

## No. 304

**COUNTIES, leasing land for oil and gas—COUNTY COMMISSIONERS—OIL AND GAS LEASES, validation of county—VALIDATING STATUTES, constitutionality of**

**Held:** Oil and gas leases made by counties before the enactment of Chapter 171 of the Laws of 1941, Section 7 of which validates oil and gas leases theretofore made covering tax deed land, are as valid as any oil and gas lease which may be entered into by counties subsequent to the approval of said Chapter and the validating portion of said act (Section 7) is constitutional.

December 1, 1941.

Mr. David N. Nyquist  
County Attorney  
Daniels County  
Scobey, Montana

My dear Mr. Nyquist:

Reference is made to your recent letter asking the opinion of this office on the following state of facts:

Prior to the approval of Chapter 171 of the Laws of 1941, which, among other things, authorizes counties to enter into oil and gas leases with respect to county tax deed lands, Daniels County entered into oil and gas leases with respect to such lands. Section 7 of Chapter 171 of the Laws of 1941 is a validating provision purporting to validate and legalize oil and gas leases entered into before the passage of the said Act. Your question is whether the old leases should be allowed to stand as validated by the enactment of Chapter 171 of the Laws of 1941 or whether new oil and gas leases should be entered into under the authority of said Chapter 171 before actual operations are commenced for oil and gas development.

Counties and county commissioners can exercise only those powers expressly conferred by statute, and those of necessity implied; and where there is a reasonable doubt as to the existence of a particular power, it must be resolved against it. (*Yellowstone Packing Company v. Hays*, 83 Mont. 1, 268 Pac. 555. See also *Judith Basin County v. Livingston*, 89 Mont. 438, 442, 298 Pac. 356; *Ainsworth v. McKay*, 55 Mont. 270, 273, 175 Pac. 887; *State ex rel. Gillett v. Cronin*, 41 Mont. 293, 109 Pac. 144.) It was apparently in view of a possible doubt as to the authority of counties and county commissioners to enter into oil and gas leases that the legislature passed the validating part of Chapter 171 of the Laws of 1941.

If the legislature has the constitutional power to authorize counties and county boards to enter into oil and gas leases—and we assume it has—then it has the power to validate such contracts entered into prior to the enactment of a validating statute. If the existing oil and gas leases were not valid when made, which we need not decide, still the law is that a statute may not be declared unconstitutional on the ground that it gives binding force to a voluntary agreement void or unenforceable when made. (12 C. J. 1060.) The legislature may validate retrospectively any proceeding which it might have authorized in advance. Statutes curing defects in acts done, or authorizing or confirming exercise of powers, are valid where the legislature originally had authority to confer the powers or authorize the act. (16 C. J. S. Constitutional Law, sec. 422, page 876.) Similarly, it has been held county bonds issued without authority may be validated by a curative statute. (15 C. J. 627.) The legislature may, by curative statute, validate acts and proceedings of municipal and quasi-

municipal corporations which are invalid because in excess of authority conferred by law, if it could have originally authorized such acts and proceedings. (16 C. J. S. Constitutional Law, sec. 428, page 879.)

The Montana Supreme Court has followed these principles, declaring the legislature has authority to validate past acts. In *Weber v. City of Helena et al.*, 89 Mont. 109, 138, 297 Pac. 455, a bond validating act was under consideration. The court stated, in part, as follows, citing other Montana cases:

"The control of remedies, exercised by the enactment of laws to cure defects in previous statutes or to supply former omissions and legalize past acts, is one of the most essential of legislative powers. \* \* \*

"In the absence of special constitutional restrictions the competency of the legislature to enact retrospective statutes to validate an irregular or defective execution of a power by municipal corporations is undoubted. (Dillon on Municipal Corporations, 5th sc., sec. 948.)"

With respect to the constitutionality of the validating statute we must bear in mind, in addition to the authorities cited, the rule that every statute enacted by the legislature is presumed to be the result of the exercise of its constitutional right to enact it, and every reasonable doubt must be resolved in favor of legislative action. (*State ex rel. Diedrichs v. State Highway Commission*, 89 Mont. 205, 296 Pac. 1033; *State ex rel. Toomey v. State Board of Examiners*, 74 Mont. 1, 238 Pac. 316; *Hill v. Rae*, 52 Mont. 378, 158 Pac. 826, Ann. Cas. 1917E 210, L. R. A. 1917 A 495; *Weber v. City of Helena*, supra; *State ex rel. City of Missoula v. Holmes*, 100 Mont. 256, 47 Pac. (2nd) 624.)

It is my opinion the oil and gas leases made by counties before the enactment of Chapter 171 of the Laws of 1941, Section 7 of which validates oil and gas leases theretofore made covering tax deed lands, are as valid as any oil and gas lease which might be entered into by counties subsequent to the approval of said Chapter and the validating portion of said act (Section 7) is constitutional.

Sincerely yours,

JOHN W. BONNER  
Attorney General