

OPINION NO. 78-006

Syllabus:

1. A "tract of land" as used in R.C. 1509.27 includes a portion of a "tract", as defined in R.C. 1509.01 (J).
2. A "tract" for the purpose of R.C. 1509.29 includes a portion of a "tract" as defined in R.C. 1509.01 (J).

To: Robert W. Teater, Director, Ohio Dept. of Natural Resources, Columbus, Ohio
By: William J. Brown, Attorney General, February 13, 1978

Your request for my opinion poses the following questions:

1. For the purpose of establishing a drilling unit under Ohio Revised Code §1509.27, (mandatory pooling orders), may the "tract" which is insufficient for a drilling unit (that mentioned in the first paragraph of Ohio R.C. §1509.27) and which requires the addition of other land through a pooling order be a portion of a "tract?"
2. May an owner of such a portion apply for designation of that portion as an exception tract under R.C. 1509.29?

You state in your letter that the failure to allow pooling of neighboring tracts with a portion of a tract would have the effect of allowing oil and gas resources under that portion which are not tapped by other drilling units in the tract to go unused. While such a result certainly would be undesirable, the authority to promulgate mandatory pooling orders must be derived from statute. Accordingly, it is necessary to examine the scheme of oil and gas regulation established by R.C. Chapter 1509.

R.C. Chapter 1509 is the first attempt to comprehensively regulate the production of oil and gas in Ohio. The goal sought by the General Assembly, when the legislation was enacted in 1965, was to seek a balance between private rights and the public interest. Specifically, the primary thrust of R.C. Chapter 1509 is to prevent both physical and economic waste of Ohio's oil and gas resources, through devices such as mandatory pooling and statewide well spacing. Meyers and Williams, Petroleum Conservation in Ohio, 26 Ohio St. L.J. 591 (1965).

R.C. 1509.27 concerns mandatory pooling orders, providing in pertinent part that:

If a tract of land is of insufficient size or shape to meet the requirements for drilling a well thereon as provided in section 1509.24 or 1509.25 of the Revised Code, whichever is applicable and the owner has been unable to form a drilling unit under agreement provided in section 1509.26 of the Revised Code, on a just and equitable basis, the owner of the tract may make application to the division of oil and gas for a mandatory pooling order.

"Tract" is defined in R.C. 1509.01 (J) as ". . . a single, individually taxed parcel of land appearing on the tax list." It is my understanding that your request contemplates a situation wherein a tract of land as defined above is of sufficient size to allow several drilling units to be formed within it plus a portion of a tract insufficient to constitute a drilling unit.

The Oil and Gas Board of Review is established by R.C. 1509.35. Persons aggrieved by an order of the Chief of the Division of Oil and Gas may, pursuant to R.C. 1509.36, appeal to the Board. The Board must conduct a hearing. If it finds the order lawful and reasonable, it must affirm it. If it does not, it may either vacate the order or make the order it finds the chief should have made. R.C. 1509.36. Pursuant to this authority, the Board, in Jerry Moore, Inc., Appeal No. 1, Ohio Oil and Gas Board of Review (July 1, 1966), determined that:

. . . an examination of said sections [R.C. Chapter 1509] discloses that the word "tract" is used therein at least thirty-nine times and that in several instances where used a narrow construction of the language "a single, individually taxed parcel of land appearing on the tax list" would be entirely unworkable.

In Moore, the appellant, who wished to have a mandatory pooling order issued regarding an eight acre portion of a one hundred seventy-four acre tract, was denied such an order. The appellee contended that the eight acres was not a tract. While the Board affirmed the order of appellee on other grounds, it held that the portion was a "tract" as defined in R.C. 1509.01 (J). The Board based its decision not only on the above construction but also upon the intent of the legislature to encourage the development of oil and gas in Ohio.

The meaning of the word "tract" as used in R.C. 1509.27 was also carefully analyzed by Meyers and Williams in the context of an issue regarding the continued validity of a portion of a lease which is not in a unit. They persuasively argue that "tract" as used in R.C. 1509.27 refers in that case to the portion of a lease which is included in a drilling unit which is established by a pooling order issued pursuant to that section. Meyers and Williams, supra, at 625-627.

R.C. Chapter 1509 is a highly technical amalgam of provisions for the regulation of oil and gas production. The Oil and Gas Board of Review is charged with the duty of insuring that orders of the Chief of Division of Oil and Gas comply with this Chapter. Great deference must, of course, be accorded administrative interpretations of statutory provisions. Jones Metal Products Co. v. Walker, 29 Ohio St.2d 173, 181 (1972); State, ex rel. Johnson & Higgins Co. v. Safford, II, Ohio St. 376, 382 (1927); State, ex rel. Crabbe v. Middletown Hydraulic Co., 114 Ohio St. 437, 452-457 (1926); 1974 Op. Atty Gen. No. 74-064. This is especially true where the interpretation of the administrative body is consistent with the purpose of the statute it is interpreting. Accordingly, it is my opinion that a "tract of land" as used in R.C. 1509.27 includes a portion of a "tract", as defined in R.C. 1509.01 (J).

Your second question concerns the term "tract" as it relates to R.C. 1509.29, which provides:

Upon application by an owner of a tract for which a drilling permit may not be issued, and a showing by him that he is unable to enter a voluntary pooling agreement and that he would be unable to participate under a mandatory pooling order, the chief of the division of oil and gas shall issue a permit and order establishing the tract as an exception tract if the chief finds that such owner would otherwise be precluded from producing oil or gas from his tract because of minimum acreage or distance requirements. The order shall set a percentage of the maximum daily potential production at which the well may be produced. The

percentage shall be the same as the percentage that the number of acres in the tract bears to the number of acres in the minimum acreage requirement which has been established under section 1409.24 or 1509.25 of the Revised Code, whichever is applicable, but if the well drilled on such tract is located nearer to the boundary of the tract than the required minimum distance, the percentage may not exceed the percentage determined by dividing the distance from the well to the boundary by the minimum distance requirement. Within ten days after completion of the well, the maximum daily potential production of the well shall be determined by such drill stem, open flow, or other tests as may be required by the chief. The chief shall require such tests, at least once every three months, as are necessary to determine the maximum daily potential production at that time.

The word "tract" was interpreted by the Oil and Gas Board in Moore, supra, in the same fashion as used in R.C. 5907.27, to include portions of single, individually taxed parcels of land appearing on the tax list. In Evelyn H. Lyons, Appeal No. 4, Ohio Oil and Gas Board of Review (March 14, 1967), the Board noted that R.C. 1509.29 was designed to enable owners of tracts of insufficient size for drilling units to recover the oil and gas underneath such tracts. The Board found that the General Assembly had intended that ". . . no person should be precluded from producing oil and gas from his property because of minimum acreage or distance requirements . . ." where the conditions of R.C. 1509.29 are satisfied. Accordingly, it is my opinion that a "tract" for the purpose of R.C. 1509.29 includes a portion of a "tract" as defined in R.C. 1509.01 (J). See Emens & Lowe Ohio Oil & Gas Conservation Law - The First Ten Years, 37 Ohio St. L.J. 31 (1976).

Therefore, it is my opinion, and ye: are so advised, that:

1. A "tract of land" as used in R.C. 1509.27 includes a portion of a "tract", as defined in R.C. 1509.01 (J).
2. A "tract" for the purpose of R.C. 1509.29 includes a portion of a "tract" as defined in R.C. 1509.01 (J).