

Louisiana Law Review

Volume 17 | Number 1
Survey of 1956 Louisiana Legislation
December 1956

Legislation Affecting Mineral Rights

Victor A. Sachse

Repository Citation

Victor A. Sachse, *Legislation Affecting Mineral Rights*, 17 La. L. Rev. (1956)
Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol17/iss1/21>

This Article is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Louisiana Law Review by an authorized editor of LSU Law Digital Commons. For more information, please contact kreed25@lsu.edu.

Legislation Affecting Mineral Rights

Victor A. Sachse*

Prior to 1936 oil and gas leases on state lands were granted by the Governor. In one case the attorneys for the Governor asserted that his failure to follow the law in such instances was beyond the reach of the courts. Our Supreme Court through Justice, now Chief Justice Fournet, rejected this theory,¹ though it was necessary to overrule a reconstruction period decision² to do so and held that where the Governor acted as agent of the Legislature he was bound by the terms of his agency as would be any other, though the exercise of his constitutional powers might be beyond judicial review. Hard on the heels of controversy over the handling of mineral leases on state lands illustrated by this litigation, but before the decision was rendered, the Legislature by Act 93 of 1936 created an agency to lease state lands, called the State Mineral Board, with four members appointed by the Governor, who serves as its ex-officio chairman with power to resolve tie votes. Act 58 of 1948 increased the membership from four to ten. Act 59 of 1950 made the number twelve.³ Act 43 of 1956 makes the number of members fifteen with eight as a quorum. In other respects the structure is not changed.

Prolonged administrations of successions impelled the Legislature to grant the district court wherein the land lies (not necessarily the court having jurisdiction of the succession) power to authorize the executor or administrator to grant a mineral lease on it. Validity of the lease as to heirs and legatees depended upon the commencement of actual development before distribution of the estate.⁴ This impediment was removed by Act 110 of 1948,⁵ which required publication in advance of a hearing upon an application to grant a lease so that interested parties might have an opportunity to object. Act 474 of 1956 supplements the law by requiring such notice to describe the

*Member, Baton Rouge Bar.

1. State *ex rel.* Brenner v. Noe, 186 La. 102, 171 So. 708 (1936).

2. State *ex rel.* Mississippi Valley Navigation Co. v. Warmoth, 24 La. Ann. 351 (1872); State *ex rel.* Oliver v. Warmoth, 22 La. Ann. 1 (1870).

3. LA. R.S. 30:121 (1950).

4. La. Acts 1936, No. 129, p. 392.

5. La. Acts 1948, No. 110, p. 339, now LA. R.S. 9:1491, 9:1492, 9:1493 (1950).

property, state the time and place of hearing, minimum bonus and royalty, and such other information as the court may require.

Act 603 of 1956 proposed an amendment to article IV, section 2, of the State Constitution. So far as it is pertinent to the mineral law field, this article forbade the alienation of the state's mineral interests except as respects land adjudicated to the state for taxes when redeemed by the owner or other person having the right to redeem.⁶ The Constitution expressly provides that this prohibition does not prevent the leasing of such lands for mineral purposes. The proposed amendment deletes this express reference to leasing just mentioned, but this deletion appears accidental and not intended to change the law in this respect. The intended innovation is to permit any other purchaser of tax lands after being assessed during ten years to acquire a half mineral interest subject to any lease granted by the state but giving the owner "one-half ($\frac{1}{2}$) of rentals, royalties and other payments thereafter accruing under such lease." Inasmuch as the present constitutional provision has been in effect for thirty-five years, and purchasers of tax lands bought with knowledge, actual or imputed, that they were not acquiring mineral rights, this amendment which is so worded as to affect such purchases made in the past would result in a windfall to some purchasers.

Act 38 of 1956 (R.S. 30:174) is a continuing step in the fight between the State of Louisiana and the Federal Government as to submerged lands, popularly and erroneously called "tidelands." A suit in the state courts in May to enjoin federal leasing within the state boundary declared by Act 33 of 1954⁷ led to an order from the United States Supreme Court on June 11, 1956, forbidding leasing or drilling in the disputed area in the absence of an approving stipulation by both governments.

The certainty that this would lead to widespread economic dislocation among the thousands whose enterprises and livelihood depend on offshore drilling led the Governor and Legislature to grant special authority as emergency legislation to the State Mineral Board with the concurrence of the Attorney General to make such stipulations and, moreover, to make agreements with present or future lessees of the United States re-

6. LA. R.S. 47:2224 (1950), as amended, La. Acts 1954, No. 546, p. 1017.

7. Sachse, *Legislation Defining Louisiana's Coastal Boundaries*, 15 LOUISIANA LAW REVIEW 79 (1954); LA. R.S. 49:1 (1950).

specting the ratification of their leases if Louisiana should prevail in its assertion of ownership of lands concerned. The act requires that such agreements are to provide for the deposit in escrow of all payments due to be made under the lease, whether of rentals or royalties, and payment to the state within ninety days after final settlement or adjudication of the controversy of all bonuses, rentals, royalties, and other considerations due and payable under the terms of the lease not theretofore paid to the State of Louisiana. The act specifically does not authorize any agreement or compromise affecting the state's boundary claim asserted by Act 33 of 1954. Diligent work by the Chairman of the State Mineral Board, the Attorney General, offshore operators, and federal officials led to implementing agreements consummated in October.

An agreement between the United States and the State of Louisiana was made without prejudice to the main dispute which established four zones, zone 1 being the three miles nearest shore, though the base line for measurement was accepted only for the purpose of that agreement, zone 2 lying between zone 1 and a line 3 marine leagues seaward from the base line, zone 3 from zone 2 to the boundary declared by Act 33 of 1954, and zone 4, the remainder of the Continental Shelf. Louisiana has freedom of granting leases in zone 1, the United States in zone 4, and, after one year from the date of the agreement in zone 3 but leases in zone 2 require joint action of the two governments. Under this agreement and those which the lessees can make with the state pursuant to this legislation, the government prevailing as to title will receive the benefit of all money paid by the lessee whether as bonus, rental or royalties; the lessee can save his lease though he obtained it from the losing government. As all wells drilled are not productive, no new ones can be commenced in the disputed area without a suitable obligation from the lessee that Louisiana will receive the bonus and rentals paid to the Federal Government even if the lease is non-productive if Louisiana's title to the submerged land concerned prevails.

The statute granting liens for labor or service in drilling or operating wells in search of oil or gas or water (R.S. 9:4861) heretofore applied to "the oil produced . . . and the oil, gas or water well or wells and the lease whereon the same are located." Act 100 of 1956 extends the privilege to the "proceeds" but the language clearly limits the privilege to "the proceeds . . . inuring

to the working interest" and, in this writer's opinion, the last quoted clause has the effect of limiting the privilege to the oil and gas attributable to the working interest as well as to the "proceeds . . . inuring to the working interest." Recordation of the claim in the mortgage records no longer suffices against the purchaser of oil, who shall not be liable to the claimant until notice thereof is "delivered personally to the purchaser or by registered letter deposited in the United States mails." The purchaser shall then "withhold payments for such oil or gas sums to the extent of the lien claimed until delivery of notice in writing that the claim has been paid." The privilege against the lease has not been diminished and, as against the movable equipment, the statute seeks to strengthen the lien by making the removal or disposal of such equipment unlawful without the consent of the holder of such lien.

Act 555 of 1956 has caused a new section to be added to the Revised Statutes.⁸ The description of any property "as fronting on or bounded by a waterway, canal, highway, road, street, alley, railroad or other right of way" in a sale, lease (surface or mineral), or mortgage includes the grantor's interest therein in the absence of an express provision "particularly excluding the same therefrom" but if the grantor owns both sides and grants on only one side of such right of way, the grantor's interest to the center thereof is included, in the absence of an express exclusion. The act does not impair any valid, existing right of way because of the failure of the grantor to mention it. The act is remedial and retroactive, saving to the grantor a year in which to file a suit or "a notarized declaration" to show a contrary intention.

8. LA. R.S. 9:2971 (1950).