

**OPINION  
51-163**

July 30, 1951           (OPINION)

STATE OF N.D.

RE: Ratification of Outstanding Oil and Gas Leases

In yours of July 3rd, you ask for an opinion from this office regarding the power of the Industrial Commission and the Bank of North Dakota as agents for the state treasurer, who acts as trustee for the state to make and deliver agreements ratifying outstanding oil and gas leases given or to be given by contract purchasers of lands owned by the trustee.

It is the opinion of this office that the Industrial Commission as well as other agencies of the state that have and control lands of public domain and public properties, have the power to make ratification agreements such as are here in question, and that it is their duty to do so in keeping with the usage of the trade in the oil industry.

Section 6-0925 N.D.R.C. of 1943 provides that the State Treasurer, as trustee, through the Bank of North Dakota, acting as his agent, and with the written approval of the Industrial Commission, may make a valid lease of any portion of the lands to which the title is acquired by foreclosure of mortgages taken by the Bank of North Dakota and assigned to him under that chapter for such time and upon such terms as the Industrial Commission shall direct, and he shall have power, as such trustee, and when so directed to make separate leases thereof covering mineral or oil and gas rights on such land, and any sales of such land, thereafter made, shall be made subject to any leases so granted. The net proceeds of rentals accruing from such leases shall accrue to the real estate bond payment fund.

In keeping with the provisions of the above cited statute, the Industrial Commission adopted, in a meeting on October 27th, 1941, a resolution authorizing the trustee of the state treasurer to execute and deliver subordination agreements, ratification agreements, and such other waivers or agreements as the manager of the Bank of North Dakota might deem proper in connection with oil and gas leases affecting lands in which the state treasurer, as trustee, has an interest.

It necessarily follows that a contract in full force and effect gives the landholder the power and authority to lease his property for whatever consideration he wishes to accept.

The question then presents itself as to whether or not the state is violating the terms of the statute when, and if, it ratifies a lease agreement where the rentals are less than the twenty-five cents per acre provided for by statute. The question is not one that need necessarily concern the trustees for the reason that they have no immediate power or control over the property in question, and that they are simply surrogating themselves to the rights of the

landholder in the event of default under the terms of his contract with the trustee. It should be borne in mind that the lessee in such instances is protecting its rights by a provision in its lease that it shall have the right to enter and render itself harmless in the event of default in the contract.

We therefore hold that it is not only within the power and the authority of the trustee but is a matter of necessity that such lease shall be ratified under the terms and conditions that it was entered into with such exceptions as sound business discretion shall dictate to the trustee or the Manager of the Bank of North Dakota.

House Bill No. 708, passed at the 32nd Session of the North Dakota Legislative Assembly, effective March 13th, 1951, especially provides for ratification agreements. We believe that it was the intent of the legislature, and after thorough research and consideration on the part of the committees, that ratifications and administrative acts are to be exercised by the agencies affected. The act goes on to provide that rentals shall be at twenty-five cents per acre, and for a royalty of one-eighth, and a bonus be offered as the condition of the lease. We interpret the "twenty-five cents per acre" payment to mean that the amount covers a mineral acre as contrasted with a surface acre. Summers, on oil and gas, has placed an interpretation upon a mineral acre for the purpose of identifying a percentage interest held in gas and oil producing lands by the term "mineral acre." The State of North Dakota, holding fifty percent of the mineral interest in a quarter section of land, would then own eighty mineral acres and will assess at the rate of twenty-five cents per acre for fifty percent or eighty mineral acres.

The bonus that is offered is based upon the same interpretation as the acreage fee. Therefore a bonus offer of One Dollar per acre would result in Eighty Dollars per quarter section of land where the state holds fifty percent of the mineral interest.

"The Ratification and Adoption of Oil and Gas Leases" hereto attached and made a part of this opinion are legal as to form and content, and are recommended for adoption to such agencies as find it amenable to their individual administrative procedure.

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