



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Lester Clark, Chairman
Oil, Gas & Mining Committee
House of Representatives
Austin, Texas

Dear Sir:

Opinion No. 0-3483
Re: Constitutionality
of Committee Amendment
No. 1 to House Bill 178.

We have your letter of April 30, 1941, in which you request our opinion as to the constitutionality of committee amendment No. 1 to House Bill No. 178, which amendment reads as follows:

"Section 1. The right of any person, firm or corporation whatsoever to enter in, upon, or under the lands or premises, the surface of which is owned by another or others, to explore for, exploit, drill for, produce or mine, or attempt to produce or mine oil, gas or other minerals, shall expire if not used or exercised within ten years and shall by operation of law be abandoned to such surface owner or owners, unless such right is extended as hereinafter provided. It is further provided that if the original contract, conveyance, or reservation creating the right to enter in, upon, or under lands or premises, the surface of which is owned by another or others to explore for, exploit, drill for, produce or mine, or attempt to produce or mine oil, gas or other minerals, is for a longer period of time than ten years, that for each consecutive succeeding year after the expiration of the above mentioned ten year period, that if the owner of such mineral rights shall properly and timely render such mineral rights for taxation and pay the taxes assessed against such mineral rights within the time or period prescribed by law to the proper authorities, such right to enter in, upon, or under said lands or premises to explore for, drill for, exploit, produce or mine, or attempt to produce or mine oil, gas or other minerals,

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shall not expire, nor by operation of law be abandoned to the surface owner or owners."

The foregoing amendment provides in effect that the rights of the lessee under an oil and gas lease shall expire at the end of ten (10) years unless (1) the lessee exercises his right to enter and develop the leased premises within ten (10) years, or unless (2) the lease provides for a longer period of time than ten (10) years and the lessee renders the mineral rights for taxation and pays the taxes. The amendment does not expressly state the time from which the ten (10) year period is to be calculated, but we believe that it is reasonably clear that the intention is that the ten (10) year period begin at the time the lessee's rights first accrue, and we believe that the statutes would be given this construction. See 39 Texas Jurisprudence, 45, 206.

As to contracts which become effective prior to the enactment of the proposed statute, we are of the opinion that the statute is unconstitutional as an impairment of the obligation of contracts to the extent that it may conflict with the provisions of such contracts, under the provisions of Article I, Section 16 of the Constitution of Texas, and Article I, Section 10 of the United States Constitution. An oil and gas lease is a contract which creates property rights in real estate in the lessee. Texas Company v. Daugherty, 107 Tex. 226, 176 S. W. 717; Lemar v. Garner, 121 Tex. 508, 50 S. W. (2d) 769; Brown v. Humble Oil and Refining Company, 126 Tex. 296, 83 S. W. (2d) 935, 87 S. W. (2d) 1069. To the extent that the proposed statute would attempt to destroy or impair such rights, created by existing contracts which were valid at the time of their execution, such proposed statute would be invalid. International Building and Loan Association v. Hardy, 86 Tex. 610, 26 S. W. 497; Thompson v. Cobb, 95 Tex. 140, 65 S. W. 1090; Travelers' Insurance Company v. Marshall, 124 Tex. 45, 76 S. W. (2d) 1007; Langever v. Miller, 124 Tex. 80, 76 S. W. (2d) 1025.

As to contracts executed after the effective date of the proposed statute, we believe that it is unconstitutional because it denies the right of redemption of land for non-payment of taxes, which right is given by Article 2, Section 13 of the Texas Constitution. Under the proposed statute, the rights of the lessee would be forfeited, with no right of redemption, upon a failure either to render the mineral rights for taxation or

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to pay the taxes thereon. Furthermore, neither the State nor any of its subdivisions would receive any benefit from such forfeiture, which would benefit only the lessor. Such a forfeiture would have no reasonable relation to the collection of taxes, and would, we believe, amount to a taking of the lessee's property without due process of law. See 12 Corpus Juris, 957.

Very truly yours

ATTORNEY GENERAL OF TEXAS

APPROVED MAY 22, 1941
[Handwritten Signature]

FIRST ASSISTANT
ATTORNEY GENERAL

By *James P. Hart*

James P. Hart
Assistant

JPH:EP

