

720

SYLLABUS:

1. A county agricultural society occupying a fairgrounds, title to which is in the board of county commissioners, has no authority under Section 1711.31, Revised Code, to lease such fairgrounds for oil and gas exploration and development.

2. Where the fee simple title to a fairgrounds is vested in the board of county commissioners, the board under Section 307.11, Revised Code, has the authority to lease such fairgrounds for oil and gas exploration and development so long as such leases does not interfere with the use of such fairgrounds by an occupying agricultural society.

3. The consideration for an oil and gas lease of a county owned fairgrounds is payable to the county and not to an occupying agricultural society.

Columbus, Ohio, December 10, 1963

Hon. Thomas E. Ray
Prosecuting Attorney
Morrow County
Mt. Gilead, Ohio

Dear Sir:

I am in receipt of your request for my opinion which reads in pertinent part as follows:

"This office has been requested by the Board of County Commissioners, Morrow County, Ohio, to obtain an opinion from your office as follows:

- "1. Where the fee simple title to the Fairgrounds is vested in the Board of County Commissioners, does the Board of County Commissioners have the right and authority to lease the Fairgrounds for oil and gas exploration and development.
- "2. If oil or gas is developed on said Fairgrounds, is the County entitled to the proceeds from the sale of oil and gas, or must such funds received be paid to the Morrow County Agriculture Society?
- "3. Does the Morrow County Agriculture Society have any control whatsoever, over the leasing of said Fairgrounds for oil and gas exploration and development and/or control over the location of oil and gas drilling sites and location of oil storage tanks, under the provisions of the Revised Code Section 1711.31.
- "4. If the Agriculture Society has control over the leasing for oil and gas and/or location of drilling sites and storage sites, what is the extent of their authority?

"This office is particularly interested in the construction of Revised Code Section 1711.31, as to the extent of the Morrow County Agriculture Society's authority under this section, both as it relates to the control over the surface of the Fairgrounds and control over the mineral under the surface of the Fairground's land."

You have stipulated that title to the grounds and improvements occupied by the agricultural society is vested in the board of county commissioners. These facts, as you have indicated, bring your problems within the purview of Section 1711.31, Revised Code, which provides:

“When the title to grounds and improvements occupied by an agricultural society is in the board of county commissioners, the control and management of such lands and improvements shall be vested in the board of directors of such society so long as they are occupied by it and used by it for holding agricultural fairs. Moneys realized by the society in holding county fairs and from renting or leasing all or part of the grounds and buildings for the conduct of fairs or otherwise, over and above the necessary expenses thereof, shall be paid into the treasury of the society and used as a fund for keeping such grounds and buildings in good order and repair and for making other improvements deemed necessary by the society’s directors.”

It is to be noted the above section provides that when title is vested in the board of county commissioners the estate or interest which the society has in the fairgrounds is to be terminated when the grounds are no longer occupied by it or used by it for holding agricultural fairs. Thus, the society in these instances has an interest which is analogous to a life estate for, when the grounds are no longer used for fair purposes, its interest terminates. This interest is definitely not a fee simple interest subject to be divested, for it is stipulated that title is already vested in the board of county commissioners.

With this in mind, I cite the leading Ohio case on the subject of oil and gas leases. *Kenton v. Dorney*, 17 C. C. 101, (1898). That case held that only the owner of the fee can execute a valid gas or oil lease. Branch 3 of the syllabus of that opinion states:

“That a tenant for life has no right to operate for oil and gas, on the premises in which such estate is held, or to make an oil or gas lease thereon, * * *”

The court at page 105 states the reasons for its decision:

“We are also of opinion that the lease executed by the life tenant, in 1897, was ineffectual to vest in defendants any interest in the 70 acres, by reason of want of power in the life tenant to convey such interest. It is well settled that a tenant for life, in possession of real estate, has no right or power to defeat the title or injuriously affect the interest of the remainderman, by alienating or disposing of some portion of the real estate; or even by using it in such way as to injure the reversionary interest and depreciate its value. The commission of waste forfeits the life estate to the remainderman. The supreme court holds, that petroleum, oil and gas in their place in land, is part

of the realty, and so remains until it is produced, when its character changes and it becomes chattle property. In this respect, petroleum is similar to standing and growing timber. While standing and growing, it is real estate, but when severed, it becomes personal property. A life tenant would have no more right to contract away the mineral part of the land, than to dispose of the standing and growing timber. The doing of either would amount to waste, and would have the effect to forfeit the life estate to the reversioner.* * *

On similar facts, other Ohio cases holding the same as the principal case are: *Breece v. Breece*, 8 N. P. (N. S.) 421, (1909); and *Fourth and Central Trust Co. v. Woolley*, 31 Ohio App. 259, (1928).

Here it is my opinion that the agricultural society, under the circumstances you state, can not execute a valid gas and oil lease which would impair the vested rights and interests of the board of county commissioners in whose name present title to the fairgrounds is vested. I say this in spite of the language of Section 1711.31, Revised Code, *supra*, which states that such society may "lease" the fairgrounds. But as stated in 26 Ohio Jurisprudence, *Gas and Oil*, Section 18, page 17, in speaking of gas and oil leases:

"While it is ordinarily denominated a 'lease', subsequent discussion shows that it has many incidents that are not common to leases generally; in fact, oil and gas leases are in a class by themselves and must be so treated."

One of the incidents of an oil and gas lease is the ultimate sale of the minerals constituting a part of the real estate. So whether the lease is deemed to be a sale of the minerals in place as real estate or is deemed to be a sale of a chattel when it reaches a well and is produced on the surface, the result is the same, there is no statutory authority for the sale of either by an agricultural society where title is vested in the board of county commissioners. See *Bach v. Ohio Fuel Gas Company*, 160 Ohio St., 81, (1953), at page 86 and *Kelley v. The Ohio Oil Company*, 57 Ohio St., 317, (1897), See also *Miller v. Vandergrift*, 12 C. C. (N. S.) 475, (1910) and *Hollister v. Vandergrift*, 12 C. C. (N. S.), 586, (1910). In construing the effect of an oil and gas lease the court in the *Hollister case* stated at page 590:

"Now as we have held and has been announced this

morning in the case that has just been decided, *Miller v. Vandergrift*, 12 C. C. N. S. 475, as we construe these instruments *they are to be regarded as sales of the substances of oil under—the surface of the earth—*of the oil or gas that may be found thereunder. The lessee becomes the purchaser of all these substances. As a part of the contract, he is licensed to enter and remove these substances and make return to the owner of the land for a certain proportion of the land thereof.* * *”

(Emphasis added)

In this regard I am not unmindful of Opinion No. 576, Opinions of the Attorney General for 1959, page 302, wherein it was concluded in the syllabus that:

“Under the provisions of Section 1711.31, Revised Code, an agricultural society, being in control of lands belonging to the county, has a right to lease such grounds for any lawful purpose, although not connected in any way with the operations of the society, in holding the county fair, or otherwise; but the rentals arising from such leases are to be retained by the society and used for the maintenance of the fairgrounds and for necessary improvements thereon.”

But that opinion dealt with a lease in the ordinary sense and not a special type of lease such as an oil and gas lease, which in most respects is not a lease at all but has as its ultimate objective the sale of minerals constituting a part of the real estate. Because there is no statutory authority for an agricultural society to sell real estate when title to the fairgrounds is vested in the board of county commissioners, it follows that there is likewise no authority to make an oil and gas lease, for an oil and gas lease is in effect a sale of real estate.

Since the agricultural society can not make a valid gas and oil lease in this situation, it is not entitled to share in the proceeds resulting from a lease validly made.

A board of county commissioners has express authority under Section 307.11, Revised Code, to execute petroleum leases upon county owned lands. This section provides in material part:

“When the county would be benefited, the board of county commissioners may make, execute, and deliver contracts or leases to mine iron ore, stone, coal, petroleum, gas, salt, and other minerals upon lands owned by such

county, to any person, association, or corporation which complies with the terms prescribed by the board as to consideration, rights of way, and occupancy of ground for necessary purposes. All other matters of contract shall be such as the board deems most advantageous to the county.”

I am of the opinion that this statute is authority for the execution of an oil and gas lease of a county owned fairgrounds even though such fairgrounds is occupied by a county agricultural society under Section 1711.31, *supra*. This is not to say that a board of county commissioners may make oil and gas leases which will interfere with the user of the agricultural society. The operation and promotion of county fairs by an agricultural society is pursuant to statute and a board of county commissioners may not curtail such activities. In granting an oil and gas lease, therefore, a board of county commissioners may not encumber such land surface so as to interfere with the control and management of an agricultural society.

In specific answer to your inquiry, it is my opinion and you are accordingly advised that:

1. A county agricultural society occupying a fairgrounds, title to which is in the board of county commissioners, has no authority under Section 1711.31, Revised Code, to lease such fairgrounds for oil and gas exploration and development.

2. Where the fee simple title to a fairgrounds is vested in the board of county commissioners, the board under Section 307.11, Revised Code, has the authority to lease such fairgrounds for oil and gas exploration and development so long as such lease does not interfere with the use of such fairgrounds by an occupying agricultural society.

3. The consideration for an oil and gas lease of a county owned fairgrounds is payable to the county and not to an occupying agricultural society.

Respectfully,

WILLIAM B. SAXBE

Attorney General