



THE ATTORNEY GENERAL OF TEXAS

GERALD C. MANN
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ATTORNEY GENERAL

AUSTIN 11, TEXAS

Honorable George H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Sir:

Opinion No. 0-3013
Re: Delay rental on oil and gas
leases on land purchased or
condemned by the State for
highway purposes.

This will acknowledge receipt of your letter of January 2, 1941, and your supplemental letter of January 11, 1941, in which you ask for an opinion of this department as to what should be done with delay rentals tendered to the State by oil companies under the two following situations:

1. Where a landowner has executed an oil and gas lease for a term of years providing for the payment of annual delay rentals and while said lease is outstanding the landowner conveys to the Highway Department fee simple titles to a portion of his land.

2. Where the Highway Department condemns a portion of the land covered by the lease for highway right of way purposes.

It is the opinion of this department that under the first situation above, where the Highway Department secures an outright deed in fee simple to a portion of land covered by an oil and gas lease, that the delay rentals on the portion of the land purchased should be paid to that department.

Article 6673a, Sec. 1, Vernon's Annotated Texas Statutes, provides as follows:

"Wherever the State Highway Commission has acquired or shall hereafter acquire any land by purchase, condemnation, or otherwise to be used as a right of way for any State Highway and thereafter the route of such Highway was or shall be changed or abandoned, and any such right of way be no longer needed for such Highway, or needed for use of citizens as a road, the State Highway Commission may

recommend to the Governor that such land be sold and that he execute a deed conveying all the State's right, title and interest in such land so acquired. Upon the recommendation of the Commission, the Governor may execute a proper deed conveying and/or exchanging such land for different land belonging to the same person or persons. It shall be the duty of the Commission to fix the fair and reasonable value of all such land and advise the Governor thereof. Provided that where such land is given to the State, the Governor may return the same by proper deed to the person or persons from whom the same is received. All money derived from the sale of such land shall be deposited with the funds from which it was originally taken. The Attorney General shall approve all transfers under this Act."

Since the land inquired about was purchased with the funds appropriated to the Highway Department, even though the delay rentals do not strictly constitute the sale price of any land previously held by that department, the delay rental grew out of the transaction of purchase made by the Highway Department insofar as the State's interest is concerned, and in view of the above statute, it logically should be paid to that department.

It is the opinion of this department, in answer to the second inquiry above with respect to delay rentals on land condemned by the Highway Department for highway right of way purposes under the right of eminent domain, that neither the Highway Department nor any other branch of the State is entitled to such delay rental since the State would own no interest in the minerals, but only an easement with a right to use the surface for highway purposes.

In the case of Calvert, et al v. Harris County, 46 S.W. (2d) 375, decided by the Court of Civil Appeals at Galveston, wherein the defendant in a condemnation suit by the county seeking to condemn certain of his land for road purposes contended that he was entitled to the value of the minerals under the land taken. The court in overruling his contentions used the following language:

"The settled rule is that in condemnation proceedings only an easement is required and that such easement is all that the law requires to be paid for."

This opinion is not to be construed as holding that under either of the two above situations that the oil company

would be authorized to develop the land taken by the Highway Department for oil and gas purposes by operation on the property taken.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By s/D.D. Mahon
D.D. Mahon
Assistant

DDM:BT:wc

APPROVED JAN 22, 1941
s/Grover Sellers
FIRST ASSISTANT
ATTORNEY GENERAL

Approved Opinion Committee By s/BWB Chairman