

OFFICIAL OPINION NO. 79-5, Assessment of Severed Mineral Interests

February 21, 1979

Mr. Rodney C. Lefholz
Deputy State's Attorney
Pennington County
Rapid City, South Dakota 57701

Official Opinion No. 79-5

Assessment of Severed Mineral Interests

Dear Mr. Lefholz:

You have requested an official opinion from this office based upon the following factual information:

FACTS:

SDCL 43-30-8.1 defines methods to be used in assessing a severed mineral interest. That statute provides:

An affidavit filed pursuant to § 43-30-7 shall bar a severed mineral interest in the same property and shall merge such severed mineral interest with the surface estate interest described in the affidavit, unless any person claiming an interest in such severed mineral interests has previously recorded an instrument describing such severed mineral interest with the appropriate register of deeds. Such recording shall be valid for 10 years and may be rerecorded. For the purposes of this section, the term "severed mineral interests" shall mean any property interest in minerals in any lands in this state which interest is owned separately from any fee interest to the surface of the property upon or beneath which the mineral interest exists. The term "severed mineral interest" shall not be deemed to mean or include any oil lease, gas lease or any other mineral lease. The filing of an affidavit by the surface estate owner pursuant to § 43-30-7 or the failure to file an affidavit by the severed mineral interest owner pursuant to this section shall have no effect whatsoever on any such lease which has been duly recorded and is valid and existing at the time such affidavit is filed. The mineral interests owned or held in trust by the state of South Dakota are exempt from the provisions of this section.

The above cited section, which was enacted by the 1976 Legislature, provides for the reuniting of severed mineral interests with the surface estate.

Based upon the above factual situation, you have asked the following questions:

QUESTIONS:

1. Should the County Director of Equalization make a separate assessment for such severed mineral interests as well as an assessment for the fee interest to the surface of the property beneath which the severed mineral interest exists?
2. Should the County Assessor keep separate records of the two assessments using the same legal description?
3. Are leased "severed mineral interests" to be assessed, and if so, to whom are they to be assessed?
4. Are "severed mineral interests" classified as agricultural property or nonagricultural property?

At 1949-1950 A.G.R. 428, the Attorney General stated:

Where there is a definite severance the mineral rights are taxable to the owner of such mineral rights and the surface is taxable to the owner of the surface.

IN RE QUESTION NO. 1:

I believe the answer is yes. I concur with the opinion of my predecessor cited above.

IN RE QUESTION NO. 2:

It is my opinion that the county director of equalization must indicate the value of the severed mineral interest since the interest is defined as real property under SDCL 10-4-2. The form for such real estate listing is provided in SDCL 10-6-39.

IN RE QUESTION NO. 3:

Your third question has been answered by the response to question No. 1 above.

IN RE QUESTION NO. 4:

It is my opinion that severed mineral interests are nonagricultural as that term is defined in SDCL 10-6-31. The South Dakota Supreme Court has recently held that agriculture has a broader meaning than farming and ". . . includes such areas as horticulture, viticulture, dairying, poultry, bee raising and ranching." *Nielson et al. v. Erickson et al.*, S.D., 272 N.W.2d 82 (1978). Operations in connections with severed mineral interests, would not, in my opinion, constitute an agricultural use of the property.

Respectfully submitted,

Mark V. Meierhenry
Attorney General

MVM:DOC:It