

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 39

OPINION NO. 79

COUNTY COMMISSIONERS - Appraisal of land before sale;  
MINES AND MINERALS - Nature of county's mineral  
interests;  
ROYALTY - Nature of county's royalty interest in land;  
MONTANA CODE ANNOTATED - Sections 7-8-2513, 70-15-102.

HELD: The requirements of an independent appraisal  
of land in section 7-8-2513, MCA, apply to  
mineral interests but not to royalty  
interests.

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27 December 1982

Donald Ranstrom, Esq.  
Blaine County Attorney  
Blaine County Courthouse  
Chinook, Montana 59523

Dear Mr. Ranstrom:

You have requested my opinion on the following question:

Do the provisions of section 7-8-2513, MCA, which require the county commissioners to obtain an independent appraisal of county lands before such lands may be sold or leased, apply to mineral or royalty interests owned by the county?

Your letter indicates that in some cases the county does not own the surface interest of certain lands, but rather has acquired or reserved a subsurface interest, either in the form of a mineral interest or a royalty interest.

Part 25 of Title 7, chapter 8, MCA, authorizes a board of county commissioners to classify county lands for retention or disposal so that the lands may be used in the best interests of the county. An examination of the legislative history of part 25 indicates that its purpose was to make clear that counties were not required to sell lands acquired through tax proceedings merely because an offer to purchase was made. County commissioners could instead choose to retain lands (whether tax-deed lands or not) in whole or in part, for the benefit of the public.

Section 7-8-2513, MCA, requires that before the county commissioners may sell or lease the classified lands, they must seek an independent appraisal to determine the value of such lands. It is not clear from the language of section 7-8-2513, MCA, whether the words "such lands" indicate anything other than lands owned by the county in fee simple absolute, i.e., whether mineral or royalty interests are covered. The available legislative history does not explain the scope of this section in particular. A review of the statute in its entirety seems to support the argument that those lands required to be appraised under section 7-8-2513, MCA, include

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lands in which the county has mineral interests, since subsurface interests are encompassed in the concept of "land" found in other sections of part 25, namely sections 7-8-2503(2) and 7-8-2504(2), MCA.

Montana property law defines "land" as "the solid material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock, or other substance." § 70-15-102, MCA. The case law interprets "land" to include minerals so long as they remain in the ground, but once the minerals are produced on the surface they become personal property. See Gas Products Co. v. Rankin, 63 Mont. 372, 393, 207 P. 993, 998 (1922); and Texas Pacific Coal and Oil Co. v. State, 125 Mont. 258, 260, 234 P.2d 452, 453 (1951). Thus, in order to determine the meaning of "land" as used in section 7-8-2513, MCA, it is necessary to understand the nature of mineral interests and royalty interests.

The holder of a mineral interest has a possessory interest in the land, and that interest may be segregated from the rest of the fee simple title. Rist v. Toole County, 117 Mont. 426, 432, 159 P.2d 340, 342 (1945); Stokes v. Tutvet, 134 Mont. 250, 256, 328 P.2d 1096, 1099 (1958). The nature of a mineral interest is such that its owner has the right to sell or lease all or a part of it, the right to explore and develop it, and the right to participate in bonus and delay rental payments. 1 Williams and Meyers, Oil and Gas Law § 301 (1981). Unlike a mineral interest, a royalty interest does not convey the right to go on the property, nor does a royalty owner have the right to explore or develop the land. The holder of a royalty interest simply shares in the profit from production paid to the owner of the property, if and when the minerals are obtained and produced. It is quite different from a share or interest in the property itself. Stokes v. Tutvet, 134 Mont. at 257. And see Smith v. Musselshell County, 155 Mont. 376, 472 P.2d 878 (1970).

The above-mentioned sources lead to the conclusion that a mineral interest is an interest in the land, while a royalty interest is more closely akin to personal property.

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THEREFORE, IT IS MY OPINION:

The requirements of an independent appraisal of land in section 7-8-2513, MCA, apply to mineral interests but not to royalty interests.

Very truly yours,

MIKE GREELY  
Attorney General