2398

REAL ESTATE—WHERE COAL, OIL, GAS AND OTHER MINERALS ARE RESERVED AND SEPARATED FROM SURFACE LAND—CONVEYANCE—SEPARATELY HELD AND OWNED FREE FROM FEE OF SOIL—INTEREST SHOULD BE ASSESSED BY COUNTY AUDITOR IN NAMES OF OWNERS—PROPERLY TAXABLE AS REAL ESTATE.

SYLLABUS:

Where coal, oil, gas and other minerals are reserved and separated from the surface land by a conveyance and so separately held and owned free from the fee of the soil, such interests should be assessed by the auditor in the names of such owners, and are properly taxable as real estate.

Columbus, Ohio, October 10, 1950

Hon. John C. Bacon, Prosecuting Attorney
Meigs County, Pomeroy, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"I have advised the County Auditor that where a reservation of coal, oil and gas and other minerals is made and same for the first time are separated from the surface, that in such case the auditor should enter the surface or soil on the tax duplicate in the name of the grantee and should enter the coal, oil and gas and other minerals in the name of the grantor and the auditor should fix a valuation upon the same according to law if the grantor and grantee can not agree as to the valuation.

I have further advised the County Auditor that where oil and gas alone are separated from the surface for the first time by the usual reservations of the oil and gas, that in such case the auditor should enter on the tax duplicate in the name of the grantee the lands conveyed except the oil and gas, and further that the auditor should enter on the tax duplicate in the name of the grantor or grantors the oil and gas, fixing a valuation upon same according to law if the parties can not agree as to the valuation of the real property and the real property reserved.

However the County Auditor has taken issue with my advice in that he is of the opinion that oil and gas in fee is not real estate. It is my opinion that coal, or oil and gas, or coal, oil and gas or other minerals, reserved in fee are real estate and taxable as such on the real duplicate of the county.

To resolve the differences in our opinions your advice is requested as to whether or not (1) coal reserved and separated

from the surface by a conveyance, (2) oil and gas reserved and separated from the surface by a conveyance, (3) coal and other minerals reserved and separated from the surface by a conveyance, should be entered on the tax duplicate and taxed as real estate."

Section 5560 of the General Code, reads as follows:

"Each separate parcel of real property shall be valued at its true value in money, excluding the value of the crops, deciduous and evergreen trees, plants and shrubs growing thereon. The price for which such real property would sell at auction, or at forced sale, shall not be taken as the criterion of the true value, and *where the fee of the soil of a tract, parcel or lot of land, is in any person natural or artificial, and the right to minerals therein in another, it shall be valued and listed agreeably to such ownership in separate entries, specifying the interests listed, and be taxed to the parties owning different interests, respectively.*

(Emphasis added.)

But where a separate parcel of real property, improved or unimproved, having a single ownership, is so used, that part thereof, is a separate entity, would be exempt from taxation, and the balance thereof would not be exempt from taxation, the listing thereof shall be split and the part thereof used exclusively for an exempt purpose or purposes shall be regarded as a separate entity and be listed as exempt, and the balance thereof used for a purpose or purposes not exempt, shall, with the approaches thereto, be listed at its true value in money and taxed accordingly."

The underlined portion of the section above set forth appeared originally in the legislation of this State in the last clause of Section 10 of the Act, passed April 5, 1859, and brought into our Code in 1878 in Section 2792. Although the section has been amended since that date the clause in question has remained essentially unchanged.

In the case of J. T. Jones v. W. T. Wood, 1 O. N. P., 155, the court, in passing on the question as to whether or not oil was a mineral within the meaning of the provision for the purpose of taxation, decided that oil was such a mineral, and as a consequence, properly taxable separately from the fee of the soil, if so owned and held. That decision was sustained without opinion in 54 O. S., 627, and has been consistently followed ever since.

It is unquestionable authority for an affirmative answer to all three of the questions you have specifically asked.

The court in the Jones v. Wood case, supra, at page 158, makes the following comment:

"* * * This statute has been retained as a permanent feature

of our tax system. In its technical scientific sense, it clearly covers petroleum, oil and natural gas. There is nothing in its provisions to indicate that they were to be applied in a special or restricted sense. Hence, though the popular understanding may be different, and become controlling in the construction of grants of minerals *eo nominie;* yet, at least to such minerals as may in fact be the subject of ownership, and mined, separately from and leaving what commonly is understood by the word 'land,' this act must be held to extend. Not only is this construction in accord with the familiar rule that if technical words are used in a statute, 'they are to be taken in a technical sense,' but it is demanded by the proposition that where 'the reason is general, the expression should be deemed general.' (1 Hent, 462; Bishop Stat. Cr., sections 99-100) The other ground for this interpretation is that petroleum or mineral oil in place, as well as natural gas, are held like coal and iron to be a part of the realty, though severable in ownership, and the land from which they are taken, mineral lands. (Gill v. Weston, 110 Pa. St. 313; Williamson v. Jones, 19 S. E. Rep. 436; W. & C. N. Gas Co. v. DeWitt, 130 Pa. St. 235) The conclusion then is that petroleum and natural gas are covered by the term 'minerals,' in the statute under consideration, and as a consequence, properly taxable separate from the 'fee of the soil,' if so owned and held."

See 38 O. J., §69, at pages 797 and 798, which reads in part as follows:

"The General Code provides for taxation of minerals where they are held separately from the surface estate. But in order to tax minerals separately from the soil they must be separately owned, and owned as land, a mere interest in them by lease not being sufficient to create a taxable interest in the minerals themselves."

See also Opinions of the Attorney General for 1922, Vol. II, page 856, for a discussion of the question. The syllabus reads as follows:

"Separately owned mineral rights pertaining to a tract of land which abuts upon a road improvement, constitute real estate abutting upon such improvement."

Based upon the above authorities and treating your three questions as one, it is my opinion that where coal, oil, gas and other minerals are reserved and separated from the surface land by a conveyance and so separately held and owned free from the fee of the soil, such interests should be assessed by the auditor in the names of such owners, and are properly taxable as real estate.

Respectfully,

HERBERT S. DUFFY,

Attorney General.