2937

AUDITOR DEEDS IN FEE SIMPLE TO PURCHASES WITHOUT RESERVING MINERAL RIGHTS. A.S.B. 112, 84 G.A., 109, O.L., 76, §§23-1, G.A., 3203-13, G.A., OPINION 2318, OAG, 1921, OPINION 3861, OAG, 1923.

SYLLABUS:

Sales of land made under Senate Bill No. 112 of the 84th General Assembly (109 Ohio Laws, 76, passed on March 23, 1921), in which the auditor issued deeds in fee simple to purchasers, without reserving mineral rights to the state, were not subject to the then existing Sections 23-1 and 3203-13, General Code, as to reservation of mineral rights to the state; and the state does not now own the mineral rights to the land so sold. Opinion No. 2318, Opinions of the Attorney General for 1921, Volume I, page 662, approved and followed.

Columbus, Ohio, April 12, 1962

Hon. James A. Rhodes, Auditor of State
State House, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"On March 23, 1921, the legislature passed and on April 8, the Governor approved Amended Senate Bill No. 112, which authorized the Auditor of State to issue a deed in fee simple to those leaseholders of school lands in Section 8 of Homer Township, Morgan County, Ohio, who desired to purchase the same.

"The leaseholders who desired to obtain a deed in *fee simple* for their holdings were required to file a correct and accurate plat of the section on which the lands they desired to purchase were clearly designated with the township trustees of the township to which such lands belonged, and each holder was to petition the Auditor of State asking that the lands be sold to the leaseholders if the said lands were appraised at not to exceed ten dollars an acre. The Auditor of State was authorized to issue a deed in *fee simple* at a purchase price of five dollars an acre to all the leaseholders in Homer Township, Morgan County, Ohio, who had filed the necessary papers provided for in the act. A number of leaseholders availed themselves of the right to purchase, as provided in the act. The question has been presented to this office as to whether or not one of such holders has the right to sell such mineral rights to the land to which he has title, under the provisions of this act.

"The same session of the legislature by Amended Senate Bill No. 75 authorized the surrender of leases for school lands in Sections 16 and 29 of original township 7 of range 13 in the Ohio Company's purchase being in Homer Township, Morgan County, Ohio. In an Opinion No. 2318 rendered August 12, 1921, a predecessor in your office held that the persons who took title, subject to the provisions of this special act, had a full and complete title in fee simple, owned the mineral rights as well as timber rights; in short, a complete ownership notwithstanding the provisions of former General Code Section 3184 as well as General Code Section 3202-13.

"The same predecessor in office, however, in his opinion, 1923 O.A.G. No. 3861 rendered January 4, 1923 held that the Auditor of State in the preparation of a deed was required by the provisions of Sections 3203-13 and 3184 to reserve the mineral rights and any fee simple conveyances that were made.

"My question is, are the holders, under the provisions of Amended Senate Bill No. 112 by virtue of Opinion No. 2318 rendered August 12, 1921, owners of the oil, coal, timber and other rights so that they could convey the same without let or hinderance by the State?"

Amended Senate Bill No. 112 of the 84th General Assembly, 109 Ohio Laws, 76, passed on March 23, 1921, reads as follows:

"SECTION 1. School lands in section eight, located in Homer township, Morgan county, Ohio, which are now held under lease, and appraised at not to exceed ten dollars per acre, may be sold to such leaseholders, and such sales shall be according to the regulations hereinafter prescribed. The proceedings for the sale of such lands, for which a deed will be duly executed and delivered by the auditor of state to the purchaser thereof, shall be conclusively presumed to be regular and according to law.

"SECTION 2. The leaseholders desiring to obtain a deed in fee simple for their holdings shall file a correct and accurate plat of the section or sections on which the lands they desire to purchase are clearly designated with the township trustees of the township to which such lands belong, and each holder shall petition the auditor of state, asking that the lands be sold at the price designated, and shall file a duplicate of the plat hereinbefore provided for with the auditor of state. He shall also file a clear and accurate description of the lands, together with their appraised value, at the time of their last appraisement.

"SECTION 3. The auditor of state is hereby authorized to issue a deed in fee simple at a purchase price of five dollars an acre to all leaseholders in Homer township, Morgan county,

> Ohio, who have filed the necessary papers provided for in this act, and whose lands at the time of the last appraisement were not appraised in excess of ten dollars per acre.
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> "All money received from the sale of such land shall be paid into the state treasury to the credit of the common school fund."

Thus, the auditor of state was authorized to issue a deed in fee simple at a purchase price of five dollars an acre to certain leaseholders of school lands, and under the facts as given, he did issue such deeds. Your question is whether the holders of those deeds are the owners of the mineral rights in the lands covered by the deeds.

Though you do not so state, I will assume for the purposes of this opinion that in issuing the deeds the auditor did not reserve the mineral rights to the state.

At the time that Amended Senate Bill No. 112, *supra,* became effective, two sections of law dealt with reservation of mineral rights in the sale of state lands. Section 23-1, General Code, provided:

> "All sales and leases of public or other state lands, except canal lands other than reservoirs and lands appurtenant and adjacent to reservoirs, shall exclude all oil, gas, coal or other minerals on or under such lands, except lands specifically leased for such purposes separate and apart from surface leases, and all deeds for such lands executed and delivered by the state shall expressly reserve to the state all gas, oil, coal or other minerals on or under such lands with the right of entry in and upon said premises for the purpose of selling or leasing the same, or prosecuting, developing or operating the same and this provision shall affect and apply to pending actions."

Section 3203-13, General Code, provided:

> "Each conveyance of the fee simple title, except when such school or ministerial lands are located within the corporate limits of a city, shall contain reservations of all oil, gas, coal and other minerals, and, where the land abuts upon a flowing stream, or such a stream for fishing and fowling and the right of egress and ingress over such land to and from such stream when the same is or may become necessary for such enjoyment and to all rights and easements granted or hereafter granted under the provisions of law providing for the leasing of such lands for gas, oil, coal, iron and other minerals."

As to Section 3203-13, General Code, that section was originally enacted as a part of House Bill No. 192 of the 82nd General Assembly

(1917). That bill also enacted Section 3203-14, General Code, which provided for the sale of school lands when approved by vote of the inhabitants of the district involved, and I am of the opinion that the provisions of Section 3203-13, *supra,* as to reservation of mineral rights were intended to apply only to such sales.

The sales concerned in the instant question were not made under the procedure of said Section 3203-14, but were authorized by the special provisions found in Amended Senate Bill No. 112, *supra.* I thus conclude that Section 3203-13, *supra,* was not applicable to the issuance of deeds under that bill.

Section 23-1, General Code, as existing at the time of the issuance of the deeds in question, was a general statute applying to all sales of public or other state lands save those specifically excluded. It not appearing that the lands here considered came within the exclusion provision, it remains to be determined whether such provision of law had the effect of reserving the mineral rights in such lands to the state.

In Opinion No. 2318, Opinions of the Attorney General for 1921, Volume I, page 662, the syllabus reads as follows:

> "The provisions of section 3203-13, G. C. have no application to deeds executed under authority of Amended Senate Bill No. 75, 109 O.L. 67, authorizing the surrender of leases for school lands in Homer township, Morgan county, Ohio, and the purchase of the same in fee simple."

Senate Bill No. 75, referred to in said Opinion No. 2318, provided that leaseholders of certain designated school lands could purchase such lands and receive a fee simple title thereto from the state auditor. The law provided that said leaseholders should "pay to the county treasurer * * * the full amount of the value of such land as appraised prior to March 9, 1904 * * *."

In considering the effect of the provisions as to reservation of mineral rights to the state, the writer of said Opinion No. 2318 said at page 664:

> "There is no showing that the appraisement referred to, did not, in arriving at the value of such lands, including everything under, in, and upon the same. This being true, it could hardly have been the intention of the legislature to cause the lessee to pay to the county treasurer 'the full amount of the value of such lands,' and then to give him a deed which would so operate as to deny him the right to exert full ownership and control over those lands."

While in said Opinion No. 2318, the effect of Section 23-1, General Code, was not considered, I believe that it did not apply for the same reasons that Section 3203-13, General Code, was held not to apply. And I might add that my earlier reasoning as to Section 3203-13, *supra*, could have been applied to deeds under Senate Bill No. 75.

Returning to Amended Senate Bill No. 112, *supra*, under that bill it is provided that the "lands be sold at the price designated," and that the auditor file a "clear and accurate description of the lands, together with their appraisal value, at the time of their last appraisement." Thus, as with Senate Bill No. 75 (Opinion No. 2318, *supra*) there is no showing that the appraisement referred to, did not, in arriving at the value of the lands, include everything under, in, and upon the same; and I am of the opinion that the language used must be construed to allow the issuance of a deed without the reservation of mineral rights. Further, said Amended Senate Bill No. 112 is a special law which takes precedence over the general terms of Section 23-1, General Code —and Section 3203-13, General Code, for that matter.

A final factor to consider in the instant question is that the deeds issued did not reserve the mineral rights to the state. That bill contains the words:

> "The proceedings for the sale of such lands, for which a deed will be duly executed and delivered by the auditor of state to the purchaser thereof, shall be conclusively presumed to be regular and according to law."

Under the above language, it appears that the deed must be considered to be according to law, and said deed having been issued without the reservation of mineral rights to the state, such mineral rights should not be considered to have been so reserved.

The 1923 opinion to which you refer, Opinion No. 3861, Opinions of the Attorney General for 1922, page 1086 (issued on January 4, 1923), held in paragraph one of the syllabus:

> "For the purpose of establishing an administrative policy relative to the reservation of coal, oil, gas and other minerals contained in and upon school and ministerial lands held under a ninety-nine year lease renewable forever, it is suggested that the reservations required by section 3203-13 and 3184 G. C. be made by the state in the conveyance of the fee simple title of said lands."

The 1923 opinion *suggested* that the provisions of Section 3203-13, General Code, as to reservation of mineral rights in deeds of school and ministerial lands, be followed by the state in the conveyance of fee simple title of those lands. It will be noted, however, that the 1923 opinion did not deal with purchases of school lands under Amended Senate Bill No. 112, here concerned. The question there was whether certain leaseholders who had the right to a fee simple conveyance prior to the enactment of said Section 3203-13 were governed by the terms of that section after its enactment.

The writer of said Opinion No. 3861 expressed doubt that Section 3203-13 could alter any vested rights but then noted a lack of knowledge as to whether the leaseholders in question ever received mineral rights interests in their leases.

I confess some uncertainty as to the ultimate conclusion of the 1923 opinion but in any event it does not apply to the special provisions of Amended Senate Bill No. 112, *supra.*

Accordingly, it is my opinion and you are advised that sales of land made under Senate Bill No. 112 of the 84th General Assembly (109 Ohio Laws, 76, passed, on March 23, 1921), in which the auditor issued deeds in fee simple to purchasers, without reserving mineral rights to the state, were not subject to the then existing Sections 23-1 and 3203-13, General Code, as to reservation of mineral rights to the state; and the state does not now own the mineral rights to the land so sold. Opinion No. 2318, Opinions of the Attorney General for 1921, Volume I, page 662, approved and followed.

Respectfully,
MARK MCELROY
Attorney General