

No. 216

CORPORATIONS—OIL AND GAS LEASES—
REAL ESTATE

Held: Oil and gas leases constitute "real estate" under Section 5909, Revised Codes of Montana, 1935, providing corporations purchasing or holding real estate in any County must file authenticated copy of charter or articles of incorporation in county where real estate held.

August 21, 1941.

Honorable Sam W. Mitchell
Secretary of State
State Capitol
Helena, Montana

Dear Mr. Mitchell:

Section 5909 of the Revised Codes of Montana, 1935, requires a corporation to file an authenticated copy of its charter or articles of incorporation in the office of the county clerk of each county in which the corporation purchases or holds real estate.

Your inquiry is:

"Are oil and gas leases real estate within the meaning of Section 5909?"

The question must be answered in the affirmative. Not only has our Supreme Court held a leasehold interest in land generally is real estate (*Standard Oil Company v. Idaho Community Oil Co.*, 98 Mont. 131, 37 Pac. (2nd) 660; *Rider v. Cooney*, 94 Mont. 295, 23 Pac. (2nd) 261) but specifically that an ordinary oil and gas lease constitutes real estate. (*Willard v. Federal Surety Co.*, 91 Mont. 465, 8 Pac. (2nd) 633). The basis for the latter decision is, in part:

"Real or immovable property consists of: 1. Land; 2. That which is affixed to land; 3. That which is incidental, or appurtenant to land; 4. That which is immovable by law.' (Id., sec. 6667). 'The word 'property' includes property real and personal' and the term 'real property' is 'co-extensive with lands, tenements, hereditaments and possessory title to public lands;' and 'the words 'personal property' include money, goods, chattels, things in action and evidence of debt.' (Sec. 16, Id.) 'The term 'real estate' includes: . . . 'All mines, minerals, and quarries in and under the land, . . . and all rights and privileges appertaining thereto,' (Id., sec. 1996.) 'Estates of inheritance and for life are called estates of freehold; estates for years are chattels real; and estates at will are chattel interests, but are not liable as such to sale on execution.' (Id., sec. 6727.) And upon execution sale a leasehold interest in lands is treated as real estate. (Id., sec. 9441; *Wheeler v. McIntyre*, 55 Mont. 295, 175 Pac. 892.) Such leases have, in statutes enacted having special applicability to them, been treated by our lawmakers as an interest in real estate. Sections 8375 to 8377, inclusive, of the Revised Codes of 1921, with amendments (Laws 1923, Chap. 152), pertain to labor and materialmen's liens on oil and gas-wells and pipe-lines."

While *Willard v. Federal Surety Co.*, supra, did not involve the precise statute under consideration and dealt with an attachment statute, the general principle enunciated therein as to the status of oil and gas leases must govern.

Sincerely yours,

JOHN W. BONNER
Attorney General