the means necessary to the development of any well or wells thereon within the time required or fail or refuse to drill such well drilled thereon, thereupon the relinquishment herein granted shall ipso facto terminate and the rights secured thereunder shall likewise terminate, and the oil and gas relinquished herein shall revert to and become the property of the State's General Revenue Fund and when the Commissioner of the General Land Office is sufficiently informed of the facts which so terminate such rights, he shall indorse on the wrapper containing the papers relating to the sale of the land words indicating such termination and sign it officially."

Section 9 thereof is the same as Article 5372 of the Revised Civil Statutes of 1925, and substantially the same as Section 12 of Chapter 19 above. The following phrase in Section 12 is not in Section 9 of Chapter 81 nor in Article 5372:

"Refused to drill any offset well or wells in good faith as required by this Act and the rules and regulations adopted by the Commissioner of the General Land Office."

It will be noted that in Section 9 of Chapter 19 being the section dealing with offset wells, no penalty or forfeiture is provided for, but Section 12 deals with forfeiture of every kind and character and includes forfeiture for failure to drill offset wells, but Chapter 81, Section 4, dealing with offset wells provides for an

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ipso facto termination of leases executed under that Act and naturally Section 9 thereof, dealing with forfeitures for failure to perform certain duties on the part of the lessee did not have any provision with respect to offset wells as that has been taken care of in Section 4.

In the revision of 1925, the above provisions in the Relinquishment Act were not changed and are set out in the revision as Articles 5370 to 5372.

The provision of Chapter 19 wherein it deals with offset wells was not changed in the revision as shown by Article 5359, but section 12, dealing with forfeitures was omitted and Article 5360 was inserted in its stead, which provides as follows:

"The provisions of subdivision 3 of this chapter governing the forfeiture of rights thereunder and a reinstatement thereof, shall apply to leases under this subdivision, and on forfeiture of such lease, after due advertisement, it shall be subject to lease by another than such forfeiting owner."

The question immediately arises as to whether or not Article 5360 refers to both Article 5370 and Article 5372 or refers only to Article 5372. In making the revision, the revisers evidently overlooked the fact that Article 5372 was not identical with Section 12 of Chapter 19, in that it did not have a provision with respect to failure to drill offset wells. It seems obvious that the reason Section 12 was not copied into subdivision 2 of Chapter 4 of Title 86, R. C. S. but the provisions of forfeiture in subdivision 3 of said Chapter were incorporated by reference was to eliminate duplications. It will be noted that Article 5360 refers to the provisions of subdivision 3 governing "forfeiture of rights thereunder and reinstatement thereof", and that Article 5372 in subdivision 3 is headed "Forfeiture of Rights" and deals with forfeiture and reinstatement and that said Article is the only one in subdivision 3 which deals with forfeiture and reinstatement in name. Article 5370 provides for ipso facto

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termination of a lease under the Relinquishment Act on failure of the lessee to drill an offset well which is not strictly a forfeiture. To read Article 5370 into subdivision 2 by reason of the provisions of Article 5360 would be to make a radical change in the law as it existed before the revision with respect to the result of failure to drill an offset well on leases covered by subdivision 2, but to read Article 5372 into subdivision 2 would leave the law unchanged by the revision. Of course Article 5372 does not provide for a forfeiture for failure to drill an offset well but considering Articles 5359, 5360 and 5372 together, it seems clear that Article 5372 was pointed to by Article 5360 as the procedure to be followed in forfeiting leases for the violation of obligations imposed in subdivision 2 and not for the grounds of forfeiture therein listed, and therefore the procedure provided in Article 5372 should be followed with regard to the forfeiture of the leases about which you have made inquiry.

In addition to the reasons set out above, we find in the final title of the revision of 1925, after the provisions that all civil laws not included therein or which are not expressly continued in force are repealed, section 9, headed "Public and Other Land", which provides as follows:

"Public and Other Lands - That all laws affecting the issuance of patents under valid land certificates; or fixing a time limit in which to redeem lands sold for taxes; or authorizing suits to contest forfeiture of sale for non-payment of interest on public lands, or affecting the reinstatement of rights after such forfeiture; or conferring a prior right to purchase land surveyed by virtue of a private right, for which a patent cannot issue; or extending oil and gas permits on public lands; or extending the time for payment of principal due on public lands sold in accordance with law; or affecting the title to public and other lands; or authorizing the Land Commissioner, the Governor, or any authorized board, to sell or lease certain lands or water rights; or granting land to cities; or affecting land reservations, or setting apart portions of such reservations for the benefit of actual settlers, are continued in force. (Underscoring ours)

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We think that this section had the effect of continuing in force Chapter 19 of the Acts of the 36th Legislature, Second Called Session, being the law as it existed before the revision. It also strengthens our conclusion that Section 12 of Chapter 19 was omitted in the revision and Article 5360 inserted in its place, not for the purpose of changing the penalty for failure to drill an offset well to that prescribed in Article 5370 of the Relinquishment Act but for the purpose of eliminating repetition in the statutes by reference to Article 5372.

It is, therefore, the opinion of this department that in order to effect a forfeiture of the leases under consideration for failure to drill an offset well, as required by law, the Commissioner of the General Land Office must take some action, amounting to a re-entry or its equivalent, such as endorsing on the leases the fact that they have been forfeited for failure to drill an offset well. We are, also, of the opinion that the Commissioner of the General Land Office has some discretion in this regard, even though Section 12 of Chapter 19, and Article 5372 provide that the Commissioner of the General Land Office "shall forfeit same when sufficiently informed of the facts which authorize a forfeiture". Such a provision ordinarily is mandatory but when followed, as it is, by a provision that the Commissioner may set aside the forfeiture and reinstate the lease before the right of another intervenes on satisfactory evidence of future compliance with the Act, we think the statute considered as a whole authorizes the Commissioner upon satisfactory evidence of future compliance before he forfeits a lease to withhold the forfeiture and does not require him to forfeit the lease and then immediately reinstate it on such satisfactory evidence of future compliance.

We trust that this opinion sufficiently answers your questions.

Yours very truly

APPROVED FEB 27, 1940

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