

FILE

Subject

*Permitting State
Lands Lease - Validity*

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STATE OF KANSAS

Office of the Attorney General

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VERN MILLER
Attorney General

June 12, 1974

Opinion No. 74- 197

Charles V. Hamm
General Counsel
Legal Division
State Department of Social
and Rehabilitation Services
State Office Building
Topeka, Kansas 66612

Attn: Bruce A. Roby

Dear Mr. Hamm:

We have your letter of May 20, concerning authority of the State Department of Social and Rehabilitation Services to execute leases for oil and gas exploration and production on land previously owned by the State of Kansas and used for the Mother Bickerdyke Home, previously under the control of the former State Board of Social Welfare. Under a 1959 enactment, now found at K.S.A. 76-14a03, the State Board was authorized to sell the property, as follows in pertinent part:

"The state board of social welfare is hereby authorized and empowered to sell the property known as the Ellsworth home for the aged, . . . except the portion thereof used for cemetery purposes The conveyance of said property shall provide for the retention by the state of Kansas of all mineral rights in and under such property, together with ingress and egress thereto for production of any oil, gas, or other mineral, and shall also provide for the reversion of said title to the state of Kansas in the event said property ceases to be used, operated and maintained by said society for charitable purposes as a home for the aged or infirm."

The deed, dated July 9, 1959, contained the following reservation:

"Saving and excepting from the above grant all minerals and mines under the described land, with power for the State Board of Social Welfare, its successors and assigns, to take all usual, necessary, or convenient means for working, getting, laying up, dressing, making merchantable, and taking away the mines and minerals, including the right of ingress and egress at any point on the above described real estate to accomplish the above powers."

The deed conveyed all the "right, title and interest" of the State Board of Social Welfare in the described real estate, subject to the foregoing reservation.

Under K.S.A. 75-2131, any state officer or governing body of any state board or agency

"having custody and control of any land belonging to the state of Kansas . . . may grant or convey right-of-way easements across, over, upon or under any such state land to any municipal corporation, quasi-municipal corporation, state highway commission or person, firm or corporation owning or operating any public utility."

K.S.A. 76-112 states in pertinent part thus:

"The state board of administration is hereby authorized to lease any of the lands the title of which is vested in the State of Kansas, under its control for the production of oil, gas or other minerals, which the board may deem valuable for the purpose . . . for a term not to exceed five years and so long thereafter as oil, gas, or other minerals, may be produced therefrom in paying quantities" [Emphasis supplied.]

A number of courts in various jurisdictions have held the term "land" to be synonymous with oil and gas and other minerals in place, for various purposes. See 24 Words and Phrases, Land, pp. 299 et seq. As used in the quoted statute above, K.S.A. 76-112, we think it is clear that the term "land" may not be construed merely to include the minerals in place, so as to empower the Board to lease the property for oil and gas exploration and production. When the property was conveyed in 1959, title to the property was vested in the grantee, and title to the property was no longer vested in the State Board. Moreover, the Board ceased to control the property. The reservation of

Charles V. Hamm
June 12, 1974
Page Three

minerals in the granting document may be read no broader than the enabling statute, K.S.A. 77-14a01. The property is not under the control of the Board, and title to it is not vested in the Board. The term "lands" and "oil, gas and other minerals" are both used in the statute, to indicate that the two terms are not synonymous. Retention of the mineral rights is not tantamount to retention of control of the "lands" themselves, so as to empower the State Board of Social and Rehabilitation Services to execute leases under the authority of this statute. We concur fully with your conclusions on this question.

Yours very truly,



VERN MILLER
Attorney General

VM:JRM:jsm