

Oil and Gas Leases — Renewals — Advertising — State Board of Land Commissioners.

At the expiration of a non-producing oil and gas lease the state board of land commissioners must advertise the land for re-leasing. The authority given to the state board of land commissioners to advertise land for re-leasing at the expiration of an oil and gas lease is a grant of power to the board and not the grant of a discretion as to its exercise.

Mr. I. M. Brandjord,
State Land Commissioner,
Helena, Montana.

August 23, 1932.

My dear Mr. Brandjord:

You have submitted to this office an application by Raymond Hildebrand of Glendive, Montana for renewal of a non-producing oil and gas lease issued under the provisions of chapter 108 of the session laws of 1927. This lease issued for a five year period will soon expire by reason of the termination of the five year period. You state that the provisions for the renewal of a lease expiring five years from the date of issue by reason of non-production are not full and explicit. The last part of section 2 of this chapter reads as follows:

“All leases issued hereunder shall be granted for a period not exceeding five (5) years and as long thereafter, during a term of fifteen (15) years commencing with the date of such lease or leases, as oil or gas of commercial quality and in commercial quantity shall be produced from the land covered thereby; provided, however, that all drilling, rental and other obligations are fully kept and performed by the lessee.”

The question you wish answered is in what manner may new leases be issued if the holder of the original lease should want to continue to lease the land. You call attention to the provisions of section 1 of this chapter which provides that,

“The State Board of Land Commissioners is hereby authorized and empowered to lease in such manner as it may determine, not inconsistent with the Enabling Act and the Constitution, any state lands to which the title has vested in the State and in which the oil and gas rights are not reserved by the United States, for prospecting and exploring for oil and gas, mining, drilling, developing and removing the same. * * *”

This Section gives to the board a discretion as to the manner of disposing of these lands whether by advertising or otherwise and would, of course, control in the absence of any specific provision limiting or defining the manner of disposition.

Section 15 of the same chapter provides as follows:

“The Board at the expiration of any lease granted under the terms of this Act is authorized to advertise the land held

thereunder for releasing and to lease the same to the highest responsible bidder therefor at public auction; provided, however, that any person, association, firm or corporation who held such lease at the expiration thereof on any such land shall have the privilege of re-leasing the same at such highest responsible bid offered therefor, upon such terms and conditions as may be prescribed by the said Board or by the Legislative Assembly; and the Board shall have the privilege of rejecting any and all bids."

This section by its terms applies only at the expiration of the term of the lease. It does not apply to a lease surrendered or relinquished under section 18 of chapter 108 or leases cancelled for any reason.

Another question under this section (section 15) is whether the language "the Board at the expiration of any lease * * * is authorized to advertise the land held thereunder for re-leasing" gives to the board a discretion as to advertising. In my opinion, this language was intended to grant a power and not to grant a discretion as to the exercise of a power. The preceding section (section 14) is similarly worded. It is to the effect that "The State Board of Land Commissioners is hereby authorized to correct errors of any kind in leases, conveyances or other instruments in writing issued pursuant to the terms hereof and to cause any and all moneys erroneously paid to the State under oil and gas leases, applications therefor, or lands and the products thereof covered thereby, to be refunded to the person or persons entitled thereto from the proper fund." Yet no one would contend that the board had any discretion as to correction of errors or refunding of money in a proper case under this section. It is a grant of power without any discretion as to its exercise and the same is true of section 15.

The purpose of section 15 is to give notice to the public that the oil or gas lease has terminated and is open for re-leasing to the highest responsible bidder. It might be contended that the lease could be surrendered under the provisions of section 18 and renewed without advertising. However, in such case the party surrendering it would not have the option or privilege of re-leasing it at the highest responsible bid offered therefor.

It is therefore my opinion that the state board of land commissioners is required to advertise the leases which have expired by their own terms, whether producing or non-producing, before a release can be granted to the original holder or to any other person.

Very truly yours,

L. A. FOOT,

Attorney General.