

BERTRAM F. RUDOLPH, JR.

IBLA 78-626      Decided January 30, 1979

Appeal from decision of Montana State Office, Bureau of Land Management, rejecting oil and gas lease offers MT 923, etc.

Affirmed.

1.      Accounts: Payments—Oil and Gas Leases: Applications: Generally

It is proper for the Bureau of Land Management to refuse to accept a filing fee check accompanying drawing entry cards for simultaneous oil and gas lease offers where the check bears the figure amount of \$110, the correct amount due, and the typewritten amount of "One hundred eleven and no/100."

APPEARANCES: Bertram F. Rudolph, Jr., pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Bertram F. Rudolph, Jr., appeals from a letter decision of the Montana State Office, Bureau of Land Management (BLM), dated August 3, 1978, rejecting his check and 11 entry cards submitted for the June 1978 simultaneous oil and gas filings. Entry cards were filed for the following parcels: MT 923, MT 926, MT 941, MT 947, MT 949, MT 954, MT 984, MT 1000, MT 1002, MT 1011, and MT 1012. BLM rejected the check because the figure amount of the check did not agree with the written amount.

The check which accompanied the 11 drawing entry cards bore the figure amount of \$110, the correct amount due, and the typewritten amount of "One hundred eleven and no/100." BLM considered this check to be an unacceptable remittance, rejected it along with the 11 entry cards and returned them to appellant.

In his statement of reasons, appellant offers the following as the basis for his appeal:

- a. -the clear intent of my \$110.00 check, dated 21 June 1978, is shown.
- b. -the fact that an amount lower than the applicable \$110.00 does not appear on the subject check establishes its \$110.00 value.
- c. -the \$110.00 figure is further [sic] supported by the 11 parcel numbers, at \$10.00 each, on the face of the check.
- d. -other federal agencies will encircle the correct figure on such a check, sometimes adding AMOUNT GUARANTEED.
- e. -cases have been documented where agencies of the U.S. Government have processed unsigned checks with the wording added, MISSING SIGNATURE GUARANTEED.

In view of the foregoing, appellant contends that a redrawing should be held involving the 11 parcels in issue.

The issue to be considered in this case is whether a check for filing fees accompanying drawing entry cards is an acceptable remittance when the figure amount on the check, which is the proper amount, differs from the typewritten amount by one dollar.

Susan Dawson, 35 IBLA 123 (1978), appears to be the closest case involving a discrepancy between the figure amount and written amount on the check. This appeal concerned the remittance of advance rental for a simultaneous oil and gas lease. The pertinent facts in this case are as follows: Under 43 CFR 3112.4-1 Dawson was allowed 15 days from receipt of Notice of Rental Due for payment of the first year's advance rental. The first check received by BLM within the 15-day period bore the written amount of "One thousand eighty one" dollars and the figure amount of \$1,281, the latter being correct among due. BLM returned the check and at BLM's request for a check for the correct amount, she submitted a second check after the 15-day period had expired, with the figure amount of \$1,280 and the written amount of "One thousand two hundred and eighty-one." BLM returned the check and received another check after the due date with both the figure and written amount of \$1,280. The Board affirmed BLM's rejection of the lease because the rental was not received within the 15-day period.

Because of the volume of drawing entry cards which must be processed, the Board has been firm in requiring strict compliance with the regulations for completing the cards. Oil and gas lease offers involving minor deficiencies have consistently been rejected by the

Department. Christiansen Oil, Inc., 37 IBLA 52, 55 (1978), and cases cited therein. 43 CFR 3112.2-1(a)(1), which is part of the same regulation dealing with the entry card, specifies that "[t]he entry card must be accompanied by a remittance covering the filing fee of \$10. The filing fee may be paid in cash or by \* \* \* check." Since this requirement is an integral part of the simultaneous oil and gas leasing system, we find that the check must also be correctly executed in order to be accepted. 1/

In these circumstances we agree that BLM properly returned the check as being an incorrect remittance.

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

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Anne Poindexter Lewis  
Administrative Judge

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1/ We note that "Notice of Return of Remittance," Illustration 13, Form 1370-21, BLM Manual 1372.25 Fla, Step 3b, lists the following as a reason for returning remittance: "The figure amount of the check does not agree with the written amount. Please submit a new remittance."

## ADMINISTRATIVE JUDGE STUEBING CONCURRING:

The majority is correct in finding that the BLM indicates that where the figure amount of a check does not agree with the written amount, the check may be returned by BLM to the maker, and that BLM employees should not be faulted for following the procedures in the Manual.

Moreover, in any circumstance where there is a risk that, if the check is accepted by BLM and deposited for payment, a debt will accrue to the United States if the check is dishonored, no chance should be taken. That was the situation here. Had BLM deposited the check and entered the 11 drawing entry cards in the drawings for the several parcels, appellant would have been indebted to the United States in the amount of \$110. If, subsequently, the bank had refused payment, BLM would be faced with a collection problem requiring additional time, expense and administrative inconvenience, with no positive assurance of success. Accordingly, I agree that in this instance BLM acted correctly in refusing to accept the check and the drawing entry cards because of the attendant risk.

However, as obiter dictum, I would add that there are numerous occasions where no risk to the United States will be incurred if BLM elects to accept a dubious check and present it to the bank for payment. Most notable among these are oil and gas lease rental payments. If the check clears, everything is well; if not, the lease simply terminates and no debt is owed by the lessee. In such cases it is my attitude that where a question arises about the efficacy of a check, it should be an exercise of judgment on the part of the employee whether to deposit it for collection or to return it to the payor. Where the nature of the discrepancy is such that it is apparent that the check probably is either void or will not be honored for the amount of the obligation, it should be refused and returned. However, where the error, omission or discrepancy is such that it will yield the required amount if honored by the bank, it should be presented for payment. After all, it is the bank, not BLM, which is the true arbiter of whether the instrument is acceptable. It does BLM no great harm to deposit such a check and allow the bank to decide whether it should be honored or dishonored. If the bank dishonors a check, the consequences which flow from that action are clearly not the fault of BLM. But if BLM refuses to present the check for payment on the assumption that the bank would dishonor it anyway, much harm and no good will result if the assumption is incorrect.

Many banks have special relationships with their customers, and frequently will inquire of them before dishonoring their checks. This is no concern of the Government. Therefore, where there is no risk to the United States, it is my view that if it appears that a check

might be accepted and paid by the bank in the required amount, it should be the bank, not BLM, which decides. In the last analysis, a check is the maker's order to the bank to pay, and whether the bank accepts the order and does so is a matter between the bank and its customer. See Lillie Belle Higgins, 38 IBLA 254 (1978); Cf. Benjamin T. Franklin, 38 IBLA 291 (1978).

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Edward W. Stuebing  
Administrative Judge

ADMINISTRATIVE JUDGE FISHMAN CONCURRING SPECIALLY:

I agree that it is not improper for BLM to refuse a check with a disparate figure and written amount. I do not agree, however, that the "check must also be correctly executed in order to be accepted."

If BLM had elected to send the check to the bank and the bank made payment of \$110 therefor, I would hold that the filing fees were properly paid.

In sum, there is an area of administrative discretion, which if exercised rationally should not be disturbed.

I see no reason to disturb the decision below.

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Frederick Fishman  
Administrative Judge

