



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

March 10, 1978

ATTORNEY GENERAL OPINION NO. 78- 112

Mr. Charles V. Hamm
General Counsel, Legal Division
Department of Social and
Rehabilitation Services
6th Floor - State Office Building
Topeka, Kansas 66612

Re: Oil and Gas--State Lands--Leases

Synopsis: There is no state official who is empowered to execute a lease of the mineral interests reserved to the State of Kansas in the property known as the Ellsworth Home for the Aged, and which were reserved to the State of Kansas in a deed executed July 1, 1959, by the State Board of Social Welfare conveying said property pursuant to K.S.A. 76-14a03.

* * *

Dear Mr. Hamm:

You inquire concerning the execution of a lease for oil and gas exploration on certain property formerly owned by the State Board of Social Welfare and conveyed by the Board by a deed dated July 1, 1959, pursuant to legislative authorization therefor, now found at K.S.A. 76-14a03. That section states in pertinent part thus:

"The state board of social welfare is hereby authorized and empowered to sell the property known as the Ellsworth home for the aged, and more particularly described as the

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southwest quarter (SW1/4) of section twenty-nine (29), township fifteen (15), range eight (8), 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, approved as to form by Attorney General John Anderson, Jr., provided for a reservation of the mineral rights in the State Board of Social Welfare rather than in the State of Kansas, in the following language:

"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."

Formerly, the State Board of Administration was authorized to execute certain leases for oil and gas exploration and production on state properties. K.S.A. 76-112, enacted in 1925, provides 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"

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The State Board of Administration no longer exists. In 1939, its powers over properties of the State Board of Social Welfare devolved upon that Board, with the creation of the State Department of Social Welfare. K.S.A. 75-3307, enacted as § 7 of the 1939 act, provided in pertinent part thus:

"All the jurisdiction, powers and duties relating to the state hospitals, state hospitals and training centers, the Kansas neurological institute, the southeast Kansas tuberculosis hospital, the Kansas childrens' receiving home, the state industrial school for boys, and the state industrial school for girls, are hereby conferred upon the state department of social welfare"

In 1973, this section was amended to provide thus:

"All deeds or other documents pertaining to titles to real estate in connection with institutions as defined in K.S.A. 76-12a01 shall be placed and remain in the custody of the secretary of state. The secretary of social and rehabilitation services shall have custody and control of such land and the same shall belong to the state of Kansas."

K.S.A. 76-12a01(b) defines the term "institution" to mean the following:

"Topeka state hospital, Osawatomie state hospital, Larned state hospital, Parsons state hospital and training center, Norton state hospital, southeast Kansas tuberculosis hospital, Winfield state hospital and training center, the youth center at Atchison, Kansas neurological institute, the youth center at Topeka and the youth center at Beloit."

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With the creation of the State Department of Social Welfare in 1939, all powers then vested in the State Board of Administration to execute leases for oil and gas exploration respecting property placed under the jurisdiction of the Department of Social Welfare passed to the State Board of Social Welfare. In 1959, that Board was authorized to and did convey the Ellsworth home for the aged property as described above. The authorizing legislation requires the mineral rights to be reserved in the State of Kansas, but the deed reserved those rights in the State Board of Social Welfare. For the purposes of the question presented here, *i.e.*, the power to lease those rights, the discrepancy is not important. I find no general statute which vests in any designated state officer the authority to lease oil and gas interests belonging solely and merely to the "State of Kansas." The reservation in the State Board of Social Welfare leads to an equal hiatus of authority. The Secretary of Social and Rehabilitation Services, of course, is the successor of the State Board of Social Welfare. The Secretary, however, succeeds to those powers only to the extent permitted and authorized by statute. The general powers of the Secretary concerning real property of the Department are limited to "institutions" as defined at K.S.A. 76-12a01(b). The mineral interests retained by the 1959 deed do not fall within that definition, and as a result, I can identify no state officer as being vested with authority to execute a lease of the mineral interests which are reserved to the state.

You point out that under K.S.A. 76-112d, all leases of lands thereunder "shall not interfere materially with the purposes for which said lands are occupied by state institutions." You ask who is authorized to make that determination in this instance. For the reasons stated above, that the execution of a lease of the mineral interests on the property in question is not authorized by this statute, there is no official authorized to make that determination. In my judgment, legislation is necessary to authorize the execution of a lease of the reserved mineral interest, and to describe the conditions and procedures by which such leases may be executed.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj