

Date Issued: July 6, 1981 (AGO 81-67)

Requested by: Representative Jack Murphy

- QUESTION PRESENTED -

Whether the duty of an oil and gas lease operator to pay interest on unpaid royalties commences on July 1, 1981, for royalties on oil and gas marketed at least 150 days prior to that date.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the duty of an oil and gas operator to pay interest on unpaid royalties will commence on July 1, 1981, for royalties on oil and gas marketed at least 150 days prior to that date.

- ANALYSIS -

Section 47-16-39.1 of the North Dakota Century Code was amended during the 1981 Legislative Assembly by the addition of language which reads, in part, as follows:

In the event the operator under an oil and gas lease fails to pay oil or gas royalties to the mineral owner or his assignee within one hundred fifty days after oil or gas produced under the lease is marketed and cancellation of the lease is not sought, the unpaid royalties shall thereafter bear interest at the rate of eighteen percent per annum until paid.

As we understand the question, it is whether the duty to pay interest on royalties begins on July 1, 1981, if the necessary 150-day period has run prior to that date, or whether an additional 150-day period is to be allowed after the effective date of the amendment before the duty to pay interest commences.

Section 1-02-10, N.D.C.C., states:

No part of this code is retroactive unless it is expressly declared to be so.

The North Dakota Supreme Court has said on several occasions that a legislative act is presumed to be prospective unless the Legislature clearly manifests a contrary intent. See, for example, In Interest of W. M. V., 268 N.W.2d. 781 (N.D. 1978), and Monson v. Nelson, 145 N.W.2d. 892 (N.D. 1966). In this case, however, it is not necessary to determine whether the Legislature has clearly manifested an intention since requiring interest to be paid as of July 1 is not a retroactive application of the law.

A retroactive law is defined by 73 Am Jur.2d. Statutes section 348 (1974) as a law which takes away or impairs vested rights acquired under existing laws or creates new obligations and imposes new duties or attaches new disabilities, in respect to transactions or considerations already passed. However, the North Dakota Supreme Court has said:

A statute is not retroactive because it draws upon antecedent facts for its operation or because part of the requisites of its action is drawn from time antecedent to its passing. Public School District No. 35 v. Cass County Board of Commissioners, 123 N.W.2d. 37, 40 (N.D. 1964).

The new obligation to pay interest imposed by the amendment to Section 47-16-39.1, N.D.C.C., is imposed prospectively only as of July 1, 1981. The requirement of a 150-day period between the marketing of the oil and gas and the commencement of the duty to pay interest is merely an antecedent fact which must be established before that duty arises and that period may begin to run prior to July 1, 1981.

- EFFECT -

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts or the applicable provisions of law are amended or repealed.

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