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Mineral Rights - Alienation of Minerals By State Political Subdivisions an Agencies

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The instant case seems to impose "impossible standards"[45] on the drafting of valid obscenity legislation, and denies the operation of the "genuine construction" rule of the Criminal Code. Such a construction seemingly runs contrary to the obvious intent and purpose of the legislation, and it is submitted that a more reasonable construction of such statutes will better serve to accord them their appropriate scope, and to fulfill the objectives of legislative design.

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MINERAL RIGHTS — ALIENATION OF MINERALS BY STATE POLITICAL SUBDIVISIONS AND AGENCIES

Plaintiff instituted a concursus proceeding to determine the ownership of proceeds from the production of oil and gas on the land in question. A dispute over the ownership of the minerals existed between the claimant school board and the claimant Harrison. The school board acquired the property by purchase, and by mesne conveyances the title ultimately descended to Harrison. In the deeds the minerals were neither excepted nor mentioned. Harrison executed an oil, gas, and mineral lease to plaintiff, and about one year later, claimant school board executed a similar lease to plaintiff. The trial court determined that the school board was included within the ambit of Article IV, Section 2, of the State Constitution of 1921, which provides that mineral rights sold by the state shall be reserved and thus by virtue of the constitutional provision could not alienate the minerals on any land it sold. Therefore, the State of Louisiana, through its agent the school board, was found to be the owner of the minerals. The court of appeal reversed and on review by the Louisiana Supreme Court, *held,* judgment of the court of appeal affirmed. The constitutional provision of Article IV, Section 2, applies to the "state" only and not to a political subdivision or state agency. Thus the sale of the land included the mineral rights since the latter were not expressly reserved by the school board. *Stokes v. Harrison,* 238 La. 343, 115 So.2d 373 (1959).

The Louisiana Constitution of 1921 in Article IV, Section 2, provides: "In all cases the mineral rights on any and all property

45. Roth v. United States, 354 U.S. 476, 491 (1957).

sold by the state shall be reserved."[1] (Emphasis added.) The scope of application of this article turns on the meaning to be given to the word "state"; more specifically, does the word state include state agencies,[2] such as school boards, or is it limited to the state in its sovereign capacity. This provision of the Constitution has been construed in only two cases, both involving conveyances by levee boards. In *State* ex rel. *Board of Commissioners of Tensas Basin Levee District v. Grace*,[3] the Tensas Levee Board sought a writ of mandamus to compel the Registrar of the State Land Office and the Auditor to certify certain lands granted by the legislature to the levee board in its act of creation. The Registrar and Auditor refused to certify the conveyance, contending that the land grant was partially revoked by Article IV, Section 2, of the Constitution of 1921. The court in granting the mandamus held that Article IV, Section 2, did not revoke the conveyance because the transfer of the land to the levee district would not be parting with the land within the meaning of that section, but was only a placing of the land under the control of a state agency for the purpose of constructing and maintaining levees. The court pointed out that, therefore, the prohibition in Article IV, Section 2, against the inclusion of minerals in sales of state land did not apply to lands conveyed by the state to the levee district. In a subsequent case, *Board of Commissioners of the Caddo Levee District v. Pure Oil Co.*,[4] the Caddo Levee Board, as lessor, filed suit against the lessee for royalties resulting from oil production on the leased premises. To the defendant's plea of three years prescription, the plaintiff contended that prescription does not run against a levee board because it is a state agency. The court stated that "if the question presented involved the loss by prescription[5] of the mineral rights themselves we should *most likely* hold, that since the levee district must retain such mineral rights, it could not lose them by prescription, for a state agency cannot lose by prescription that which it must retain. However, no such

1. LA. CONST. art. IV, § 2. *Cf.* Barnett v. State Mineral Board, 193 La. 1055, 192 So. 701 (1939). In this case the court held that the state legislature can convey the property and the minerals to a state agency such as a levee board without violating Article IV, § 2.

2. See State v. Standard Oil Co., 164 La. 334, 113 So. 867 (1927). This case defines *state agency*, holding that it is any subdivision incorporated by an act of the legislature, which has the right to sue and be sued. Thus, levee boards and school boards are *state agencies*.

3. 161 La. 1039, 107 So. 830 (1926).

4. 167 La. 801, 120 So. 373 (1929).

5. LA. CIVIL CODE art. 3538 (1870). This article provides: "The following actions are prescribed by three years: . . . That for arrearages of rent charge . . . ."

question is here presented, as our only inquiry is whether the demand of a levee district for royalties under a lease is prescriptible, and we conclude they are."[6] (Emphasis added.)

Since the solution of the problem presented by the instant case depends upon an interpretation of the word "state" in the Louisiana Constitution, prior judicial constructions are helpful in determining its meaning. Two cases construing similar provisions lend support by analogy to upholding a conveyance of minerals by a state agency to an individual. In one case[7] the court held that Article 121 of the Constitution of 1845[8] which provided that "the state shall not become a subscriber to the stock of any corporation, or joint stock company" did not prevent such subscriptions by parish and municipal corporations. A like construction was given a similar provision in Article 108 of the Constitution of 1852.[9]

In the instant case the court for the first time was squarely presented with the issue of whether or not a state agency had to reserve the minerals on property sold by the agency.[10] The court held that "state" as used in Article IV, Section 2, of the Constitution of 1921 refers only to the state as a sovereign and not a state agency. Thus the conveyance from the school board transferred the land and the minerals. To reach this conclusion the court first reasoned that the term "state" in the Constitution sometimes refers solely to the state in its sovereign character, and at other times includes within its meaning every agency of the state. Turning to the Constitution the court noted that in Article IV, Section 12,[11] the language used is "the state

6. 167 La. 801, 810, 120 So. 373, 376 (1929).

7. New Orleans v. Graihle, 9 La. Ann. 561 (1854).

8. LA. CONST. art. 121 (1845).

9. Police Jury v. Succession of McDonogh, 8 La. Ann. 341 (1853). La. Const. art. 108 (1852): "The state shall not subscribe for the stock of, nor make a loan to nor pledge its faith for the benefit of any corporation. . . ."

A legal principle which supports alienation of minerals by a state agency was announced by the court in State v. Knop, 190 So. 135, 144 (La. App. 1939): "Where there is ambiguity, the language of a constitutional amendment must be interpreted in an effort to carry out the obvious intent, such enactment may not be broadened or extended by interpretation." Such an interpretation would restrict the word *state* in Article IV, § 2, to the state in its sovereign capacity.

10. No cases could be found on the interpretation to be given to the word *shall* in Article IV, § 2; however, it is submitted that the direction it gives is mandatory.

11. LA. CONST. art. IV, § 12: "The funds, credit, property or things of value of the *state, or of any political corporation* thereof, shall not be loaned, pledged, or granted to or for any person or persons . . .; nor shall the *state, nor any political corporation*, purchase or subscribe to the capital or stock of any corporation. . . . Nor shall the state, nor any political corporation thereof, assume the liabilities of any political . . . association. . . ." (Emphasis added.)

or any political corporation," and this same language is found in Section 13 of Article IV.[12] Comparing these provisions with Section 2 the court quoted the court of appeal, saying, "a comparison of the language of Sections 2, 12, and 13 of Article IV leaves it clear that where the framers intended that the restriction or limitation should apply to the state only as a separate entity from its political subdivision, the word state alone was used, but where the limitation or restriction was intended to apply to the state and all its political subdivisions thereof, the intent was so spelled out in terms of 'the state or any political subdivision thereof.' "[13] The court further reasoned that normally in a constitution the word state expresses the combined idea of people, territory, and government, and should be so construed here. In considering the two levee board decisions previously discussed, it was said that any statement construing Article IV, Section 2, was unnecessary for the decision in those cases and therefore was dictum.

An examination of the problem presented in the levee board cases is necessary to determine the effect of the instant case on future litigation involving alienation of minerals by state agencies. In the *Grace*[14] case the actual issue was the constitutionality of a transfer of state lands from the state to a state agency without a reservation of the minerals. No problem of alienation of the minerals by the state agency to a private individual was presented. However, it seems that the reasoning of the court concerning alienability of the land was an important link in supporting the decision that the property passed to the agency, for it brought out that the land, even though transferred to an agency, would still belong to the state and could not be further transferred to an individual without a reservation of the minerals. Looked at in this way a court in a later case might give more than dictum weight to the pronouncement in the *Grace* case concerning alienability of state land by a state agency.

There is some question as to the effect the instant case will have on future sales by state agencies. It is submitted that the court has at least settled that a sale without a mineral reserva-

12. *Id.* art. IV, § 13: "The legislature shall have no power to release or extinguish, or to authorize the releasing or extinguishment, in whole or in part, of the indebtedness, liability or obligation of any corporation or individual to the *State, or to any parish or municipal corporation* thereof . . . ." (Emphasis added.)

13. Stokes v. Harrison, 238 La. 343, 359, 115 So.2d 373, 379 (1959).

14. State *ex rel.* Board of Commissioners of Tensas Basin Levee Dist. v. Grace, 161 La. 1039, 109 So. 830 (1926).

tion, by a school board, of land *purchased* by the board from an individual, will convey both the land and the minerals in the absence of a mineral exception. Whether or not this same result will be reached in a case where the land sold was acquired from the state rather than purchased from an individual is not clear. When there is a conveyance from the state rather than a purchase from an individual, it is more difficult for the court to find a separation of the land from the state. This could explain the position of the court in the *Grace* case, wherein it held that putting the property under the control of the levee board would not be a parting with the property by the state but merely placing it under the control of one of its agencies, and thus the land would still be the property of the state. This seems especially true when one considers that the apparent policy behind Article IV, Section 2, is to prevent the legislature from selling state lands for an immediate lump sum and to assure future generations at least the mineral revenue from these lands. Due, however, to the language of the court in the instant case, it is submitted that in the future all sales by state agencies and subdivisions will convey the minerals as well as the land unless there is an express mineral reservation.[15] Such a construction might create a need for legislative and constitutional change because of the possibility of abuse by state agencies to avoid the spirit of the Constitution.

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15. See Louisiana Attorney General Rulings, p. 890 (1942-44). It should be noted that such a construction was not what the Attorney General considered the law to be prior to the instant case. In a 1942 opinion by the office of the Attorney General, it was stated that the State Board of Health could not sell realty acquired by the Greenwell Springs Hospital under will, without reserving the mineral rights to the Tuberculosis Commission as an agency of the state.