Opinion No. 57

**State Lands —
Oil and Gas — Royalties**

HELD: The State Board of Land Commissioners may not enter into any agreement which diminishes the amount to be paid for royalty oil produced from state school lands below the posted field price existing on the day the oil is run into a pipe line or storage tank as required by Section 81-1704, R.C.M., 1947.

January 10, 1956

State Board of Land Commissioners
State Capitol Building
Helena, Montana

Gentlemen:

You have requested my opinion whether the State may enter into an agreement, known as a Division Order, by which the amount of royalty payable to the State of Montana on oil produced from State school lands will be reduced by the amount of trucking charges incurred in carrying the oil to the nearest rail or pipeline terminal.

Paragraph 6 of the State of Montana Oil and Gas lease provides for payment in cash for the State's royalty oil at the prevailing posted field price on the day that the oil is run into the tanks.

"The lessee shall pay to the lessor in cash for such royalty oil and gas at the rate of the posted field price therefor existing on the day such oil or gas was run into any pipe line or storage tank to the credit of the lessee plus any bonus or other increase in price actually paid or agreed to be paid to the lessee; . . ."

This term of the lease is taken directly from Section 81-1704, R.C.M., 1947, which provides:

"The lessee shall pay to the state, in cash, for all oil and gas royalty reserved, the posted field price existing on the day such oil or gas is run into any pipe line or storage tank to the credit of the lessee, plus any bonus actually paid, or agreed to be paid, to the lessee, for such oil or gas; . . ."

The statute is clear and unambiguous. There can be no dispute as to its terms. The lease contract, standing alone, could be modified by action of the State Board of Land Commissioners at the request of the lessee. The statute, however, is an explicit direction specifying how much must be paid for the oil, and this cannot be diminished by agreement between the Board and the lessee.

The Constitution of the State requires that the State Board of Land Commissioners " . . . increase and protect by all honorable means the funds for support of the educational institutions. . . . " (State ex rel. Gravely vs. Stewart, 48 Mont. 347, 137 Pac. 854). The statute is clearly aimed at carrying out this constitutional mandate.

It is therefore my opinion that the State Board of Land Commissioners may not enter into any agreement which diminishes the amount to be paid for royalty oil produced from State school lands below the posted field price existing on the day the oil is run into a pine line or storage tank as required by Section 81-1704, R.C.M., 1947.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.