

OPINION
53-90

August 5, 1953 (OPINION)

OIL AND GAS

RE: Gravel and Sand as Minerals Subject to Oil and Gas Lease

I wish to acknowledge receipt of your request for an opinion as to the construction of the word "mineral" as used in, and the subject of the usual documents commonly referred to as oil and gas leases. you state that because of the large portion of this state now covered by oil and gas leases, the State Highway Department is experiencing difficulty in obtaining rights to necessary highway construction materials such as sand, gravel, scoria, clay binder and earth filler, from the landowners because of their uncertainty as to whether these materials are properly classified as minerals under the usual oil and gas lease.

It is my opinion that the minerals which you have identified are not obligated beyond a right to their use, as the land itself, during exploration and production of oil and gas, under an oil and gas lease unless such document specifically includes such materials.

The word "mineral" is not a definite term and is susceptible of limitations or extensions according to the intention with which it was used. Standing alone, the word "mineral" might embrace all matter which is not "animal" or "vegetable" and would include the soil and hence, any type of sand, gravel, scoria, clay binder and earth filler. Under certain circumstances, it might be limited to metallic substances only.

Courts in other jurisdictions have defined "mineral" from a broad commercial sense as being any inorganic substance found in nature, having sufficient value separated from its situs as part of the earth to be mined or dug for its own sake or uses. Other courts have held that the phrase "coal and other minerals" used in a lease or deed, does not include common mixed sand.

It is my opinion that sand, gravel, scoria, clay binder and earth filler constitutes ordinary soil and are a part of the land as distinguished from "minerals" as that term is used in the vernacular of the oil industry and such materials would not be conveyed by a document that purported to convey rights to oil and gas minerals, unless such document, by specific mention and express inclusion extended to those materials.

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Attorney General