

STATE OF KANSAS

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February 13, 1980

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ATTORNEY GENERAL OPINION NO. 80- 40

Mr. H. Scott Beims
Rawlins County Attorney
Rawlins County Courthouse
Atwood, Kansas 67730

Ms. Jeannette Bethell
Register of Deeds
Rawlins County Courthouse
Atwood, Kansas 67730

Re: Taxation--Listing and Valuation of Real Estate--
Surface and Mineral Rights Taxed Separately, When

Synopsis: The reservation of a "non-participating mineral interest" in a deed conveying real property does not affect a severance of the minerals from the fee, and, therefore, there can be no separate taxation of the mineral interest under K.S.A. 79-420.

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Dear Mr. Beims and Ms. Bethell:

You request our opinion as to whether the reservation of a "non-participating mineral interest" in a deed conveying real property affects a severance of the minerals from the fee, so as to require that such minerals be valued and listed for taxation separately under K.S.A. 79-420. You state that the reservation of a "non-participating mineral interest" is accomplished by including a clause in a deed which provides as follows:

"Each of the grantors reserve an undivided one-half of his or her interest in the oil, gas and other minerals in and under said real estate for a term and period of twenty (20) years from the date of this deed and so long thereafter as oil or gas is produced from said real estate. This reservation is non-participating as to all future bonuses and delay rentals, and all bonuses and delay rentals payable in the future from oil and gas leases covering said real estate shall belong to the grantee, his heirs or assigns. Each grantor is only reserving the right to have and to receive his or her proportionate share of the royalties payable to owners of the oil, gas and other minerals in and under the land from the production of oil, gas and other minerals during the term and period of this reservation." (Emphasis added.)

K.S.A. 79-420 provides, in part, that:

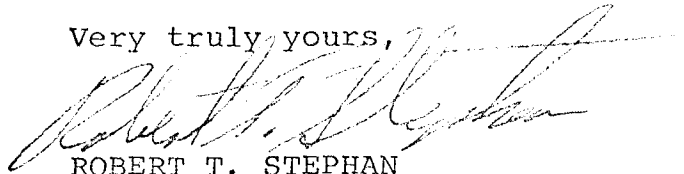
"Where the fee to the surface of any tract, parcel or lot of land is in any person or persons, natural or artificial, and the right or title to any minerals therein is in another or in others, the right to such minerals shall be valued and listed separately from the fee of said land, in separate entries and descriptions, and such land itself and said right to the minerals therein shall be separately taxed to the owners thereof respectively."

It is well established that execution of oil and gas leases, and transfers of royalties, do not effect a severance of the mineral estate so as to require separate listing and taxation as real estate under K.S.A. 79-420. Robinson v. Jones, 119 Kan. 609, 613 (1925); Hickey v. Dirks, 156 Kan. 326, 328 (1943). Rather, royalty interests are personal property and taxed as such. K.S.A. 79-330; Rathbun v. Williams, 154 Kan. 601, 604 (1942). The question which you have posed, i.e. whether a "non-participating mineral interest" must be separately taxed to the owner thereof under K.S.A. 79-420, therefore, turns upon whether the clause in the deed reserving such interest creates a separate ownership in the "minerals in place," or whether such clause merely reserves a portion of the "royalty interest" to the grantor.

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The underscored portion of the above quoted reservation, which reservation creates a "non-participating mineral interest," specifically provides that the grantor "is only reserving the right to have and receive his or her proportionate share of the royalties payable to the owners of the oil, gas and other minerals in and under the land from the production of oil, gas and other minerals during the term and period of this reservation." Additionally, the reservation clause provides that any delay rentals and bonuses payable in the future from oil and gas leases covering the subject real estate shall belong to the grantee. Such a provision has been held to support a conclusion that there was an intention to create "a royalty interest only." Hickey v. Dirks, supra at 330. In short, the clear intent of the subject reservation is to create an interest in the "royalty interest" only, and there is, in our opinion, no intent to reserve any ownership in the minerals in place. Under such circumstances, there has been no severance of the minerals from the fee, and there can be no separate taxation of the mineral interest under K.S.A. 79-420.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:jm