



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

**CRAWFORD C. MARTIN  
ATTORNEY GENERAL**

June 6, 1972

The Honorable James U. Cross  
Executive Director  
Texas Parks and Wildlife  
Department  
John H. Reagan Building  
Austin, Texas 78701

Opinion No. M-1147

Re: Ownership and recover of  
abandoned shell used as  
pads for foundations for  
offshore drilling opera-  
tions and other relative  
questions.

Dear Mr. Cross:

You have recently requested the opinion of this office regarding the ownership of shell used as foundations for oil and gas drilling operations in the bays of this State when the drill sites are abandoned. Your request reads, in part, as follows:

"An inquiry has arisen concerning recovery of abandoned shell from pads used as foundations for offshore drilling operations. This department needs your opinion relative to the principles of law involved.

"Lessees of submerged land tracts, in the course of operations or development of oil and/or gas resources, require a firm and relatively level site upon which to place a drilling rig. In coastal operations when bay bottoms require placement of some material to achieve the optimum conditions, shell is customarily laid down in a pad as a foundation for a drilling rig.

"Normally, the shell involved will have been produced and purchased from the State at some other location. At the end of the drilling operation, whether or not a well is completed, the shell pad is usually left in place. Evidently, most lessees do not feel that it is worth reclaiming. In the case of a completion, a structure is left to protect the well head and the shell is available in the event the well needs to be reworked. If no production is made, the well is plugged and no structure remains.

"I am informed by personnel of the General Land Office that leases are on occasion forfeited

or abandoned by failure to pay the following year's rental, in the event a completion is not made.

"We have been approached by an individual who now proposes to negotiate agreements with various lessees who may have abandoned such shell pads for the purpose of reclaiming that shell. In some instances, due to the nature of the bottom and the weight of the drilling rig, the shell may have been covered over by bottom sediments or have been pressed into the bottom. There will probably be occasions when such shell will have been placed directly on shell which had not been previously removed and sold.

"In light of the above, our questions then are:

"1. Under the facts presented above, does ownership of the shell placed upon bay bottoms revert to the State?

"2. If your answer to question number one is affirmative, at what point would the ownership to the shell revert to the State?

"3. If ownership does revert to the State, would such shell be restored to the jurisdiction of the Parks and Wildlife Department?

"4. In the event you determine that the Parks and Wildlife Department would regain jurisdiction to the shell, would a permit for removal be required, and, if a permit is required, can the department sell the shell?

"5. If you determine that ownership does not revert to the State, would the party need a permit from this Department to disturb the bay bottoms in accordance with Opinion No. M-84 and other opinions issued by your Office?"

The shell used to make a pad for the drilling barge with its attached derrick and rig to rest upon is unquestionably personal property before it is spread upon the bay floor at the proposed well site, since it has previously been dredged up, severed from the bay floor and paid for. The basic question is, does the shell become a fixture when redeposited on the bay floor as a pad?

It is said in 25 Texas Jurisprudence, 2d, page 394, Fixtures, §3, that:

". . . 'Whatever is affixed to the soil belongs to the soil.' Thus, in the absence of a reservation, buildings and other articles affixed to or used in connection with realty in such a way as to constitute appurtenances or fixtures pass as a matter of course by the conveyance, devise, or decree passing title to the realty."

It is also stated in 25 Texas Jurisprudence, 2d, page 398, Fixtures, §6:

". . . Property held in place by the force of gravity without any fastening is a fixture, provided an intention to make the thing a part of the freehold appears and its weight is sufficient, because gravity will keep it in place."

It is also observed in 25 Texas Jurisprudence, 2d, page 398, Fixtures, §7, that:

"An important factor to be considered in determining the status of property affixed to realty is its removability. Chattels lose their identity as personal property where they are so annexed to the realty that they cannot be detached without damage to the freehold, or without destroying the usefulness of the property to which they are annexed. . ."

In the case of Jones v. Bull, 85 Tex. 136, 19 S.W. 1031 (1892), the question was considered as to whether property that had formerly been personalty become a fixture, and the Court held that where evidence does not admit to any other conclusion but that property in controversy is a part of the realty, a jury may be so instructed, observing:

". . . In the case of Hutchins v. Masterson, 46 Tex. 554, it was said that 'the weight of modern authorities establish the doctrine that the true criterion for determining whether a chattel has become an immovable fixture consists in the united application of the following tests:  
(1) Has there been a real or constructive annexation of the article in question to the realty?  
(2) Was there a fitness or adaptation of such article to the uses or purposes of the realty with

which it is connected? (3) Whether or not it was the intention of the party making the annexation that the chattel should become a permanent accession to the freehold, this intention being inferable from the nature of the article, the relation and the situation of the parties interested, the policy of the law in respect thereto, the mode of annexation, and purpose or use for which the annexation is made. And of these three tests preeminence is to be given to the question of intention to make the article a permanent accession to the freehold, while the others are chiefly of value as evidence of this intention.' See *Moody v. Aiken*, 50 Tex. 74; *Willis v. Morris*, 66 Tex. 628, 1 S.W. Rep. 799. The question of intention relates to the time when the land was purchased and the machinery was originally placed upon and attached to it, and, when so considered, we think every test suggested by the above rules for the purpose of making such machinery a part of the freehold was fulfilled. The evidence does not admit of any other conclusion than that the property in controversy was a part of the realty. As that was the controlling issue in the cause, and there was no evidence proper to be considered to the contrary, the court should have charged the jury to find for the plaintiff." (19 S.W. 1032)

In the situations about which you inquire, the shell is spread upon the bay floor so as to form a level platform for the drilling barge, derrick, and rig to rest upon. The weight of the shell, together with the weight of the drilling barge, rig, and derrick, compresses, grinds, and further works the shell farther into the submerged soil.

At this point it would be impossible to remove the exact shell that had been placed on the bay floor from the other shell, silt, marl, and other material comprising the bay floor without materially altering and destroying the bay floor insofar as it existed immediately before or after the shell had been placed thereon as a pad for drilling barge and well site. The intent of the parties involved is presumed to have been to make this shell a part of the realty.

We believe that under these circumstances and under the above cited authorities, particularly *Jones v. Bull*, supra, the shell used for pads for drilling in the Texas bays for oil and gas

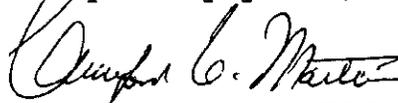
becomes a fixture and attached to and a part of the realty as a matter of law when the shell and the drilling equipment are in place. Any further removal to a new location would be subject to the jurisdiction of the Parks and Wildlife Department, and such party desiring to remove the shell must obtain a permit from the Parks and Wildlife Department. Article 4053, Vernon's Civil Statutes, so requires. Attorney General Opinions Nos. WW-151 (1957) and M-84 (1967). It is our conclusion that the Parks and Wildlife Department may sell the shell as provided for by Article 4053, et seq, upon abandonment or termination of the lease.

SUMMARY

Shell redeposited on bay floors as pads for drilling barges, rigs and derricks in the Texas bays for oil and gas exploration and production becomes a fixture and attaches to and becomes a part of the realty as a matter of law when the shell and the drilling equipment are in place. Any further removal to a new location would be subject to the jurisdiction of the Parks and Wildlife Department, and such party desiring to so remove the shell must first obtain a permit from the Parks and Wildlife Department to do so in accordance with Article 4053, Vernon's Civil Statutes.

The Parks and Wildlife Department may sell this shell to any party desiring it, as provided for by Article 4053, et seq, Vernon's Civil Statutes, upon abandonment or termination of the lease.

Very truly yours,



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