

Editor's note: Appealed -- aff'd, Civ. No. 73-481-B (W.D. Ok. April 4, 1974); aff'd, No. 74-1266 (10th Cir. Jan. 7, 1975) 508 F.2d 885

J. W. McTIERNAN

IBLA 73-145

Decided June 27, 1973

Appeal from decision of New Mexico State Office, Bureau of Land Management, rejecting five oil and gas lease offers.

Affirmed.

Mineral Leasing Act for Acquired Lands: Lands Subject to--Oil and Gas Leases:
Acquired Lands Leases--Oil and Gas Leases: Discretion to Lease--Oil and Gas
Leases: Lands Subject to Lease

Offers for oil and gas leases under the Mineral Leasing Act for Acquired Lands may properly be rejected where there is uncertainty regarding the title to the oil and gas deposits.

APPEARANCES: Jay R. Bond, Esq., Oklahoma City, Oklahoma, for appellant.

OPINION BY MRS. THOMPSON

This appeal by J. W. McTiernan is from a decision of the New Mexico State Office, Bureau of Land Management, dated September 14, 1972, which rejected five oil and gas lease offers. These noncompetitive offers, numbered NM-A 15185 (Okla.) through NM-A 15189 (Okla.), were filed on acquired lands in Roger Mills County, Oklahoma, pursuant to the Mineral Leasing Act for Acquired Lands, 30 U.S.C. § 351 et seq. (1970). The State Office held that minerals in the lands applied for were "restricted" and not presently owned by the United States, and title to the minerals would not vest in the United States until 50 years from various dates in 1942 and 1943. ^{1/} It concluded the offers were premature for

^{1/} The dates correspond to the dates of the deeds whereby the United States acquired title. The deeds all contained a provision similar to the following:

"There is hereby excepted and reserved from the foregoing sale and conveyance unto the grantor, its successors and assigns, the right to mine and remove all oil, gas and other valuable minerals

present interest leases, and unacceptable for future interest leases because compliance was not made with 43 CFR 3130.4-5(a).

Appellant contends that the United States owns the oil and gas within these acquired lands. He does not dispute the fact that minerals were reserved for 50 years by the grantor in the conveyances to the United States, but disputes the validity of the reservation. Specifically, he contends that, with the exception of one offer, ^{2/} all the lands were vested in Roger Mills County by tax resale deeds, and were conveyed to the United States by deeds from the County's board of Commissioners. He alleges that during the period in which the County held the lands, they were held not in its proprietary capacity, but in trust for the various taxing units entitled to share in ad valorem taxes, and the County had no authority to reserve proprietary interests to itself. Thus, he asserts:

The United States, having no authority to confer powers upon the Board of County Commissioners of a state, in derogation of the laws of a state, has no power to validate a reservation of minerals void by reason of the laws of the state which conferred the power to the grantor to make the grant.

In a prior appeal appellant raised the same issue as to the same lands, contending that mineral reservations made by Roger Mills County in deeds to the United States were void. In J. W. McTiernan, 3 IBLA 19 (1971), this Board found the contention was "* * * not supported by citation of any legal authority," Id. at 21, and affirmed a decision rejecting his offers to lease lands where there was a reservation of the minerals by the County.

In the present appeal appellant cites decisions by the Oklahoma courts in support of his contention that title to the minerals passed to the United States despite the County's reservation.

While his citations establish some precedential support for his contention, they cannot be accepted as clearly determining that the

fn. 1 (Cont'd.)

deposited in or under the above described land for a period of fifty (50) years from the date of this deed. All rights under said reservation in favor of the grantor shall be subject to and in accordance with the following clauses, rules and regulations * * *."

^{2/} The appellant has abandoned that part of his offer NM-A 15185 (Okla.) which involves lands within the E 1/2 NW 1/4 and the W 1/2 NE 1/4 of section 14, T. 15 N., R. 25 W., I.M.

United States would prevail in any quiet title proceeding if it asserted title to the minerals which were reserved in the deeds to it. In the face of the clear reservation in the deeds to the United States, which are of public record, certainty of title to the minerals could not be established without a judicial determination. The refusal of this Department to issue an oil and gas lease prior to any such determination or any refusal to initiate judicial proceedings is not, as appellant suggests, any conferral of the mineral interest in the County contrary to state law. Whether it is in the interest of the United States to initiate litigation is a matter within the discretion of the Department of Justice as advised by the Office of the Solicitor of this Department. This Board has insufficient information in the record concerning the present status of the land, and other factors relevant for consideration, before this Board would recommend such litigation.

The determinative issue before us in this appeal is whether or not these offers were properly rejected. This Department has held that oil and gas lease offers may properly be rejected in the exercise of administrative discretion where there is a "mere uncertainty regarding title to oil and gas deposits." Carolyn C. Stockmeyer, 1 IBLA 87 (1970); Duncan Miller, A-30451 (November 17, 1965). Regardless of whether or not the title question is further explored by the Office of the Solicitor, rejection of appellant's offers is within the Department's discretion and appropriate for this reason. Cf. 43 CFR 2091.1(e).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is affirmed.

Joan B. Thompson, Member

We concur:

Douglas E. Henriques, Member

Joseph W. Goss, Member

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