



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

June 27, 1958

This Opinion
Overrules Opinion

* *WW-458*

(N)

Honorable Robert S. Calvert
Comptroller of Public Accounts
Capitol Station
Austin, Texas

Opinion No. WW-458A

Re: Whether or not an interest owned by the Federal Land Bank of Houston, in production of oil, is subject to the production tax provided for by Article 7057a, V.C.S. and the regulation pipe line tax provided for by Article 6032, V.C.S.

Dear Mr. Calvert:

Opinion No. WW-458, dated June 19, 1958, on the above-captioned matter, is withdrawn and the following opinion substituted therefor.

You submit the following question:

Whether or not an interest owned by the Federal Land Bank of Houston, in production of oil, is subject to the production tax provided for by Article 7057a, Vernon's Civil Statutes, and the regulation pipe line tax provided for by Article 6032, V.C.S.

You advise us that the royalty interest here involved was reserved by the Federal Land Bank in the sale of property which it had acquired by foreclosure.

The answer to your question depends upon the construction that should be given to certain Federal statutes pertaining to taxation and exemptions therefrom and the powers conferred upon Federal Land Banks by Congress. For example, Section 931, Volume 12 of the United States Code Annotated deals with their taxation. It is as follows:

"Every Federal land bank and every national farm loan association, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from Federal, State, municipal, and local taxation, except taxes upon real estate held, purchased, or taken by said bank or association under the provisions of sec-

tions 761 and 781 of this title. First mortgages executed to Federal land banks, or to joint stock land banks, and farm loan bonds issued under the provisions of this chapter, shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation. July 17, 1916, c. 245 § 26, 39 Stat. 380."

This provision of the Federal law is broad enough to cover exemptions from all forms of taxation except that upon real property, which it specifically permits. Of course, the oil production tax and the pipe line regulation tax are not ad valorem taxes upon real property, but are in the nature of excise and occupation taxes. The Supreme Court of the United States in the case of Federal Land Bank of New Orleans v. Crosland, Ala. 1923, 43 S.Ct. 385, 261 U.S. 374, 67 L.Ed. 73, 29 A.L.R. 1, holds that Section 931, quoted above, must prevail over any inconsistent laws of a state. We do not consider the phrase "including the capital and reserve or surplus therein and the income derived therefrom" as a limitation upon "Every Federal land bank and every national farm loan association" so as to restrict the exemption to "capital and reserve or surplus therein and the income derived therefrom." Even if we were to construe "capital and reserve or surplus and income derived therefrom" as constituting the extent of Federal immunity from taxation, exclusive of real estate which is taxable, it may reasonably be said that the exemption still applies, for this oil interest no doubt constitutes a part of the reserve or surplus of the bank or income derived therefrom.

Therefore, unless we are prepared to hold that the Federal Land Bank holds this royalty in violation of other provisions of the Federal Land Bank Act, such for example as Sections 781 and 791, we must hold the bank exempt from these taxes.

Section 781 provides in part as follows:

"But no such bank shall hold title and possession of any real estate purchased or acquired to secure any debt due to it, for a longer period than five years, except with the special approval of the Farm Credit Administration in writing."

Section 791 provides in part as follows:

"No Federal land bank shall have power to accept deposits of current funds payable upon demand except from its own stockholders, or to transact any bank-

ing or other business not expressly authorized by the provisions of this subchapter."

These we shall now discuss briefly.

There are no Texas cases in point but two from other jurisdictions which we feel impelled to follow. In the case of Federal Land Bank of New Orleans v. Cooper, 190 Miss. 490, 200 Southern 729 the Court said:

". . . After the appellant acquired title to the land, it had the right to sell it without the minerals therein to one and the minerals to another, either contemporaneously or at different times. This we do not understand counsel for the appellees to controvert, but they say that the purpose for which the appellant was organized was to 'set up a rural credit system by which credit, not adequately provided by commercial banks, should be extended to those engaged in agriculture, upon the security of farm mortgages' (Federal Land Bank v. Gaines, 290 U.S. 247, 54 S.Ct. 168, 169, 78 L.Ed. 298); that Section 791 of the Farm Loan Act prohibits it from transacting 'any banking or other business not expressly authorized by the provisions of this sub-chapter' (*italics ours*), and that the exception in this deed is pursuant to a policy adopted by the bank of placing similar exceptions in all of the deeds conveying land owned by it for the purpose of engaging 'in the mineral or oil and gas business' -- a business not authorized by the appellant's charter, but in which it is prohibited from engaging. . . .

"As hereinbefore said, the appellant had the right to reserve the minerals in this land when selling it, and to thereafter sell them. Should it go further than this and enter actively into the mineral, oil and gas business, its right so to do will be for determination when but not until it is challenged either by the Government from which it received its charter, or by someone injured thereby, and who has the right so to do."

The case of Lively v. Federal Land Bank et al 176 S.W. 2d 264 (Court of Appeals of Kentucky, the highest Court of that state) holds substantially the same in this language:

". . . While it is the general rule in this jurisdiction that private corporations may not own real estate, except what is necessary in the operation of its business, for more than five years, but we do not think this

is applicable to appellee bank which is governed by the law creating such institutions and defining its rights and authority. . . .

". . .

". . . 'However, retention of such minerals and mineral rights for periods in excess of five years when in the Bank's opinion it is in the Bank's interest to do so, had the approval of the Farm Credit Administration.' The Manual referred to contains the rules and regulations governing the operation of such banks which the Farm Credit Administration is authorized to make by 12 U.S.C.A. § 665. It appears from this authority and the evidence produced that the bank had the right and power to retain an interest in the oil and gas and that the reservation or exception contained in the deed was valid."

These rules and regulations seem to be general, and apparently apply to the Houston Land Bank.

(N) A denial by the State of immunity from taxation of a Federal agency incorporated by Congress, such as a Federal land bank, is not in our view such a challenge of its corporate powers under its charter as was in the mind of the Court in the two cases referred to above. Rather, we think the challenge must be a direct action by the State or some affirmative action by the Federal government from which the bank received its charter. Until this is successfully done, we are constrained to hold that the Federal Land Bank of Houston is exempt from the taxes here in question. The royalty is subject to ad valorem taxes as real property by the expressed sanction of Congress and this we assume is not questioned.

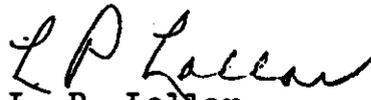
SUMMARY

The Houston Federal Land Bank is exempt from the oil production tax and the regulation pipe line tax provided in Article 7057a and 6032, V.C.S., respectively. The royalty owned by the bank is real property and is taxable as such by the expressed consent of Congress, but the oil production tax and the oil pipe line regulation tax are excise or occupation taxes and, as such, are exempt from the State taxes here involved under Section 931, Volume 12 of the United States Code Annotated.

Honorable Robert S. Calvert, page 5, Opinion No. WW-458A

Yours very truly,

WILL WILSON
Attorney General of Texas

By 
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LPL:db

APPROVED:

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REVIEWED FOR THE ATTORNEY GENERAL

By: W. V. Geppert