

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 91-24

Date issued: December 30, 1991

Requested by: Timothy L. Kingstad, Land Commission

- QUESTIONS PRESENTED -

I.

Whether the terms "mineral" and "mineral interests" in N.D.C.C. " 15-08.1-02.1 and 15-08.1-03 include all minerals of any nature whatsoever.

II.

Whether N.D.C.C. ' 15-08-27 or N.D.C.C. ' 38-09-01 governs the terms of a mineral reservation clause in the sale of land subject to N.D.C.C. ch. 15-08.1.

- ATTORNEY GENERAL'S OPINION -

I.

The terms "minerals" and "mineral interests" in N.D.C.C. " 15-08.1-02.1 and 15-08.1-03 include all minerals of any nature whatsoever, but do not include gravel, clay, and scoria.

II.

Neither N.D.C.C. ' 15-08-27 nor N.D.C.C. ' 38-09-01 governs the terms of a mineral reservation clause in the sale of land subject to N.D.C.C. ch. 15-08.1.

- ANALYSES -

I.

As a consequence of making loans and taking a security interest in land, the Bank of North Dakota may receive title to real property. In 1977 the Legislative Assembly transferred title to real property then held or which might be acquired by the Bank to the Board of University and School Lands [Land Board]. In particular, "[a]ll contracts for deed, tracts of real property, reserved minerals, mineral leases, surface leases, and all possessory interests . . . of whatever nature belonging to" or which "may be acquired by the Bank" were conveyed to the Land Board. 1977 N.D. Sess. Laws 138, ' 10. In other words, the land and all interests in it went to the Land Board.

In 1989 the Legislative Assembly revisited the question of which state agency should manage this property. It decided to split the responsibility between the Bank and Land Board by enacting N.D.C.C. ' 15-08.1-02.1 and amending N.D.C.C. ' 15-08.1-03. 1989 N.D. Sess. Laws 114, " 2, 6. N.D.C.C. ' 15-08.1-02.1 transfers "[a]ll possessory interests in real property other than minerals" which were previously conveyed by the Bank to the Land Board under the 1977 legislation, back to the Bank. (Emphasis added). Section 15-08.1-03 states that "[a]ll mineral interests" the Bank acquires in the future are to be conveyed to the Land Board. In summary, the Land Board only has title to the minerals in land which is subject to N.D.C.C. ch. 15-08.1. The problem, however, arises because the Legislature did not describe the substances included in the terms "minerals" and "mineral interest." Thus, there is uncertainty as to what the Land Board possesses.

There is no difference between the term "minerals" as it appears in N.D.C.C. ' 15-08.1-02.1 and the term "mineral interests" as it appears in N.D.C.C. ' 15-08.1-03. Therefore, references in this opinion to "minerals" include the term "mineral interests."

The objective of statutory construction is to give effect to legislative intent. Eastburn v. C.J.A., 473 N.W.2d 439, 440 (N.D. 1991). Nothing in the legislation at issue, 1989 N.D. Sess. Laws 114 " 2, 6, is useful in determining how the Legislative Assembly intended to define the term "minerals." Furthermore, nothing explains the meaning of the term. The purpose of transferring most of the property interests back to the Bank appears to have been to ease the Bank's bookkeeping chores and to end the Bank's payment of a management fee to the Land Board. Hearing on S. 2216 Before the House Comm. on Natural Resources, 51st N.D. Leg. (Mar. 9, 1989) (statement of Tom Tudor). Understanding these purposes, however, is not helpful in resolving the meaning of the term "minerals."

Another rule of statutory construction is to give words their ordinary meaning. Peterson v. McKenzie County Pub. School Dist. No. 1, 467 N.W.2d 456, 459 (N.D. 1991). Unfortunately, "there is no generally accepted meaning of the word 'minerals.'" Reeves, "The Meaning of the Word 'Minerals'," 54 N.D.L. Rev. 419, 429 (1978). This has also been the conclusion of North Dakota courts that have considered the meaning of "minerals" as the term appears in statutes. Abbey v. State, 202 N.W.2d 844, 855-56 (N.D. 1972) (interpreting N.D.C.C. ' 38-09-01); Adams County v. Smith, 23 N.W.2d 873, 875 (N.D. 1946) (interpreting N.D.C.C. ' 11-27-04, repealed by 1951 N.D. Sess. Laws 112, ' 1).

While "minerals" does not have a common meaning, whether specific substances, in their common understanding, constitute "minerals" depends on the type of instrument, its date and the applicable statutes. See N.D. Mineral Title Standards 1-04. For example, oil, natural gas, and coal are generally classified as minerals. Lee v. Frank, 313 N.W.2d 733, 734-35 (N.D. 1981). On the other hand gravel, clay, and scoria are generally not considered minerals. N.D. Mineral Title Standards 1-04.7. But this approach is an unsatisfactory method of resolving this issue because the North Dakota courts have not had an opportunity to consider whether all possible substances

related to minerals are minerals.

Interpreting the meaning of the term "minerals" in N. D. C. C. ch. 15-08.1 is aided, if not resolved, by N. D. C. C. " 47-10-24 and 47-10-25. Section 47-10-24 concerns conveyances of mineral rights. Section 47-20-25 concerns the reservation of minerals when the surface of land is sold.

N. D. C. C. ' 47-10-24 states that conveyances of mineral rights transfer "all minerals of any nature whatsoever." However, the statute adds two conditions to this rule. The first condition is that those minerals that are specifically excluded are not conveyed. The second condition is that gravel, clay, and scoria are not conveyed unless they are specifically stated as being transferred.

N. D. C. C. ' 47-10-25 concerns mineral reservations made in conveying the surface of land. In these transactions, a simple reservation of minerals will reserve "all minerals, of any nature whatsoever." Again, two conditions apply. Minerals specifically excluded from the transaction are not conveyed; but gravel, clay, and scoria are transferred with the surface unless specifically reserved. These two statutes were last amended in 1983 and are the Legislature's most recent attempt to give guidance to the meaning of "minerals." 1983 N. D. Sess. Laws chs. 503 and 504. They can be used to construe what the Legislature meant in 1989 when it amended N. D. C. C. ch. 15-08.1. Furthermore, N. D. C. C. " 47-10-24 and 47-10-25 are broad enough to actually govern interpretation of the conveyances made between the Bank and Land Board by the 1989 amendments to N. D. C. C. ch. 15-08.1.

N. D. C. C. ' 15-08.1-02.1 conveys back to the Bank all the land, except "minerals," held by the Land Board under the 1977 legislation. This is a conveyance of the surface of real property with a general mineral reservation.

N. D. C. C. ' 47-10-25 applies to "all . . . conveyances of the title to the surface of real property . . . in which all or any portion of the minerals are reserved or excepted . . ." N. D. C. C. ' 15-08.1-03 is a conveyance of mineral rights to the Land Board of all "mineral interests" acquired by the Bank in the future. N. D. C. C. ' 47-10-24 applies to "[a]ll conveyances of mineral rights."

In conclusion, N. D. C. C. " 47-10-24 and 47-10-25 determine the meaning of the term "minerals" in N. D. C. C. " 15-08.1-02.1 and 15-08.1-03 and govern the conveyances made by those statutes. Therefore, it is my opinion that the terms "minerals" in N. D. C. C. ' 15-08.1-02.1 and "mineral interests" in N. D. C. C. ' 15-08.1-03 mean all minerals of any nature whatsoever, except gravel, clay and scoria.

II.

N. D. C. C. ' 15-08-27 states that in all sales of non-grant land the Land Board is to reserve the same minerals it reserves in sales of grant land. N. D. Const. art. IX, ' 5 sets forth the mineral reservation clause for grant land, requiring a 100% reservation of all minerals. N. D. C. C. ' 38-09-01 requires that the mineral reservation clause used in "every transfer of land . . . by

the State of North Dakota or by any department thereof" to include a 50% reservation of all minerals. Neither of these sections govern reservations in land subject to N. D. C. C. ch. 15-08.1.

N. D. C. C. ' 15-08.1-01 states that "lands" managed under N. D. C. C. ch. 15-08.1, are not "subject to the leasing and sale provisions found elsewhere in this code." The statute's reference to "land" includes minerals. See Kim-Go v. J. P. Furlong Enterprises, Inc., 460 N. W. 2d 694, 698 (N. D. 1990) (VandeWalle, J., concurring) (mineral interests are an interest in real property); McLaughlin v. Lambourn, 359 N. W. 2d 370, 374 (N. D. 1985) (recognizing the rule that a general conveyance of land, without exceptions or reservations of minerals carries with it the minerals as well as the surface); N. D. Mineral Title Standards '1-02. Therefore, it is my opinion that neither N. D. C. C. ' 15-08-27 nor N. D. C. C. ' 38-09-01 control the terms of the mineral reservation clause in sales of land subject to N. D. C. C. ch. 15-08.1. Similarly, other statutes, such as N. D. C. C. ' 15-05-06 which prohibits the sale of land containing gravel, do not apply.

Consequently, the Bank has full discretion to decide whether to reserve or convey the gravel, clay and scoria it manages pursuant to N. D. C. C. ch. 15-08.1. The Land Board has full discretion to decide whether to reserve or convey the minerals it manages under the chapter. Despite this, as a general rule, it is advisable for state entities to reserve 100% of the minerals because this practice usually brings the greatest economic benefit to the state. Therefore, 100% of the minerals, including all the gravel, clay, and scoria, should generally be reserved.

Since any sale of land subject to N. D. C. C. ch. 15-08.1 affects the Bank and the Land Board, those entities must cooperate in sale negotiations and in setting the terms of the contract. Such cooperation will ensure that the proper mineral reservations are made and that the purchaser will understand exactly what is being conveyed.

- EFFECT -

This opinion is issued pursuant to N. D. C. C. ' 54-12-01. It governs the actions of public officials until such time as the questions presented are decided by the courts.

Nicholas J. Spaeth
Attorney General

Assisted by: Charles M. Carvell
Assistant Attorney General

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