Approved April 20, 1983
Date

MINUTES OF THE House COMMITTEE ON Energy and Natural Resources.

The meeting was called to order by Representative David J. Heinemann at
Chairperson

3:30 ~~x~~a.m./p.m. on March 14, 1983 in room 519-S of the Capitol.

All members were present except:

Committee staff present:

Ramon Powers, Research Department
Theresa Kiernan, Revisor of Statutes' Office

Conferees appearing before the committee:

HB 2516 - Brian Moline, Kansas Corporation Commission.
John Rosacker, Kansas Corporation Commission.
SB 248 - Senator Roy Ehrlich.
SB 125 - Senator Roy Ehrlich.
SB 143 - Senator Charlie Angell.

HB 2516 - An act concerning the mined-land conservation and reclamation board; relating to the acquisition of eligible abandoned mined-land.

Brian Moline, general counsel for the Kansas Corporation Commission (KCC), provided background information regarding HB 2516. He said several years ago the federal government decided to take over operations of all the strip mining activity in the country, and created the Office of Surface Mining (OSM) as the federal administering agency. He noted that under OSM, the states were given an option to assume primacy over their own operations, with the states having their own strip mining quotas, provided they always complied with the federal guidelines.

Mr. Moline said Kansas elected to assume primacy, and by legislation, created the Mined-Lands Division of the KCC. Basically, he said, the Mined-Lands Division is a mined-land board, set up with a number of statutory members. He noted the administrative arm is a division of the KCC, and basically is the state mined-land program as decided by the state legislature. He said the KCC submitted to last year's legislature, HB 2994 which was passed into law and, at that time, was thought to be the necessary cleanup for the state plan to be adopted and approved by the federal government.

Mr. Moline said the state plan received conditional approval by OSM February 1, 1982. That conditional approval had three conditions: (1) the board should be able to accept federal money; (2) the money should be for the benefit of Kansas; and, most importantly and what HB 2516 is about, (3) the state mined-land board has condemnation authority where necessary.

Mr. Moline said that, at the time, they thought the condemnation authority was negotiable, and because of the late date in last year's legislative session, HB 2994 was submitted without any authority for condemnation. He said the mined-land board attempted negotiating this matter with OSM, but since that time, they have been unable to dissuade the OSM from their position of providing conditional approval of the state primacy plan, dependent on condemnation authority. He said when negotiations appeared to be fruitless, they decided it was necessary to approach the Legislature.

John Rosacker, a KCC-staff attorney, testified in support of HB 2516. Mr. Rosacker serves as attorney for the Mined-Land Conservation and Reclamation Board (MLCRB).

Mr. Rosacker said HB 2516 gives the MLCRB the authority to acquire eligible abandoned mined lands, by purchase, donation, or eminent domain. He said

they had tried to negotiate with OSM the condemnation, but, no plan approval--and no plan approval means no money for reclamation. He noted that the Abandoned Mined Land (AML) program in Kansas serves approximately 30,000 to 40,000 acres.

Mr. Rosacker then reviewed the bill, section-by-section. He noted there were a couple of technical corrections that needed to be made. On line 39, subsection (a) should be subsection (b); on line 44, subsections (a) and (b) should be subsections (b) and (c), and on line 49, subsections (a) and (b) should read (b) and (c).

A question and answer period followed the presentations of testimony on HB 2516.

SB 248 - An act relating to natural gas; concerning the flaring thereof; amending K.S.A. 55-102 and 55-702 and repealing the existing sections.

Senator Roy Ehrlich, sponsor of SB 248, testified in support of the bill. He said it is an act relating to the flaring of natural gas and the defining of the waste of gas. He noted that new language is found on page two, lines 52 through 55. He said the bill would give the KCC total control over the flaring of gas, to make the decision if the well is drilled, how long the gas should be confined by rules and regulations.

A question and answer period followed his presentation of testimony on SB 248.

Upon request by Senator Ehrlich, the Committee concensus was that SB 248 be held for a few days, before making a final decision on the Committee recommendation.

SB 125 - An act relating to oil and gas; relating to regulation of common sources of supply; amending K.S.A. 1982 Supp. 55-703 and repealing the existing section.

Senator Ehrlich, sponsor of SB 125, testified in support of the bill. He said it was an act relating to oil and gas relative to common sources of supply. He said SB 125 extends KCC jurisdiction over natural gas from all common sources of supply.

FINAL ACTION ON SB 125

Representative Keith Farrar made a motion that the Committee recommend SB 125 be passed. Representative Fred Rosenau seconded the motion. The motion was unanimously passed.

FINAL ACTION ON HB 2516

Representative Ron Fox made a motion that the Committee recommend to the Speaker that HB 2516 be referred to Ways and Means with proposed technical changes. Representative LeRoy Fry seconded the motion. The motion passed.

SB 143 - An act concerning certain mineral interests; relating to reversion of certain unused interests.

Senator Charlie Angell, sponsor of SB 143, testified in support of the bill. He said the proposed legislation grows out of a long-standing interest of many who deal with severed mineral interests. Senator Angell distributed to Committee members a copy of a letter from Wayne Morris, * which related to a Supreme Court decision, Texaco vs Short, involving an Indiana law which was declared constitutional on this same matter. He said SB 143 is a bill designed specifically as the Indiana case which said that after a given period of time, under certain kinds of situations where due diligence was used, it can be a case whereby law you can return severed mineral interests back to the surface owner. He said the bill describes what a mineral interest is and says if unused for a period of 20 years it shall lapse unless a statement of claim is filed in accordance to Section Four, the ownership shall revert to the current surface owner.

MINUTES OF THE House COMMITTEE ON Energy and Natural Resources,

room 519-S, Statehouse, at 3:30 ~~a.m.~~/p.m. on March 14, 1983.

In a question and answer period following Senator Angell's testimony, a concern was expressed that some effort should be made to locate the owner of a mineral interest.

Chairman Heinemann advised Committee members that consideration on SB 248 and SB 143 would be deferred for a few days.

There being no further business to come before the Committee, the meeting adjourned at 5:00 p.m.

The next meeting of the Committee will be held March 15, 1983.

Rep. David J. Heinemann, Chairman

*(see attached letter regarding SB 143 from Wayne Morris to Senator Angell)

STATE OF KANSAS

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December 27, 1982

Senator Charlie Angell
Box 427
Plains, Kansas 67869

Dear Senator Angell:

This letter is in response to your request to review the U.S. Supreme Court's opinion in Texaco, Inc. v. Short, 70 L. Ed. 2d 738 (1982), and comment on its potential applicability to Kansas. As you may remember, this case was originally referred to you by Mr. Bernie Frigon of Frigon and Campbell, a chartered law practice in Cimarron.

The Texaco case involved a challenge to an Indiana act which provides for reversion of unused severed mineral interests to the surface owner of the land in certain specified instances. The act provides that a severed mineral interest that is not used for a period of 20 years automatically lapses and reverts to the current surface owner of the property, unless the mineral owner files a statement of claim in the local county recorder's office. "Use" of a mineral interest is defined as the production or attempted production of minerals, the payment of rents or royalties, or the payment of taxes on the interest. The act provided a two-year grace period after the effective date of the law for the mineral owners to file a claim. Finally, the act also allows an exception for owners of ten or more mineral interests in one county who inadvertently failed to file the statement of claim for some of those interests to file a supplemental statement covering the omitted interests.

The act was challenged by mineral owners who had obtained severed mineral interests in the 1940s and 1950s. The owners had not used their interests for the 20-year period and had also failed to file their statement of claims during the grace period after the act's enactment; their interests thus reverted to the surface owners. The owners of the lapsed interest alleged that the act violated the Fourteenth Amendment to the U.S. Constitution because it: (1) deprived them of property without due process of law because of lack of prior notice; (2) constituted a taking of private property without just compensation; and (3) denied equal protection because of the exception for owners of ten or more mineral interests. They also argued that the act violated Article 1, Section 10 of the U.S. Constitution by impairing contracts.

In a majority decision (5-4), the Supreme Court rejected all of the above allegations. The Court held that there is no "taking" of property by the state -- that the state has a right to treat certain rights as abandoned and that it is the owners neglect that causes lapse of the property. Secondly, the Court said specific notice of a general state law is not necessary and that the two-year grace period was reasonable. Thirdly,

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the exception for holders of ten mineral interests was held to further a legitimate state purpose and did not have an adverse impact on owners of fewer interests, thereby it did not violate the Equal Protection Clause of the Fourteenth Amendment. And finally, the Court said the mineral interest is a property, not a contract, right, and "in any event, a mineral owner may safeguard any contractual obligations or rights by filing a statement of claim in the county recorder's office. Such a minimal 'burden' on contractual obligations is not beyond the scope of permissible state action." The four dissenters to the majority opinion believed that statute should have required that the surface owner give notice to the mineral owners before the interest could lapse.

Because of the U.S. Supreme Court's reasoning, it seems entirely possible that a similar statute could be constitutionally enacted in Kansas. Of course, Supreme Court opinions are always held to be limited to the facts presented in the case. Any deviation from the Indiana statute might alter the court's opinion.

At least one application of the Indiana statute, however, could require further study. As stated above, one "use" under the Indiana law is payment of property taxes on the severed mineral interest. Under K.S.A. 79-420, as amended by Section 29 of 1982 S.B. 832, appraisers are to determine the "market value, if any" of severed mineral interests. Some appraisers may thus determine that some severed mineral interests have no value. How such a determination might affect the application of a lapse statute such as Indiana's should be considered further.

I will send Don Hayward a copy of the Texaco opinion. Please call us if you have any other questions or would like any further work done in this area.

Sincerely,

Wayne

Wayne D. Morris
Principal Analyst

WDM/db

cc: Don Hayward

P.S. - I am enclosing a copy of the Indiana statutes.