



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

JOHN BEN SHEPPERD
ATTORNEY GENERAL

June 16, 1955

Honorable J. Earl Rudder
Commissioner, General Land Office
State of Texas
Austin, Texas

Letter Opinion No. MS-225

Re: Status of an oil and gas
lease on mineral class-
fied State free school
land on which late pay-
ments of delay rentals were
made in 1943, 1945, and 1946.

Dear Mr. Rudder:

In your request for an opinion of this office,
you state the following:

"On May 25, 1942, T. J. Jefferies,
individually and as agent for the State
of Texas, executed an oil and gas lease
to E. R. Cosby covering 330 acres out of
Section 20, Block 3, H. & T.C. Ry.Co. Sur-
vey, Pecos County. The lease was filed
in the Land Office June 26, 1942, and re-
cites that it was executed to correct an
error in describing property intended to
be conveyed, 'in lease executed by and
between same parties dated May 7, 1942.'

"Paragraph 3 of that lease is the
'unless' clause and provides that, 'if
no well be commenced on said land hereby
leased on or before the 7th day of May
1943, this lease shall terminate as to both
parties unless the lessee on or before that
time shall pay or tender to the lessor as
owner of the soil, or to his credit in the
First State Bank at Monahans, Texas, or its

successors . . . the sum of 82 and 50/100 Dollars and in addition shall pay to the Commissioner of the General Land Office at Austin, Texas, a like sum on or before said date. . . .'

"On April 20, 1943, this office by form letter advised the lessee that the lease contained an 'unless' clause and that such leases are automatically terminated unless the rental is paid on or before the anniversary date of the lease. In that letter the office erroneously advised that such rental would be due May 25, 1943.

"On May 28, 1943, E. R. Cosby forwarded the amount of \$85.00 as rental on the 170 acres of the original lease remaining in his name. By letter dated that same day, the office advised Mr. Cosby that he had forwarded too much rental and returned his check to him with the request that he forward the proper amount of rental by return mail. This amount was received on June 2, 1943, almost a month after the delay rental date.

"A rental payment was timely made in 1944, and on April 18, 1945, the office again sent a form letter to the lessee with regard to the rental payment, erroneously advising that the due date was May 25, 1945. That payment was received on May 8, 1945. Substantially the same thing happened with regard to rental in 1946. Since 1946 all rental payments have been timely made.

"In 1951 production was secured from a part of the land covered by the original lease and has continued to the present time. Royalty payments have been made both to the surface owner and to the State of Texas.

"On September 3, 1949, an agreement with regard to the lease was entered into by and between Sinclair Oil and Gas Company, R. E.

Alexander (both of whom had succeeded to the rights of the original lessee in parts of the lease), and T. J. Jefferies, the surface owner. The last paragraph of that agreement provides in part,

"The undersigned Party of the Third Part, T. J. Jefferies, does hereby ratify and confirm the aforementioned oil and gas mining lease as in full force and effect, embracing all of the land described thereby and particularly ratifies and confirms unto Party of the First Part, Sinclair Oil and Gas Company, said lease insofar as the same embraces the lands set forth in paragraph first hereof, described according to provisions of paragraph third hereof; and particularly ratifies and confirms said lease unto Party of the Second Part herein as embracing all of the land set forth in paragraph second hereof, . . ."

"A certified copy of that agreement was filed in the Land Office December 21, 1949.

"The question upon which your opinion is desired is, briefly stated, assuming that all other provisions of the lease and the law have been complied with, whether or not the subject lease is in full force and effect in view of the late rental payments in 1943, 1945 and 1946, and in view of the further fact that the lease contains an 'unless' clause."

It is well settled in Texas that the "unless" clause in an oil and gas lease is not an optional forfeiture provision, but a clause of limitation which, unless strictly complied with by the lessee, ipso facto terminates the estate. W. T. Waggoner Estate v. The Sigler Oil Company, 118 Tex. 509, 19 S.W.2d 27 (1949); Humble Oil & Refining Co. v. Davis, 296 S.W. 285 (Com.App. 1927); Summers, The Law of Oil and Gas §452 (2d Ed.1938). However, in leases between private parties, the Texas courts have held under various situations where there has been a late

payment made of delay rental, that a lessor may be estopped to assert a termination of the oil and gas lease. But estoppel does not apply here. The cases of Fannin County v. Riddle, 51 Tex. 360 (1879); Day Land and Cattle Co. v. State, 68 Tex. 526, 4 S.W. 865 (1887); Saunders v. Hart, 57 Tex. 8 (1882); Weatherly v. Jackson, 123 Tex. 213, 71 S.W.2d 259 (1934); Humble Oil & Refg. Co. v. State, 162 S.W.2d 119 (Tex.Civ.App.1942, writ ref.) stand for the proposition that the State holds public school lands in trust for the benefit of the State and administers them in its sovereign capacity and that the acts and conduct of its officers and agents cannot estop it in a case such as the instant one.

As to private individuals terminated leases may be revived. Grissom v. Anderson, 125 Tex. 26, 79 S.W. 2d 619 (1935); Humble Oil & Refg. Co. v. Clark, 126 Tex. 262, 87 S.W.2d 471 (Tex.Com.App.1935); Loeffler v. King, 149 Tex. 626, 236 S.W. 2d 772 (1951). We are of the opinion that the principle above announced would extend to and likewise apply to the facts of the instant case. In any event it would seem that the agreement entered into by Sinclair Oil & Gas Company, R. E. Alexander, and T. J. Jefferies, the surface owner, on September 3, 1949, was in effect the execution of a new lease that was duly filed in the General Land Office December 21, 1949.

We, therefore, are of the opinion that the subject lease is in full force and effect as of December 21, 1949. We limit this opinion to the specific facts in this case.

Yours very truly,

JOHN BEN SHEPPERD
Attorney General

By Milton Richardson
Assistant

APPROVED:

J. Arthur Sandlin
Reviewer

Robert S. Trotti
First Assistant

MR:bt