

OPINION
56-91

June 20, 1956 (OPINION)

OIL LEASES

RE: Serving Notice of Expiration of Redemption Period

This is in reply to your letter of June 5, 1956 requesting an opinion of this office concerning service of notice of expiration of period of redemption on oil leases.

The statute requires that such notice be served upon the owner of the record title of the estate sold to the county for taxes, and upon each mortgagee, lienholder and other person interested therein as may appear from the records of the register of deeds and the clerk of the district court of said county (section 57-2804 of the North Dakota Revised Code of 1943.)

You state that you advised the county auditor that while the oil lessee would hardly be a lienholder, he as such oil lessee had an interest in real property, which he was entitled to protect, and that therefore he should be served with the usual notice. Further you expressed the opinion that it will do no harm to serve them and it might just as well be done so the question of non-service cannot be raised.

We are in substantial agreement with the conclusion you express. While owners of interests in minerals properly separately assessed under section 57-0224 are, of course, not interested in disposition of the surface estate by tax deed proceedings, owners of interests in minerals properly not separately assessed under section 57-0224 are, of course, concerned with disposition of the fee title to the property by tax deed proceedings. We find no decisions of our Supreme Court directly on the point of whether or not the oil and gas lessee is entitled to notice of the expiration of the period of redemption, and we find no clear-cut line of authority throughout other states that would be definitely controlling. There is, of course, authority for the proposition that a mineral owner can protect his property interest by payment of taxes (See: Crane v. Taylor (Okla.) 261 P. 2d. 587) although it may be questionable in some jurisdictions whether an oil lessee is such a mineral owner. The North Dakota cases of Petroleum Exchange Inc. v. Poynter, 64 N.W.2d. 718 and Ulrich v. Amerada Petroleum Corp., 66 N.W. 2d. 397, would appear to indicate that the lessee is the owner of an interest in real property, although neither of these cases was directly concerned with the point here involved. Thus, it would presently appear that while there are some doubts on the matter, the oil lessee is the owner of an interest in the real property and therefore is entitled to the proper notice of the expiration of the period of redemption.

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