



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**PRICE DANIEL  
ATTORNEY GENERAL**

February 16, 1949

Hon. Bascom Giles, Commissioner  
General Land Office  
Austin, Texas

Opinion No. V-777

Re: Status of non-extended producing leases on State land as affected by Article 5344c, V. C. S. (Acts 1947, 50th Leg., Ch. 82, p. 139) and related questions.

Dear Sir:

We have your request for an opinion, composed of three questions, concerning the above-mentioned subject.

Your question No. 1 reads as follows:

"What will be the status of non-extended leases which may be found productive during the primary term and subsequent to October 1, 1948? Shall the 25 year term be considered binding, or shall the School Land Board have within its authority the ability to grant lease extensions at any later date, on the basis of value established after production has been encountered?"

You are advised that non-extended leases will terminate after twenty-five (25) years from the date of the lease. The School Land Board is without authority to grant lease extensions on applications filed after September 30, 1948. Article 5344c, V. C. S.

Your question No. 2 reads as follows:

"What methods of disposition will be available to the present or future School

Land Boards with regard to the title of non-extended producing leases which may be found to have appreciable reserves upon termination of the 25 year period? Even with the best geological and engineering estimates certain producing leases may indicate insufficient reserves to have producing lives greater than 25 years. With possible discoveries of new producing formations the application of more efficient methods of recovery, or with changes in crude prices and demand, these leases may have reserves greater than those presently anticipated, and also extended operating lives."

The method of disposition available to present or future School Land Boards with reference to State lands formerly leased under terminated non-extended leases will depend upon the pertinent leasing statutes in effect at the time of the expiration of the twenty-five (25) year term. The present leasing Act is Article 5421c, V. C. S. (Acts 1931, 42nd Leg., p.452; as amended, Acts 1939, 46th Leg. p. 465; as amended, 1941, 47th Leg., p. 596; as amended, Acts 1943, 48th Leg. p. 453).

Your question No. 3 reads as follows:

"It is anticipated that certain non-extended producing leases will be capable of additional production after the 25 year term, provided that large capital expenditures are not required to produce or to redevelop the property. It is possible that the present law can be interpreted to mean that upon termination of the 25 year period the lease reverts to the State and the operator is entitled to salvage all surface and subsurface equipment. If the operator plugs and abandons any or all wells upon said lease, it is quite possible that the remaining reserve would be unprofitable should redrilling be required. Since we are interested in maintaining a profitable reserve, it will be necessary to establish the right of the State to assume title to the hole and its salvagable

casing. Without this right an appreciable reserve could be lost by the abandonment of a nonextended producing lease."

Mr. Dennis Wallace of the General Land Office and this writer made a survey for a twenty year period of several of the leases now on file, and it is our conclusion that the leases are silent as to the disposition of casing in the ground.

You are advised that the view of the Texas Courts is that casing placed in a well can be removed by the lessee. These cases are based on the reasoning that it is personal property or a trade fixture of the lessee. Southwestern Oil & Gas Co. v. Kimball Oil and Development Co., 224 S. W. 1111 (Civ. App. 1920); Moore v. Carey Bros. Oil Co., 269 S. W. 75 (Comm. App. 1925); Orfic Gasoline Production Co. v. Herring, 273 S. W. 944 (Civ. App. 1925); Hubert v. Collard, 141 S.W. (2d) 677 (Civ. App. 1940, W. E. dismiss'd, Judg. Corr.); Armstrong v. Federal Supply Co., 17 S. W. (2) 170 (Civ. App. 1929); Brazos Conservation & Reclamation District v. Adkisson, 173 S. W. (2d) 294 (Civ. App. 1943, W.E. Ref.); Guffey v. Stroud, 16 S. W. (2d) 528 (Comm. App. 1929); Meers v. Frick-Reid Supply Corp., 127 S. W. (2d) 493 (Civ. App. 1939, W. E. dismiss'd, judg. corr.) and In Re Midland Oil Co., 2 Fed. (2) 112 (Fifth Cir., 1924); Summers, Oil and Gas, Perm. ed., Vol. 3, Sec. 526, p. 214 and 19 Tex. Law Review 95.

The view of Texas is the view of other states. 39 A. L. R. 1225. Practically all the cases involved standard oil and gas leases with a clause giving the lessee the right to remove machinery and casing on abandonment or termination of lease. However, the rule is that a lessee can, within a reasonable time after abandonment or termination, remove machinery and casing even though the lease contract does not specifically give him this privilege. Southwestern Oil & Gas Co. v. Kimball Oil & Development Co., supra; In Re Midland Oil Co., supra; Moore, et al v. Carey Bros. Oil Co., supra; Thornton's Law of Oil & Gas, 3rd Ed., Vol. 2, p. 904, Sec. 653.

The courts, unhesitatingly, apply the rule that the lessee can remove casing from a dry hole. They have, however, in the few cases on the subject, issued injunctions restraining the lessee from removing casing from a producer. Orfic Gasoline Case, supra; Southwestern Oil

& Gas Co. case, supra; and Wisconsin-Texas Oil Co. v. Clutter, 258 S. W. 265 (Rev. on other grounds by Comm. App. 268 S. W. 921).

Restraining the removal of casing from a producing well is consistent with Railroad Commission rules for prevention of waste. Art. 6005, V. C. S., Railroad Comm. Oil & Gas Rule #9b and 10, and Art. 6014(c), V. C. S. See also 31-A Texas Jurisprudence, Sec. 216, which says:

"The right to remove casing from an unproductive hole does not, of course, give the lessee any right to destroy a productive well by taking away the casing, for such action would involve a violation of the oil and gas conservation laws."

It should be noted that the question of removing casing from a producer is applicable only as between lessor-lessee. The rights of mortgagees of casing may involve a different conclusion. Crabb v. Keystone Pipe & Supply Co., 177 S. W. (2d) 989 (Civ. App., 1944, W. E. ref.).

As a safeguard in future leases which might terminate for other reasons while wells are still productive, you might wish to consider insertion of a clause which would provide that casing and other equipment necessary to maintain production shall not be removed.

#### SUMMARY

Under the provisions of Art. 5344c (Acts 1947, 50th Leg., Ch. 82, p. 139), the School Land Board is without authority to extend leases on State land on applications filed after September 30, 1948.

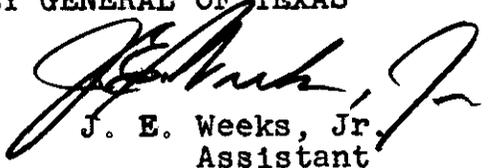
School Land Board will dispose of State lands which revert to State upon termination of non-extended leases according to terms of leasing statute in effect at time of expiration of the lease.

Unless otherwise provided by contract, casing in a well is personal property or a trade fixture of the lessee, and can be removed by him; however, the courts will not permit the removal of casing from a producing well in violation of the oil and gas conservation laws.

Yours very truly

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By

  
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