

**OPINION
59-163**

May 25, 1959 (OPINION)

MINING AND GAS AND OIL PRODUCTION

RE: Control of Gas and Oil Resources - Commission Sets Spacing
Units - Exception to Spacing Pattern

In reply to the request of the North Dakota Industrial Commission for an opinion concerning the original jurisdiction of the commission to grant drilling exceptions to spacing patterns already established by the commission, we understand the facts to be as follows:

At a recent hearing of the Industrial Commission an application was made for an exception to the drilling pattern established by the commission in a certain field. This application was objected to on the grounds that the commission did not have original jurisdiction to hear the application in view of section 38-0807(3) of the 1957 Supplement to the North Dakota Revised Code of 1943. This section provides as follows:

3. An order establishing spacing units for a pool shall specify the size and shape of each unit and the location of the permitted well thereon in accordance with a reasonably uniform spacing plan. Upon application, if the state geologist finds that a well drilled at the prescribed location would not produce in paying quantities, or that surface conditions would substantially add to the burden or hazard of drilling such well, the state geologist is authorized to enter an order permitting the well to be drilled at a location other than that prescribed by such spacing order; however the state geologist shall include in the order suitable provisions to prevent the production from the spacing unit of more than its just and equitable share of the oil and gas in the pool. Any such order of the state geologist allowing exceptions to the established spacing pattern may be appealed within a reasonable time to the commission by filing such an appeal with the commission. Upon the filing of such an appeal and after a due hearing, the commission may affirm or repeal the order of the state geologist."

The applicant for the exception to the spacing pattern defended his application on the basis of Case No. 276, Order No. 304(4) of the Industrial Commission which reads as follows:

4. That no well shall be drilled or produced in said pool except in conformity with the spacing pattern set forth above, without special order of the Commission after due notice and hearing."

The question of the Industrial Commission is whether or not the commission has the original jurisdiction to hear and decide the

application for an exception to a spacing pattern if no application was initially filed and ruled upon by the state geologist as set forth in section 38-0807(3) quoted above.

Section 38-0804 of the 1957 Supplement to the North Dakota Revised Code of 1943 defines the jurisdiction of the commission. This section reads in part as follows:

JURISDICTION OF COMMISSION. The commission has jurisdiction and authority over all persons and property, public and private, necessary to enforce effectively the provisions of this Act (chapter). The state geologist shall act as a supervisor charged with the duty of enforcing the regulations and orders of the commission applicable to the crude petroleum oil and natural gas resources of this state and the provisions of this chapter. The commission has the authority, and it is its duty, to make such investigations as it deems proper to determine whether waste exists or is imminent or whether other facts exist which justify action by the commission. The commission acting through the office of the state geologist has the authority:

. . . .

2. To regulate:

. . . .

c. The spacing of wells;

. . . .

5. To promulgate and enforce rules, regulations, and orders to effectuate the purposes and the intent of this Act (chapter)."

In 43 Am. Jur. 316, PUBLIC ADMINISTRATIVE LAW, s 26 we find this statement:

Administrative boards, commissions, and officers have no common-law powers. Their powers are limited by the statutes creating them to those conferred expressly or by necessary or fair implication. General language describing the powers and functions of an administrative body may be construed to extend no further than the specific duties and powers conferred in the same statute. In determining whether a board or commission has a certain power, the authority given should be liberally construed in light of the purposes for which it was created, and that which is incidentally necessary to a full exposition of the legislative intent should be upheld as being germane to the law. In the construction of a grant of powers, it is a general principle of law that where the end is required the appropriate means are given. . . ."

These are only general statements which may be used in the interpretation of the statutes granting power to the commission. Basically the commission has jurisdiction over all persons and

property, public and private, necessary to enforce effectively the provisions of the Act. This jurisdiction is not on a contingency or on the basis of an exception "unless otherwise provided for." Out of necessity this jurisdiction must be deemed original jurisdiction.

On close examination of subsection 3 of section 38-0807 it is found that this provision is not mandatory but is merely permissive. The statute does not require that an application for an exception to a spacing order must be made to the geologist. Considering the previous reference to the state geologist under section 38-0804 he is deemed to be the executive secretary and technical advisor of the commission. It is recognized that as such he must be delegated certain authority. The Legislature presumably was aware that the Industrial Commission could not handle all of the administrative functions and wished to provide a manner whereby the commission could be relieved of some of the minor duties and still prevent any attack on such actions delegated to the geologist for lack of authority. The Legislature then delegated certain authority to the state geologist so as to give certain actions of the state geologist a proper foundation.

Viewing it in this light we can come to only one conclusion and that is that the application to the state geologist for an exemption to a spacing order is a permissive procedure and not a mandatory provision.

On the assumption which cannot be denied that the commission has original jurisdiction, it would be extremely difficult to recognize a statute where jurisdiction would be removed and vested in a person subordinate to the commission.

It is therefore the opinion of this office that the commission has original jurisdiction to hear and decide an application for an exception to a spacing pattern although no application was initially filed with the state geologist as set forth in section 38-0807(3) of the 1957 Supplement to the North Dakota Revised Code of 1943.

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