OPINION
53-93

November 20, 1953(OPINION)

OIL AND GAS

RE: Industrial Commission - Rule Making Powers

At a hearing held in the State Capitol on November 16, 1953, the North Dakota Industrial Commission considered certain rules and regulations proposed to it, together with objections to and corrections for those rules. The Commission requested an opinion of the Attorney General upon three specific questions:

1. Whether the proposed definition of waste is within the statutory and constitutional powers of the Commission.

2. Whether the Commission can enact Rule 802 as it now appears in the proposed draft.

3. Whether the doctrine of correlative rights as it appears on page 2 is properly a part of the definitions set forth by the Commission and its usage in Rule 601.

Our answer to your first inquiry is that the Commission is exceeding its constitutional authority by adopting the definition of "waste" as it appears in the proposed rules. The rule making power of the Industrial Commission in this matter is derived entirely from the provisions of chapter 227 of the 1953Session Laws, the so-called Conservation Act. This Act is substantially the 1950 model act drafted by the Interstate Oil Compact Commission. Its primary purpose is the conservation of oil and gas as a natural resource and to promote its development and production in such a manner as to prevent waste and that such conservation measures will be conducted in such a manner as to protect as far as possible the correlative rights of all owners. It is fundamental that the Industrial Commission, as well as other agencies, boards and bureaus, derive their powers from the law only, and "possess only the authority conferred upon it by the Constitution and the statutes of the state. All orders made by it must conform with the statutes, to be valid."

We suggest, therefore, that the Commission strike the definition for "waste" in its entirety and substitute the definition as found in Chapter 227 of the 1953 Session Laws.

Question 2. We find no authority under the statute for Rule 802. We suggest for the same reasons that the rule be omitted but suggest that ratable take is a proper subject for the attention of the Legislature and that they might make provisions for those conditions within certain constitutional limits. In reading Section 7 of Chapter 227, the last sentence in Subsection 5 reads as follows: "The commission shall allocate the allowable for the state in such manner as prevents undue discrimination between fields, pools, or portions thereof resulting from selective buying or nominations by purchasers."

Under that section it is our opinion that the state geologist is charged with the duty substantially as outlined in Rule 802 and if, in his opinion, waste is occurring, he must call it to the attention of the Commission which will act in accordance with the rules covering "practice before the commission." The

desired effect of Rule 802 may, in some measure, be realized through this course of action, although there is no provision in the statute authorizing the Commission to adopt a rule as far-reaching as Rule 802.

Question 3. The term "correlative rights" is not defined by the act although the proposed rules on page 2 contain the definition. We believe such a definition should be omitted. Correlative rights is a judicial doctrine and "the term correlative rights, is merely a convenient method of indicating that each owner of land in a common source of supply of oil and gas has legal privileges as against other owners of land therein to take oil or gas therefrom by lawful operations conducted on his own land; that each such owner has duties to the other owners not to exercise his privileges of taking so as to injure the common source of supply; and that each such owner has duties to the other owners not to exercise his privileges of taking so as to injure the common source of supply; and that each such owner has rights that other owners not exercise their privileges of taking so as to injure the common source of supply." Summers Oil and Gas, Vol. 1, Page 142. Correlative rights refers to this aggregate of legal relations of the owner of land in a common source of supply and is a doctrine to be interpreted by the courts and not a rule to be laid down by an arm of the government. To do so is to invade the province of the court.

In the second line of Rule 601 where the term "to protect correlative rights" is used, we suggest the word "or" after the word "waste" be changed to the word "and."

As a general rule, it might be stated that the Commission should not attempt to promulgate special rules that attempt to regulate activities within the industry which might more properly be left to the judgment and/or discretion of the inspecting authority provided for that purpose under the general rules. The result is that, although the Commission is limited to the definition of waste as it is found in the statute, it remains for the court to determine whether a given situation under certain circumstances is such as to constitute waste, and it is for the state geologist or other parties in interest to determine whether the facts and circumstances warrant bringing the matter to the attention of the Commission or the court.

Authorities:

Lyons v. Ottertail Power Company, 280 N.W.192, 68 ND 403; State v. Jones, 23 NW 2d 54, 74 ND 465; Petition of Village Board of Wheatland, 42 NW 2d 321, 77 ND 194; Cavanagh v. Coleman, 33 NW 2d 282, 284; 42 Am. Jur. 428, Section 99 and 75 C.J.S. 383 Section 59; State v. Blaisdell, 132 NW769; Summers Oil and Gas, Vol. 1, page 142.

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