

784

OIL OR GAS WELL—CHIEF OF THE DIVISION OF MINES—UNDER HIS BROAD POWERS MAY REFUSE TO GRANT PERMISSION TO WITHDRAW CASING FROM AN OIL OR GAS WELL WHEN POLLUTION OF POTABLE WATER WILL RESULT.

SYLLABUS:

The Chief, Division of Mines, under his broad powers may refuse to grant permission to withdraw casing from an oil or gas well when in his opinion a pollution of potable water will result.

Columbus, Ohio, July 28, 1949

Hon. Albert A. Woldman, Director, Department of Industrial Relations
Columbus, Ohio

Dear Sir:

You have recently requested my opinion relative to the powers of the Chief of the Division of Mines, Department of Industrial Relations, under the provisions of Section 898-198 of the General Code of Ohio. Your request reads as follows:

“Will you please give us an opinion on the following Section 898-198, which reads in part:

‘It shall be permissible, with the written consent of the Chief of the Division of Mines, to withdraw such casing in such well, leaving only the tubing and packing therein.’

Question: Can the Chief of the Division of Mines refuse to grant permission to withdraw the casing when he is of the opinion that such withdrawal may result in the contamination of the fresh water in the immediate area where the well is located.?’”

Section 898-4 of the General Code reads as follows:

“The division of mines, department of industrial relations, shall have jurisdiction over all mines, quarries, oil wells and gas wells located in the state of Ohio, and shall exercise such supervision over them and their development and operation as provided by law.”

Section 898-5 of the General Code reads in part as follows:

“The division of mines, in the department of industrial relations, provided for in section 154-6 of the General Code, hereinafter referred to as ‘division’ and ‘department’, respectively, shall enforce and supervise the execution of all laws enacted for the health and safety of persons and the protection and conservation of property within, about, or in connection with mines or mining and quarries, oil and gas wells in this state, and for such purpose shall make, publish and enforce necessary rules and regulations not inconsistent with the mining laws of this state. The division of mines shall be administered by the chief, division of mines, provided for in section 154-6 of the General Code. * * *”

Section 898-29 of the General Code provides in part as follows:

“The laws relating to mines and mining and duties and functions of the division of mines shall be administered by the chief, division of mines, and through and by the various deputy mine inspectors. * * *”

Thus it will be observed that the legislature clearly provided that the Division of Mines shall have jurisdiction over oil wells and gas wells located in the State of Ohio, and such division shall be administered by the Chief, Division of Mines.

Section 898-9 of the General Code, providing for the powers and duties of Chief, Division of Mines, reads in part as follows:

“* * * He shall mail to the owner, lessee or agent of each mine such reports, orders, and other information as required by law or which, in his judgment, may be useful and educational. He shall issue such written orders and permissions as will permit the owner, lessee or agent of a mine to take advantage of the developments of new types of machinery and mining methods as they are developed when demonstrated to his satisfaction by the owner, lessee or agent that they are in the interest of safety and efficiency.”

The quotation just given is not directly in point on the question considered here, as it refers only to mines, but it is set forth for the purpose of showing the overall power and authority intended to be placed in the chief.

Section 898-194 of the General Code reads as follows:

“If any well has passed through a stratum bearing potable water, it shall, when it is abandoned, be plugged in the following manner: the hole shall be bridged fifty feet below all potable water stratum and filled one hundred feet above the bridge with properly prepared clay or rock sediment.”

As we have formerly observed, the crux of the mining laws of Ohio, among other things, is for health and safety as well as for the conservation of natural resources. It is well established that water seeping into deposits of minerals is destructive to them. On the other hand, there can be no question but that potable water is made definitely unpalatable if not unhealthy by polluting it with gas, oil or brine.

For the purpose of brevity I call your attention to Sections 898-191 and 898-192 of the General Code without quoting, which sections provide for the procedure to be followed in connection with the abandonment of wells.

Section 898-193 of the General Code reads as follows:

“Unless written permission is granted by the chief, division of mines, no owner or operator of any oil well or wells shall permit said well or wells to stand without diligently pumping or flowing same for a period of more than ninety days. Upon notice of the chief, division of mines, to any owner or operator of any well or wells that the casing or tubing in such well or wells is leaking fresh or salt water into the oil or gas bearing sand or rock, such owner or operator shall immediately repair such casing or tubing or *abandon and plug such well according to the provisions of this act.*” (Emphasis added.)

Further, Section 898-200 of the General Code reads as follows:

“It shall be the duty of the deputy mine inspectors and the oil and gas well inspectors under the supervision of the chief, division of mines, to see that all the laws relating to the location, drilling and abandonment of oil, gas or test wells are complied with and to obtain the strict enforcement of such laws or other regulations relating thereto.”

It is apparent that the legislature had in mind at least two things in connection with the drilling, abandonment and casing of wells which are, first, to prevent potable water from being contaminated; and, second, to prevent mineral strata from being flooded.

From reading the mining laws I am greatly impressed with the wide field of responsibilities and authority placed upon the Chief, Division of Mines. The administration and enforcement seems to be placed entirely upon the Chief, Division of Mines. The mining laws are written in great detail and they seem to provide that the Chief, Division of Mines, can refuse to allow methods to be used which in his opinion are contrary to the interests of public health and safety.

Therefore, I am of the opinion that the Chief of the Division of Mines is clothed with power and authority to refuse to grant permission to withdraw the casing from a well where in his opinion such withdrawal by leaving the tubing and packing therein would contaminate the fresh water in the immediate area where the well is located.

Respectfully,

HERBERT S. DUFFY,
Attorney General.