

OPINION  
51-104

July 26, 1951 (OPINION)

MINERAL RIGHTS

RE: Effect of Tax Sale

In yours of the 24th inst. you ask two questions, to-wit:

A sold some land to B, reserving in A the mineral rights: B defaulted in his real estate tax:

1. If the county acquires this land through tax proceedings, does it do so subject to A's mineral rights?
2. If some party other than the county purchases the land either at a tax sale or from the county subsequently, does he acquire title subject to A's mineral rights?"

In our opinion the answer to each question must be yes.

Ordinarily lands in this state are assessed and taxed in entire disregard of possible mineral deposits therein. Attempts of the legislature to tax mineral reservations have been abortive. Therefore, when lands are sold for taxes, mineral reservations are unaffected, and the county on acquiring tax title acquires title subject to the reserved rights of A.

It must follow, also, that, since the land is sold for taxes subject to the reserved mineral rights of A, any other party who purchases at tax sale acquires no interest in the mineral rights reserved. And, since the county acquires tax title subject to A's mineral rights and it cannot sell more than it acquires by its tax deed, purchasers of tax-acquired lands from the county acquire no interest in reserved mineral rights.

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