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ATTORNEY GENERAL OPINION NO. 91- 44

The Honorable Delbert L. Gross
State Representative, One Hundred Eleventh District
State Capitol, Room 115-S
Topeka, Kansas 66612

Re: Counties and County Officers--General
Provisions--Home Rule Powers; Limitations,
Restrictions and Prohibitions; Procedure

Oil and Gas--Oil and Gas Wells; Regulatory
Provisions; Protection of Surface and
Groundwater--Definitions

Synopsis: Injection wells used to increase the ultimate
recovery of oil or gas are an integral part of oil
and gas recovery operations. As such, the Kansas
corporation commission has exclusive jurisdiction,
and a county cannot use its home rule powers to
regulate drilling activities in this area. Cited
herein: K.S.A. 1990 Supp. 19-101a; 55-150; 55-901;
55-1003; 74-623.

* * *

Dear Representative Gross:

As representative for the one hundred eleventh district you
inquire whether Ellis county has the authority to either
block or otherwise regulate the drilling activities of Allen
Drilling Company under its home rule powers.

You indicate that the drilling company is seeking permission
to drill injection wells in an area used as a water supply for

the city of Hays and at least one rural water district. You cite the limitation found in K.S.A. 1990 Supp. 19-101a(22) and believe an injection well is not covered by the limitation.

K.S.A. 1990 Supp. 19-101a(22) provides:

"Counties may not regulate the production or drilling of any oil or gas well in any manner which would result in the duplication of regulation by the state corporation commission and the Kansas department of health and environment pursuant to chapter 55 and chapter 65 of the Kansas Statutes Annotated and any rules and regulations adopted pursuant thereto. Counties may not require any license or permit for the drilling or production of oil and gas wells. Counties may not impose any fee or charge for the drilling or production of any oil or gas well."

The above county home rule limitation deals with the drilling of any oil or gas well and restricts a county from duplicating the regulation imposed by the Kansas corporation commission (KCC) and the Kansas department of health and environment (KDHE) pursuant to chapters 55 and 65 respectively. At issue is whether an injection well is an integral part of the production operations of an oil or gas well, and therefore included in the above prohibition.

The Allen Drilling Company in its application for permission states that its business is oil and gas operations and that it seeks approval of its proposed injection wells for the purpose of "increas[ing] substantially the ultimate recovery of oil" from the area. See Application entitled In the Matter of the Application of Allen Drilling Company for an Order Authorizing the Injection of Fluids into the N.E. Zim Unit Wells #2-30 and #3-30 Located in the Southwest Quarter (SW 14) of Section Ten (10), Township Fifteen (15) South, Range Eighteen (18) West, Ellis County, Kansas, p. 2-3 (incorporating prior applications in Docket No. E-25,975). Thus your question involves injection wells used for the enhanced recovery of oil.

A perusal of the statutes evidences comprehensive regulation of the area by the KCC pursuant to its exclusive jurisdiction and authority to regulate oil and gas activities.

See K.S.A. 1990 Supp. 74-623. Additionally, injection wells are the subject of K.A.R. 82-3-400 et seq. A perusal of the statutes and regulations pertinent to the area of oil and gas production indicates that injection wells are an integral part of oil and gas operations and thus included in the limitation found in subsection (22) of K.S.A. 1990 Supp. 19-101a. K.A.R. 1990 Supp. 82-3-400 et seq., K.S.A. 1990 Supp. 55-150 (defining injection wells); K.S.A. 1990 Supp. 55-901 et seq. (regulating certain fluids used in disposal and injection wells); 55-1003 et seq. (regulating certain fluids used in disposal and injection wells); and K.A.R. 1990 Supp. 82-3-101 et seq. (providing generally for the production and conservation of oil and gas).

We note that these statutes and the Environment Protection Agency requirements (40 C.F.R. subpart B part 146.00 et seq., 1990 Ed.) already provide for your concerns that there be stringent protections to insure the safety of the public water supply.

In conclusion, it is our opinion that Ellis county cannot pursuant to the its home rule power, block or otherwise regulate the drilling activities of the Allen Drilling Company.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Guen Easley
Assistant Attorney General