

The questions arise: May the county, by and through its board of county commissioners, lease this $6\frac{1}{4}$ per cent royalty? May it lease the land bearing the royalty interest? May it join in a lease of the land with the purchaser thereof?

In answering your inquiry, it is well to consider Chapter 63, Laws of 1937, which reads as follows:

"The deed hereafter issued under this or any other law of this state shall convey to the grantee the absolute title to the lands described therein as of the date of the expiration of the period for redemption, free of all encumbrances and clear of any and all claims of said defendants to said action except the lien for taxes which may have attached subsequent to the sale and the lien of any special, local improvement, irrigation and drainage assessments levied against the property payable after the execution of said deed, and except when the land is owned by the United States or this state, in which case it is prima facie evidence of the right of possession accrued as of the date of expiration of such period for redemption."

The foregoing describes the effect of and the kind of a deed issued by the county, with the exception that the same is modified by the terms of Section 2, Chapter 171, Laws of 1941.

When a sale is made by the county on terms, the purchaser and county agree that, upon full payment by the purchaser, the county will execute and deliver to him such a deed as modified by said Chapter 171.

It is further to be noted that Section 2, Chapter 171, Laws of 1941, grants the authority to the board of county commissioners to reserve to the county not to exceed $6\frac{1}{4}$ per cent royalty interest in the oil, gas, and minerals produced and saved from said land. When a deed has been issued by the county with said reservation, all the county has is an expectancy in oil, gas and minerals to the extent of $6\frac{1}{4}$ per cent royalty interest when oil, gas and minerals or either of them are produced and saved from such land. This royalty interest is personal property and is not an interest in the land; the purchaser from the county under such deed owns all of the oil, gas and

Opinion No. 137.

**Lands—Oil, Gas and Mineral Rights—
Royalty and Interest—Interest and
Royalty—Tax Deed Lands—Rights,
Oil, Gas and Mineral.**

Held: When the owner of lands which include the oil, gas, and or minerals, leases such lands and when production is secured and saved from such lands, the county is entitled to the $6\frac{1}{4}$ per cent royalty interest in all oil, gas and minerals produced and saved from said lands.

March 21, 1946.

Mr. Robert E. Purcell
County Attorney
Garfield County
Jordan, Montana

Dear Mr. Purcell:

You have asked for my opinion on the following facts which you have given to me:

Garfield County has sold tax deed lands and issued deeds therefor. The county has also sold tax deed lands on contract, which contracts are still in force as the purchasers have not paid the purchase price in full as yet. In the deeds issued by the county for such lands, and in the contracts now outstanding, the following reservation appears:

"There is hereby reserved to the grantor, its successors and assigns, a royalty interest of $6\frac{1}{4}$ per cent of all oil, gas and minerals recovered and saved from said land . . ."

minerals in place; the county has no interest in the land nor in the minerals in place.

When the county sells such tax deed lands on terms with such reservation, the purchaser acquires the equitable title to the lands and everything in and upon it, together with full possession thereof, so long as he fulfills his part of the contract. The county retains the bare legal title which must be conveyed upon the completion of the contract by the purchaser. (First National Bank of Galata v. Montana Emporium Co., 59 Mont. 584, 592; 197 Pac. 994..)

The meaning of the word "royalty" or "royalty interest" has been before our Supreme Court many times. In the case of Rist v. Toole County (Mont.), 159 Pac. (2d) 340, 342, the court said:

"This court long ago adopted the standard and universal definition of royalty. In *Hinerman v. Baldwin*, 67 Mont. 417, 215 Pac. 1103, 1108, it said: 'The word has a very well understood and definite meaning in mining and oil operations. As thus used, it means a share of the produce or profit paid to the owner of the property.'"

Again the court said, at page 343:

"'Royalty' is that part of oil and gas payable to the lessor by the lessee out of oil and gas produced. It is sometimes referred to as part of the compensation to the title owner for the privilege of exploring, developing and producing oil and gas from the tract."

The court repeated the same definition in *Homestake Exploration Corporation v. Schoregge*, 81 Mont. 604, 264 Pac. 388, 391, and said:

". . . The general rule is that: 'Both petroleum and gas, as long as they remain in the ground, are a part of the realty. They belong to the owner of the land, and are a part of it as long as they are on it or in it, or subject to his control.' *Gas Products Co. v. Rankin*, 63 Mont. 372, 207 Pac. 993 . . ."

In *Rist v. Toole County*, 159 Pac. (2d) 340, 343, the court said:

"The owner of the fee has the same title to the oil and gas in place

which characterizes the ownership of solid minerals in like circumstances, but by his lease, regardless of the form of the granting clause, he does not intend to convey the oil and gas in place or any interest therein . . ."

It should be kept in mind that there is a vast difference between a royalty interest and a mineral deed as differentiated in the last mentioned decision.

From the provisions of Section 2, Chapter 171, Laws of 1941, and from the foregoing decisions of our Supreme Court, it appears, and it is my opinion that such a royalty as is reserved by the county in the lands does not come into being until oil, gas and minerals or either of them are produced and saved from such lands, and is a personal property interest; that the county may not lease or assign its royalty interest in such lands nor does the county have a leasable interest in such lands. Consequently my answer to each of your questions is in the negative.

The grantee in such deeded lands is the owner of all oil, gas and minerals in place in said lands, and the vendee in such lands bought from the county on terms is the holder and owner of the equitable title of such lands, and the oil, gas and minerals in place in or on said lands so long as he fulfills his part of the contract, the county holding the bare legal title thereto until the terms of the contract are fully complied with.

When the owner of lands which include the oil, gas, and/or minerals, leases such lands, and when production is secured and saved from such lands, the county is entitled to the 6¼ per cent royalty interest in all oil, gas and minerals produced and saved from said lands.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General