

of State Armories, and The Middle States Construction Company, a corporation, Columbus, Ohio. This contract covers the construction and completion of the Ohio State Armory to be erected at Piqua, Ohio, and calls for an expenditure of sixty-three thousand three hundred and eighty-one dollars (\$63,381.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also furnished evidence to the effect that the consent of the Controlling Board to the expenditure has been obtained, as required by Section 11 of House Bill No. 510 of the 88th General Assembly. In addition you have submitted a contract bond, upon which the Fidelity and Casualty Company of New York appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation act have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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2060.

APPROVAL, BONDS OF VILLAGE OF FREDERICKTOWN, KNOX COUNTY, OHIO—\$6,840.66.

COLUMBUS, OHIO, July 7, 1930.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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2061.

FLOOD METHOD—FOR RECOVERY OF OIL—ILLEGAL—METHODS FOR PREVENTION OF PRACTICE AND HOW CRIMINAL PROSECUTION INSTITUTED.

**SYLLABUS:**

1. *By virtue of the provisions of Section 973 of the General Code, the use of the flood method for producing oil in the coal bearing or coal producing townships is prohibited, and by virtue of the provisions of Sections 6311 and 6312, General Code, the flood method used for the production of oil is prohibited as to oil wells outside of the coal bearing or coal producing townships.*

2. *By virtue of the provisions of Section 914 of the General Code, the chief oil inspector may issue any instructions and regulations to deputy oil inspectors to prevent and stop the use of the flood method for the recovery of oil from oil wells in coal*

bearing and coal producing townships, and may institute criminal prosecutions for the violation of the provisions of Section 973 of the General Code.

3. *The Department of Industrial Relations, Division of Mines, may cause to be instituted, under the provisions of Section 6319, General Code, a civil suit for the recovery of a penalty of one thousand dollars by a resident of the state, for violation of Section 6312 of the General Code, when a person, co-partnership or corporation, owning the land or lease upon which the flood method is used, or who is the owner or lessee of land adjoining or adjacent to the land on which such well is located, or is the lessee of any such land under a lease for oil or gas, fails to bring a suit within a reasonable time and to prosecute such suit with all convenient speed, and under the provisions of Section 6319, General Code, the Department of Industrial Relations, Division of Mines, may cause to be instituted by a resident of the state a civil suit for the recovery of a penalty of one hundred dollars for violation of Section 6311 of the General Code.*

COLUMBUS, OHIO, July 7, 1930.

HON. E. W. SMITH, Chief, Division of Mines, Department of Industrial Relations, Columbus, Ohio.

DEAR SIR:—I am in receipt of your letter of recent date in which you request a ruling by me as to the jurisdiction and powers of the Department of Industrial Relations, Division of Mines, with respect to prohibiting the use of the flood method for the recovery of oil from oil fields.

The flood method, as described by you, and as it is generally understood, is a method whereby oil is recovered from oil wells by filling the oil and gas sands with fresh water, which floods or crowds the oil through the sand to another part of the lease and then it is pumped to the surface from wells situated near the pocket where the oil is gathered. This water pressure is furnished by filling the wells to the surface with fresh water.

In your letter you cite portions of Sections 973, 6311 and 6313 of the General Code of Ohio and then you state that these sections plainly prohibit the use of the flood method for oil recovery, and, in view of the fact that this method is already being used in some parts of the state, you are asking me for a ruling with respect to the power of the Department of Industrial Relations to prohibit the continuance of such a method.

It may be that there is some misunderstanding as to whether or not the laws of Ohio prohibit the use of the flood method for the recovery of oil, so, before discussing the powers of the Department of Industrial Relations, Division of Mines, to prohibit the use of such a method, I shall discuss the question of whether or not it is a violation of the statutes of Ohio to use the flood method as described herein for the recovery of oil.

Section 973 of the General Code of Ohio provides in part as follows:

“ \* \* \* When any oil well, gas well or test well is to be abandoned, it must first be plugged in some secure manner above the oil or gas sand or rock formation, either by placing or driving one or more good seasoned wooden plugs \* \* \* so that no gas or oil may escape, or any water or destructive matter force itself into the oil or gas sand, or rock formation. \* \* \* ”

You will observe that this section provides that when any oil well is abandoned, it must be plugged in a secure manner so that no water shall force itself into the oil or gas sand or rock formation. It may be urged that an oil well is not abandoned when its operations are continued by forcing oil from the well by water pressure, that is, by the use of the flood method. The question arises, therefore, at this point as to what the legislature meant by the language “when any oil well is abandoned.”

Keeping in mind that at the time this legislation was enacted the only method used for the recovery of oil was what is known as the pumping method, that is, where the oil is pumped from the well without the introduction of any external pressure, it may therefore be reasonably inferred that when the legislature used the word "abandoned," it meant the cessation of operation of an oil well by the only method it had in mind at the time of the enactment of this legislation, and that is, by the method of pumping the oil.

The question of abandonment of an oil well is one of intention primarily and is to be gathered from the conduct of the parties. It is a well known fact that water is heavier than oil and when it gets into the oil sand it displaces the oil and as soon as any oil well is filled with water it cannot be longer used for producing oil by pumping, for the water has driven the oil away from it. The fact that the operators of the oil well are about to fill the well with water is conclusive evidence that they intend to abandon the well within the meaning of the word "abandon" as used in Section 973 of the General Code. While it is true that Section 973 is a penal statute and must be strictly construed, yet the statute must be given a reasonable construction with the view that the mischief intended may be reached. The purpose of this legislation was to prevent the waste of oil lands, for it is a scientific fact, of which courts will take judicial notice, that water introduced into a well upon geological formations which contain oil will drive the mineral substance therefrom and, perhaps, damage not only the productiveness of the immediate surrounding deposits, but will also damage that of contiguous territory.

Section 973 of the General Code provides that when a well is to be abandoned, it should be plugged to prevent water forcing itself into oil sand and rock formations, and to hold that allowing water to be introduced is a violation, but to wilfully introduce it was not, would defeat the very object and purpose of the legislation intended at the time of the enactment of the same. The fact that the flood method as now used may be so controlled as not to damage the productiveness of contiguous territory can have no bearing upon the construction of the statute, for at the time this legislation was enacted this method was not known to the legislature.

It follows, therefore, that Section 973 of the General Code requires that when an oil well is no longer utilized to produce oil by the pumping method, it is to be plugged, thereby preventing the further use of the well to produce oil by the flood method.

While I have concluded that the provisions of Section 973 of the General Code prohibit the use of the flood method to produce oil, it is to be noted that this section does not apply generally to all oil wells in Ohio. This section appears in the General Code under Chapter 11, under the heading "Chief Inspector of Mines." This chapter begins with Section 898 and ends with Section 978-7 of the General Code. The entire chapter deals with the coal mining industry and provides rules and regulations with reference to the mining industry. Section 914 of the General Code provides that the chief deputy inspector of mines and the gas and oil well inspector should designate the townships in the various coal producing counties of Ohio which shall be considered coal bearing or coal producing townships to be included under the regulations as prescribed in Section 973 of the General Code, relating to the mapping, drilling and abandonment of oil, gas or test wells. It appears from a reading of Section 914 of the General Code and related sections, that Section 973 is only applicable to oil wells in the coal bearing or coal producing townships designated by the chief deputy inspector of mines and the gas and oil well inspector. The statutes which deal generally with oil and gas wells are Sections 6311 to 6319-1, inclusive, of the General Code, which statutes are in Chapter 22 of the General Code under the heading of "Natural Gas, Oil and Mineral Waters."

Section 6311 of the General Code provides in part as follows:

"An owner of land when he drills a well for the production of petroleum oil, \* \* \* before drilling into the oil or gas bearing sand or rock shall incase such well with good and sufficient wrought iron or steel casing so as to exclude all surface water and fresh or salt water, from any part of such well, penetrating the oil or gas bearing sand or rock."

The language of this statute is clear and expresses the intention of the legislature to exclude surface water and fresh and salt water from any part of such oil wells.

Section 6312 of the General Code provides in part as follows:

"The owner or operator of any such well of a depth of more than eighteen hundred (1,800) feet, who intends to abandon or cease operating it, shall, before drawing the casing therefrom, securely fill such well with rock sediment to the top of the oil or gas bearing sand or rock, and shall then cause a wooden plug to be placed upon such rock sediment. \* \* \* "

This statute further provides:

"Wells of less depth than eighteen hundred (1,800) feet shall be filled to a point 200 feet above the oil or gas bearing sand or rock, with sediment," etc.

The word "abandoned", as used in Section 6312, I interpret to mean the same as it is used in Section 973 of the General Code, that is, when the oil well no longer is used to produce oil by the pumping method, it is abandoned within the meaning of the word "abandoned" in this section. It therefore follows that when the pumping method ceases the well must be plugged and therefore no other method, such as the flood method, may be used to produce oil. Having concluded that a proper construction of Sections 973, 6311 and 6312, General Code, prohibits the use of the flood method for the recovery of oil from wells, I come now to a discussion of your specific inquiry as to the power and jurisdiction of the Department of Industrial Relations, Division of Mines, to prohibit the use of the flood method.

Section 914 of the General Code provides in part as follows:

"The oil and gas well inspector shall supervise the granting of permits to drill or abandon a well, the filing and reprinting of maps of oil, gas or test wells, *and see that all the provisions relating to the mapping, drilling and abandonment of such wells are strictly complied with.* In any case where the plugging method as outlined in Section 973 cannot be applied, or if applied, would be found ineffective in carrying out the intended protection, which the law is meant to give, the oil and gas well inspector may designate the method of plugging to be used, in all such cases causing the abandonment report to show the manner in which the work was done.

The oil and gas well inspector shall designate the counties or townships thereof which shall compose the different districts of the respective deputy oil and gas well inspectors, or change such districts whenever in his judgment the best interests of the service so demands. *He shall issue instructions and regulations for the government of the deputy inspectors as will be consistent with the powers and duties vested in them by law, and secure the proper protection which the law intended.* The oil and gas well inspector shall give such personal assistance to the deputy inspectors as they may need and make such personal inspection as he deems necessary throughout all the districts, at any time.

Each deputy oil and gas well inspector shall carry out the instructions of the oil and gas well inspector with reference to the enforcement of the regulations provided in Section 973, *or other regulations that are deemed necessary to insure the protection which this section intends.* Any person, firm or corporation dissatisfied with the ruling of the chief deputy inspector of mines, or the oil and gas well inspector under the provisions of this section shall have the right of appeal to the industrial commission of Ohio within ten days from the date of such ruling." (Italics the writer's.)

It will be observed from a reading of this section that the oil and gas well inspector shall supervise and see that all provisions relating to the abandonment of wells are strictly complied with and that he shall issue instructions and regulations to secure the proper protection that the law intends, and further that each deputy inspector shall carry out the instructions of the oil and gas inspector with reference to the enforcement of the regulations provided in Section 973 of the General Code, and other regulations as are deemed necessary to insure the protection this section intends.

Section 914 makes provision for regulation by the Department of Industrial Relations, Division of Mines, with reference to oil wells in the coal producing and coal bearing townships. However, I am unable to find any statute which authorizes the Department of Industrial Relations, Division of Mines, to regulate oil wells that are located outside of the coal bearing or coal producing townships. However, there are statutes which provide penalties for violations of Sections 973, 6311 and 6312, General Code.

Section 976 of the General Code provides the penalty for the violation of Section 973 of the General Code, which reads as follows:

"Any person, firm or corporation who violates or wilfully refuses or neglects to comply with the provisions of Section 973, shall, upon conviction thereof, be fined not less than one hundred dollars, nor more than five hundred dollars, and for a second or any subsequent offense shall be fined not less than two hundred dollars and not more than one thousand dollars, or imprisoned not less than thirty days nor more than six months, at the discretion of the court. In addition, if the material is pulled out of a well which was not plugged in accordance with the provisions of Section 973, the person, firm or corporation causing such offense may be made to clean out such well and properly plug the same, or pay the entire reasonable cost of such work being done under orders of the industrial commission of Ohio, division of mines, within thirty days."

Section 6319 of the General Code provides the penalty for violation of Sections 6311 and 6312, General Code. Section 6319 provides in part as follows:

"Any person, co-partnership or corporation violating any provisions of Section 6312 shall be liable to a penalty of one thousand dollars, to be recovered, with costs of suit, in a civil action in any court of competent jurisdiction in the county in which the act shall have been committed or omitted. Such suit shall be brought on the relation of any person, co-partnership or corporation owning the land or lease upon which any such well is located or who is the owner or lessee of land adjoining or adjacent to the land on which such well is located or is the lessee of any such lands under a lease for oil or gas. Any such person, co-partnership or corporation failing for a reasonable time to bring such suit after any such violation and to prosecute

the same with all convenient speed, such suit may be brought at the instance of any other resident of this state, but in no case shall the party bringing such suit, be required to give security or be liable for costs. \* \* \*

It will be noted that this part of Section 6319 provides only a penalty for violation of Section 6312. However, the last sentence of Section 6319 provides a penalty for violation of any other provision of the chapter (which contains Section 6311 of the General Code), and therefore provides a penalty for a violation of Section 6311.

The portion of Section 6319 of the General Code which provides a penalty for the violation of Section 6311, is as follows:

“A person, co-partnership or corporation violating any other provision of this chapter shall be liable to a penalty of one hundred dollars, to be recovered, with costs of suit, in a civil action in the name of the state, in the county in which the act was committed or omitted. Such suit may be brought at the instance of a resident of this state without security or liability for costs.”

Therefore, in specific answer to your inquiry, I am of the opinion that:

1. By virtue of the provisions of Section 973 of the General Code, the use of the flood method for producing oil in the coal bearing or coal producing townships is prohibited, and by virtue of the provisions of Sections 6311 and 6312, General Code, the flood method used for the production of oil is prohibited as to oil wells outside of the coal bearing or coal producing townships.

2. By virtue of the provisions of Section 914 of the General Code, the chief oil inspector may issue any instructions and regulations to deputy oil inspectors to prevent and stop the use of the flood method for the recovery of oil from oil wells in coal bearing and coal producing townships, and may institute criminal prosecutions for the violation of the provisions of Section 973 of the General Code.

3. The Department of Industrial Relations, Division of Mines, may cause to be instituted, under the provisions of Section 6319 of the General Code, a civil suit for the recovery of a penalty of one thousand dollars by a resident of the state, for violation of Section 6312 of the General Code, when a person, co-partnership or corporation owning the land or lease upon which the flood method is used, or who is the owner or lessee of land adjoining or adjacent to the land on which such well is located, or is the lessee of any such land under a lease for oil or gas, fails to bring a suit within a reasonable time and to prosecute such suit with all convenient speed, and under the provisions of Section 6319 of the General Code the Department of Industrial Relations, Division of Mines, may cause to be instituted by a resident of the state a civil suit for the recovery of a penalty of one hundred dollars for violation of Section 6311 of the General Code.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

2062.

#### COUNTY EMPLOYEE—SALARY MAY NOT BE GARNISHEED.

##### *SYLLABUS:*

*County officials are not proper parties as garnishees in proceedings in aid of execution to attach money in their-hands due a county employe.*