....PUBLIC LANDS-:-MINERAL ACT OF 1913....

A person owning an undivided interest (whether of 40, 50, 60 or other per cent) in a tract of land filed on for mineral purposes, under the Mineral Act of 1913, may not file on another maximum acreage, under said Act.

The restriction contained in Section 10 of said Act should be construed so as to limit a person to 1280 or 1000 acres whether owned or controlled solely or by joint ownership or by ownership of corporate stock.

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Hon. J. T. Robison, Com'r
General Land Office,
Austin, Texas.

Dear Sir:

In your letter of May the 21st you refer to Section 10 of the Mineral Act of 1913, which Section is as follows:

> "No person, association of persons, corporate or otherwise, shall hold or own at one time by permit or lease, direct or through assignment, nor hold or own a controlling interest in more than two sections of 640 acres each, more or less, of surveyed school land, University, Asylum or other public land, nor more than 1280 acres of islands, lakes, bays, marshes, reefs, or unsurveyed school, University, or Asylum or other public land in any undeveloped field nor more than one thousand acres within ten miles of any producing oil or gas well."

You desire a construction of the limitation contained in the above section, submitting the following question:

> "Suppose one files on the maximum quantity then sells an undivided 4/10 or 40% interest or sells an undivided half interest or 50%, or sells an undivided 6/10 interest or 60%, can either of such persons so selling then file on another maximum acreage?"

We are of the opinion that the section above referred to should be given a liberal construction to accomplish what we believe to be the purpose of the law and so as to prevent discriminations for which there is no reason.

It is our opinion that it is the purpose of the law to restrict one person to ownership of or control over 1280 acres

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or 1000 acres, as the case may be, whether the person owns the land solely or whether his ownership or interest in it consists of an undivided interest or of ownership of stock in a corporation having the mineral rights in the land: For example: A person who owns an undivided 40% interest in 1280 acres should be permitted in his own name to file on 60% of 1280 acres, or 768 acres. He would thus have ownership or control over the full amount of 1280 acres. If the same person desired to acquire the mineral right in land, not solely, but together with some other person, he could acquire an interest of 60% in another 1280 acres in addition to his 40% interest in the first 1280 acres.

Similarly, a person owning an undivided interest of 50% in 1280 acres should be permitted to acquire in his own name the mineral right in 640 acres, or he should be permitted to acquire a one-half interest in the mineral right to 1280 acres. A person owning an undivided 60% interest in 1280 acres should be permitted to acquire in his own name the mineral right in 512 acres, or he should be permitted to acquire an undivided 40% interest in 1280 acres.

It follows from the foregoing construction that none of the persons named in your letter could file on another maximum acreage, but each of them could file on such additional acreage as above indicated.

Yours very truly,

G. B. Smedley,
Assistant Attorney General.

GBS/FKT

This opinion has been passed upon, approved by this Department in executive session and is now ordered recorded.

B. F. Looney,
Attorney General.

File No. 22-2

Old Miscellaneous ~~County~~

Attny. Genl. Opinion / Min. Rights

Filed Dec 13 19 84

GARRY MAURO, Com'r

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...PUBLIC LAND -:- MINERAL RIGHTS...

Chapter 173, General Laws Thirty-third Legislature.

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AN application for a survey made under Section 4 of the Mineral Act of 1913 does not so fix the status of the land as to prohibit other applications within 90 days from the time of the filing of the first application; and if the first applicant fails to have the land surveyed within the 90 days, a second applicant, whose application was filed before the expiration of the 90 days from the date of the first application, may fix his rights to a permit, provided, the survey is made under his application within the 90 days and the field notes filed in the Land Office, as required by law.

IF a person makes application for the maximum acreage under Section 4 and makes a second application within 90 days from the date of the first application and has the land surveyed, not under the first application, but under the second application, the second application is valid.

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Hon. J. T. Robison, Com'r
General Land Office,
Austin, T e x a s.

Dear Sir:

In your letter of May the 4th, you submit three questions arising out of Chapter 173, General Laws of the Thirty-third Legislature, being what is known as the Mineral Act of 1913. These questions all relate to applications for the purpose of obtaining permits to prospect on unsurveyed public land, submerged land, etc., under Section 4 of the Act.

The first question submitted is whether a second application is valid when made within 90 days from a first application for the same land, the first applicant not having a survey made under his application.

The method prescribed by Section 4 for obtaining the right to prospect for oil or gas on unsurveyed public school

land, submerged land, etc., is as follows: The applicant first files with the county surveyor an application to have the particular tract of land surveyed. The surveyor is required to file and record this application and within 90 days from the time of the filing to survey the land and to deliver to the applicant the field notes and the original application. These papers must then be filed in the General Land Office within 90 days after the time the application was filed with the county surveyor.

By Section 5, it is provided that if upon examination the papers are found to be correct and in compliance with the Act, the applicant shall be entitled to the right to prospect for oil or gas upon the land, and the Commissioner shall issue to the applicant a permit.

This Act contains no provision prohibiting the filing of other applications with the county surveyor within the 90 days. It is to be observed also that the steps by which the right to the permit is acquired are very similar to the steps by which one purchases unsurveyed public school land. In each case the original application for the purpose of obtaining a proper description and correctly defining the land is made to the county surveyor; in each case the field notes made by the county surveyor are required to be made and filed in the General Land Office within a certain time; and in each case the application for the purchase or the permit is filed in the General Land Office and the evidence of the purchase or of the right to prospect, being in the one case the award and in the other the permit, is issued by the Commissioner of the General Land Office. It has been held that the application to the county surveyor for the purpose of purchasing unsurveyed public school land does not fix a right in the land, but that it is merely a preliminary step toward the acquisition of the land which is acquired after the field notes are approved by the Commissioner and the application to purchase is filed in the General Land

Office.

Adair vs. Hays, 72 S.W. 256.

It appears likewise that the application to the county surveyor for the purpose of prospecting for oil on unsurveyed public school land, etc., is but a preliminary step toward the acquisition of the permit and does not fix of itself any right to prospect for oil in the land. The other steps must be taken. It is true, of course, that if the applicant follows up his original application to the county surveyor, has the land surveyed and the field notes filed in the Land Office in the time required by law, he is entitled to the permit; that is, that the first person who makes the application to the county surveyor for the particular land fixes his right to acquire the permit by taking the subsequent steps, but there is no reason why he may not abandon the right thus fixed by failing to take such steps in the time required by law.

We note the suggestion that by filing with the county surveyor an application and failing to have the land surveyed a person may retard the development of the particular area, or that a combination of persons, by filing a series of applications and failing to have the land surveyed, might retard the development of the land. It is perhaps true that other persons might assume that the persons filing such applications were acting in good faith and would have the land surveyed under the rights fixed by them, and this might, in some cases, slightly retard the development of the particular territory, but a third person, not in the combination, could file his application for a survey at any time and could acquire a right to a permit by taking the other steps under the statute, in the event the prior applicant did not take the steps to fix his right. In many cases a contrary holding, that is, a holding that an application for survey would render other applications invalid if made within 90 days, would result also in retarding the devel-

opment of the area, and under such holding a combination of persons, not acting in good faith, would also be able to induce other persons not to file on the land through a series of filings 90 days apart.

We therefore advise you, in response to your first question, that the application by the second application within 90 days from the date of the first application is valid and that if the first applicant does not comply with the law the second applicant by complying with the law may obtain a right to a permit.

Your second question is as follows:

> "A and B file as above stated (that is, B files within 90 days from the date of A's filing) and C also files after the expiration of A's time, but within 90 days after B files. Are B's application and survey superior to C's?"

Replying to this question, we advise you, for the reasons above stated, that in such case B may acquire the right to a permit by having the survey made and otherwise complying with the law, in the event A does not have a survey made and does not comply with the law. If neither A nor B has the land surveyed and otherwise complies with the law, then C, by having his survey made and by complying with the law, may obtain the right to a permit.

Your third question is whether a person who files with the county surveyor, under Section 4, an application for the maximum acreage and does not have a survey made under such application, but within 90 days from its date files a second application, acquires any right by virtue of the second application.

Section 4 of the Act, as amended at the First Called Session of the Thirty-third Legislature, contains the following:

> ". . . Locations and surveys under this section shall not exceed 1280 acres in undeveloped territory and not exceeding 1000 acres within ten miles of a producing gas or oil well. . ."

Section 10 of the Act, as amended by the First Called Ses-

session, is as follows:

> "No person, association of persons, corporate or otherwise, shall hold or own at one time by permit or lease, direct or through assignment, nor hold or own a controlling interest in more than two sections of 640 acres each, more or less, of surveyed school land, University, Asylum or other public land, nor more than 1280 acres of islands, lakes, bays, marshes, reefs or unsurveyed school, University, or Asylum or other public land in any undeveloped field nor more than one thousand acres within ten miles of any producing oil or gas well."

A reading of these two sections of the law shows the purpose of the Legislature that no person or corporation shall obtain or hold the right to prospect for or to take oil or gas from a greater acreage than that prescribed by the law. One application, of course, can not be for more than 1280 acres or 1000 acres, as the case may be, and a person who has obtained a permit or lease covering 1280 acres or 1000 acres nan not obtain a permit or lease on other land.

For the reasons stated in answering your first question, however, we see no reason why the second application by a person who has made application for the maximum acreage, but who has failed to have the land surveyed, is invalid. The making of the second application in such case should be treated as an abandonment of the first application. The law leaves it with the applicant after the survey is made to file the field notes and his application in the Land Office within 100 days from the date of the application, and we know of no reason why the preliminary right acquired by the first application may not be abandoned by the applicant. We therefore advise you that, in the case stated in your letter, the second application would be valid.

Very truly yours,

G. B. Smedley,
Assistant Attorney General.

This opinion has been passed upon, approved by this Department in executive session and is now ordered recorded.

C. M. Cureton,
Acting Attorney General.

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File No. 22 - 1

Old Miscellaneous ~~County~~

Attny. Genl. Opinion / Min. Rights

Filed Dec 13 19 84

GARRY MAURO, Com'r

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