

Official Opinion No. 81-21, Severance of Mineral Interests

June 23, 1981

Mr. Philip N. Hogen
State's Attorney
Jackson County
Kadoka, South Dakota 57543

Official Opinion No. 81-21

Severance of Mineral Interests

Dear Mr. Hogen:

You have requested an official opinion from this office in regard to the following factual situation:

FACTS:

Jackson County, by Warranty Deed on January 5, 1937, conveyed a 40-acre tract in what is now Badlands National Park, to the United States, with no specific mineral reservation to the county.

Based on the above facts, you have asked the following question:

QUESTION:

Have the mineral interests in this tract of land been reserved to the county?

The answer to your question is yes; the mineral interests in this forty-acre tract of land have been reserved to Jackson County.

SDCL 7-29-17 states as follows:

All mineral rights to such lands sold and conveyed to the United States government pursuant to § 7-29-16 shall be reserved to the county, and such deeds of conveyances shall provide therein that any and all mineral rights in and to said lands are expressly reserved to the county.

This statute was promulgated in 1931 (Session Laws of 1931, Chapter 112).

It is a general rule that contracting parties are presumed to have in mind all the existing laws relating to the contract and to the subject matter of the contract. 17 Am. Jur.2d, Contracts, Section 257; West River Bridge Co. v. Dix, 6 How. (U.S.) 507, 12 L.Ed. 535 (1848). Therefore, all applicable statutes existing at the time the contract is made become part of the contract and must be read into the contract just as if an express provision to that effect were inserted therein. Abilene National Bank v. Dolley, 228 U.S. 1, 33 S.Ct. 409, 57 L.Ed. 707 (1912); Goodwin v. Frendrich, 135 Neb. 203, 280 N.W. 917 (1938); Naftalin v. King, 252 Minn. 381, 90 N.W.2d 185 (1958); Cornick v. Southwest Iowa Broadcasting Company, 252 Iowa 653; 107 N.W.2d 920 (1961).

Indeed, the South Dakota Supreme Court addressed a very similar situation in Argo Oil Corporation v. Lathrop, 76 S.D. 70, 72 (N.W.2d 431 (1955)). This case involved a conveyance of land from the State to an individual under the Rural Credit Act. SDCL 5-2-12, in effect at the time of the conveyance, states:

All sales, leases and conveyances of land belonging to the state of South Dakota or to which it may now or hereafter be entitled, including all common school, public buildings and endowment lands, shall be subject to and contain a reservation to the State of South Dakota of all deposits of coal, ores, metals and other minerals, asphaltum, oil, gas, geothermal resources and other like substance in such lands, together with the right to prospect for, mine and remove the same upon rendering compensation to the owner or lessee for all damages that may be caused by such prospecting or removal. The reserved deposits shall be disposed of only in the manner expressly provided by law. (Emphasis added.)

A mineral reservation was not contained in the deed conveying the land from the State to the individual. Nonetheless, the Supreme Court held that a mineral reservation to the State did exist, stating:

It is therefore our conclusion that Ch. 308, S.L. 1919 (SDCL 5-2-12) became a part of the deed executed by the Rural Credit Board and must be read into it just as if an express provision to that effect were inserted therein . . . '12 Am. Jur., Contracts, § 240.

Similar to SDCL 5-2-12, SDCL 7-29-17 requires that the deed conveying the surface and reserving the mineral interests by the county be contained in the deed; in this case,

however, it was not. Following the ruling in *Argo Oil Corporation v. Lathrop*, supra as well as the general rules of law regarding the formation of contracts, the deed executed by the county impliedly does contain the mineral reservation to the county required by SDCL 7-29-17.

Therefore, the mineral interests in the forty-acre tract conveyed to the United States were reserved to Jackson County.

Respectfully submitted,

Mark V. Meierhenry
Attorney General