

Appeal from decision of the Wyoming State Office, Bureau of Land Management, dismissing protest of rejection of simultaneous oil and gas lease applications. WY 1374 (952).

Reversed and remanded.

1. Accounts: Payments -- Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Filing -- Regulations: Interpretation

A regulation should be sufficiently clear that there is no reasonable basis for an oil and gas lease applicant's noncompliance with the regulation before it is interpreted to deprive an applicant of a preference right to a lease. A regulation specifying a bank money order as an acceptable form of remittance requires the acceptance of a personal money order issued by a bank.

APPEARANCES: Marla J. Williams, Esq., Denver, Colorado, for appellants.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Robert L. and Patricia A. Andersen appeal the letter decision of the Wyoming State Office, Bureau of Land Management (BLM), dated January 30, 1981, dismissing their protest of BLM's rejection of their tendered remittance and drawing entry cards for a simultaneous oil and gas drawing.

Appellants filed drawing entry cards for several parcels <sup>1/</sup> on the November 1980, list of lands available in the oil and gas lease drawing posted by the Wyoming State Office. Their tendered filing fee was rejected by BLM because, as the BLM decision dismissing the protest states, their remittance, a personal money order, did not meet the requirements of 43 CFR 3112.2-2(a), which states in part, "The filing fee shall be paid in U.S. currency, Post Office or bank money order, bank cashier's check or bank certified check, made payable to the Bureau of Land Management."

Reference to copies of the rejected instrument in the case file discloses that it is identified as a "Personal Money Order," and that it bears the name of United Bank of Skyline, N.A. (United Bank), with an address of Denver, Colorado. The instrument further contains the inscription "Pay To The Order Of" followed by a blank line to be filled in with the name of the payee. The instrument also specifies a certain amount of money to be paid, which amount, together with the name of the bank, has been imprinted by machine. The money order also contains blank lines for the signature and address of the drawer. The instrument has been signed by appellant, Robert L. Andersen, as drawer, and the blanks for the name of the payee and the address of the drawer have been completed in the handwriting of appellant. The instrument has not been signed by an official of the bank; but the bank's name appears in the upper left hand corner, and the bank's serial number for the money order appears in the upper right hand corner.

In their statement of reasons for appeal, appellants assert that the meaning of the phrase "bank money order" is ambiguous and confusing, and that although there is authority that "bank money order" refers to a special instrument requiring the signature of an authorized officer of the issuing bank, the phrase is also commonly used to refer to any money order issued by a bank. Further, appellants assert that the requirements of 43 CFR 3112.2-2(a) are not "so clearly set forth that there is no reasonable basis for noncompliance." Appellants contend that although "bank money order" may have a narrow technical meaning, it also has a much broader meaning as a matter of common usage. In its broader sense, appellants assert the Skyline Bank Money Order is clearly a "bank money order" insofar as it was issued by a bank as opposed to a grocery store or pharmacy. Appellants also assert on information and belief that their applications were not the only applications returned because they were accompanied by an instrument similar in form to the Skyline

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<sup>1/</sup> The parcels to which this appeal applies are:

WY 2844	WY 3636	WY 4905	WY 6262	WY 7086	WY 9183
WY 2901	WY 4236	WY 5872	WY 6753	WY 7581	WY 9197
WY 3042	WY 4389	WY 6191	WY 6995	WY 8284	

Bank Money Order, and that the identical interpretation by other applicants of the meaning of "bank money order" is further indication that appellants' interpretation is both common and reasonable.

A letter from the Vice President and Cashier of the United Bank of Skyline, C. Terry Hartlerade, submitted in support of the appeal states in part:

Dear Mr. Andersen:

Subject: With reference to money order #14227 purchased on Nov. 20, 1980 in the amount of \$340.00 made payable to "Dept. of Interior, Bureau of Land Management".

The above money order is the only kind of bank money order offered by the United Bank of Skyline.

The money order is purchased with cash. It does not require the signature of a bank officer. The customer who purchased the money order must sign it before it can be a negotiable item.

The pertinent regulations governing the simultaneous oil and gas filing procedures provide that only certain forms of remittance are acceptable in payment of the filing fees, including "bank money order, bank cashier's check or bank certified check." 43 CFR 3112.2-2(a). Further, the regulations provide that applications filed shall be examined prior to selection and that any application which is "[a]ccompanied by an unacceptable remittance" shall be returned to the applicant together with the filing fee. 43 CFR 3112.5(a). Therefore, the issue raised by this appeal is whether a simultaneously filed oil and gas lease application accompanied by a filing fee in the form of a personal money order issued by a bank is properly rejected pursuant to a regulation providing that a bank money order is an acceptable form of remittance.

A bank money order has been defined as "an instrument issued by an authorized officer of a bank and directed to another, evidencing the fact that the payee may demand and receive upon indorsement and presentation to the bank the amount stated on the face of the instrument; such an instrument is paid from the bank's funds and liability for payment rests solely on the issuing bank." 2 Anderson, Uniform Commercial Code, § 3-104:20 (2d ed. 1971). A personal money order issued by a bank for a consideration accepted as adequate by the bank is a purchase of the credit of the bank and constitutes a means of establishing or transmitting that credit so that once issued to the purchaser it is no longer revocable by the bank. 10 Am. Jur. 2d,

Banks § 545 (Supp. 1980). Thus, it would appear that the payee of a money order issued by a bank may be assured that funds to cover the instrument have been transferred to the bank. The money orders submitted by appellant are consistent with this definition of a bank money order.

However, a bank money order that does not require the signature of the issuer has been held subject to a stop payment order. 10 Am. Jur. 2d, Banks § 643 (Supp. 1980). An instrument denominated a "Personal Money Order" which at the time of purchase by the bank's customer had an amount of money written on it, and on the face of which the bank's name and address were printed, but which was blank as to date, payee, and name and address of drawer, these items being subsequently completed by purchaser, falls within the "check or other draft" provisions of section 3-409 of the Uniform Commercial Code (UCC) on which drawee is not liable until acceptance of the instrument and, accordingly, is subject to a stop payment order prior to such acceptance. Krom v. Chemical Bank New York Trust Co., 38 App. Div. 2d 871, 329 N.Y.S. 2d 91 (1972). This Board has recognized that a personal money order issued by a bank is similar to a personal check to the extent that payment may be stopped any time prior to acceptance by the drawee bank. Ross L. Kinnaman, 48 IBLA 239 (1980).

Thus, a bank personal money order may be distinguished from a bank money order signed by an authorized bank official, which, like a cashier's check, entails an instrument drawn on a bank, issued by the drawee bank, and signed by an authorized bank employee, so that it cannot ordinarily be countermanded. Charles J. Rydzewski, 55 IBLA 373 (1981), 88 I.D. 625; see Frank H. Gower, Jr., 53 IBLA 146 (1981); Oxy Petroleum, Inc., 52 IBLA 239 (1981). Subsequent to issuance of the regulation identifying "bank money orders" as an acceptable form of remittance, BLM attempted by internal memorandum to make this distinction in specifying what type of bank money order is acceptable. Instruction Memorandum No. 80-635, change 2, dated November 3, 1980, asserts that the characteristics of bank money orders are similar to cashier's checks in that they are: drawn on a bank, issued by the drawee bank, and signed by an authorized bank employee. The instruction memorandum further states that personal money orders, even if issued by a bank, are not acceptable. Unfortunately, the governing regulation was not amended to reflect this clarification.

[1] A regulation should be sufficiently clear that there is no reasonable basis for an oil and gas applicant's noncompliance with the regulation before it is interpreted to deprive an applicant of a preference right to a lease. Bill J. Maddox, 34 IBLA 278 (1978); A. M. Shaffer, 73 I.D. 293 (1966). The regulation simply does not specify what types of money order issued by banks are acceptable. Therefore, personal money orders issued by a bank should be accepted, and rejection of appellants' remittance and drawing entry cards was improper. Charles J. Rydzewski, *supra*.

Accordingly, 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 reversed and the case is remanded.

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C. Randall Grant, Jr.  
Administrative Judge

We concur:

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Bernard V. Parrette  
Chief Administrative Judge

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Gail M. Frazier  
Administrative Judge