

**OPINION**  
**53-95**

July 20, 1953           (OPINION)

OIL AND GAS

RE: Industrial Commission Rules Making Power

This opinion is given in response to your request to the Governor dated July thirteenth, which he has referred to this office.

You have enclosed a letter from an official of the Federal Housing Administration. In brief, he seeks a ruling from the Industrial Commission flatly forbidding drilling oil wells within 200 feet of any building. His interest in the matter is the protection of property values of houses in which the Federal Housing Administration has an interest as loan insurer.

You correctly state that chapter 223, Sessions Laws of 1953, our new Oil Conservation Act, does not cover this problem.

It is our opinion that the Commission is without authority to promulgate a regulation which categorically forbids drilling within 200 feet of a building. The jurisdiction granted by chapter 223 empowers the Commission to make rules and regulations which are in the interests of conservation of oil and gas, that is production without needless waste and according to good practice in the industry. The Commission has no power to arbitrarily make a ruling on distance of drilling sites from a building, when such ruling is merely for the purpose of protecting neighboring property values.

Therefore, it is our opinion that the Commission does not have the authority to make a rule such as is here requested. Such a ruling would have no logical connection with or bearing upon the subject of conservation.

Municipalities in this state have powers to pass ordinances upon the subject of enterprises or activity within their limits which constitute a fire hazard. (Section 40-0501 (35) NDRC 1943) Municipalities also have the power to regulate and control any offensive or nauseous business. (Section 40-0501 (48) NDRC 1943) They have also the power to curb and abate any unwholesome or nauseous place. (Section 40-0501 (49) NDRC 1943) With these powers in the hands of our municipalities, there is ample remedy available to the public, in the event that oil drilling and production operations within a municipality cause an unreasonable fire hazard or are obnoxious and offensive. Likewise, nearby property owners have an adequate civil remedy at law, in the event of actual property damage due to nearby oil well drilling or production.

Considerations involving fire hazards, offensiveness, etc. however, are matters within the jurisdiction of the governing bodies of our cities and villages, and not suitable for consideration by the Industrial Commission in its role as conservator of our oil and gas resources.

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