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The Relinquishment Act – an Interesting Chapter in Texas History

By John McFarland

I have recently been reading "The Big Rich: the Rise and Fall of the Greatest Texas Oil Fortunes," by Bryan Burrough. It has reminded me of a fascinating chapter in the history of Texas oil and gas law that arose out of the Texas oil boom in the early years of the 20th century, and that still affects mineral titles to more than 7.4 million acres of land in Texas. It could also be seen as an early example of judicial activism in Texas.

Texas entered the Union retaining all of its public domain – all land not already sold by Spain or Mexico to private citizens. Under Spanish and Mexican laws, when the sovereign sold land it retained all mineral rights under those lands. When Texas became an independent nation, it recognized the titles of landowners who had acquired their lands by Spanish and Mexican grants, including the state's retention of mineral rights under those lands. In its constitution of 1876, Texas set aside more than 42,500,000 acres of unsold land as "public free school land," and provided that the sales of those lands would be set aside in a permanent fund to finance the provision of schools in Texas. That constitution also provided that the State released to the owners of lands previously sold "all mines and mineral substances" under their lands. This same provision was included as an article in the Revised Statutes of 1895. Thus, Texas decided that, unlike Spain and Mexico, it would not retain title to minerals under lands it sold for settlement and development.

After 1895, Texas sold lands pursuant to various acts, and under those acts the State classified the land before sale as either "grazing land," "mineral land," "agricultural land," or "timber land." Almost all lands not previously sold by the State by 1895 were in West Texas, and the State classified most of those lands as "mineral lands." If the lands were "mineral-classified," the statutes provided that the State must retain all minerals when it was sold.

In the first few years of the 20th century, Texas became the center of oil exploration, and many large oil fields were discovered by major companies and wildcatters. Those explorers applied to the State to obtain leases on lands in West Texas that the State had sold with mineral classifications. The statute governing such leasing provided that the surface owner would be paid ten cents per acre annually during the life of the lease as compensation for damages to the surface caused by the oil exploration. Landowners understandably were unhappy with this situation, and they lobbied the Texas Legislature to change the law. In response the Legislature passed what has become known as the Relinquishment Act of 1919. It purported to relinquish to the owners of the land the State's oil and gas rights in the land, retaining a 1/16th royalty interest for the State.

But there were those who did not believe that the Legislature should have given away the State's mineral rights, and they challenged the Relinquishment Act as a donation to the landowners of a part of the permanent free school fund in violation of the State constitution that set aside those lands for the benefit of the public free school fund. The controversy finally made its way to the Texas Supreme Court in 1928, in Greene v. Robinson. Rather than holding the Relinquishment Act unconstitutional, the Court "construed" the Act in a way that would pass constitutional muster. It held that the Act did not relinquish the oil and gas to the landowners; instead, it made the landowners the agent of the State for the leasing of oil and gas rights, and granted to the landowner the right to one-half of all bonuses, royalties and other benefits accruing from those leases. So in effect it made the landowner the holder of the leasing rights, but kept the mineral ownership in the State. It had very little to do with the actual language of the Act, but it was a political compromise crafted by the Court to attempt to satisfy both sides.

Some landowners were not happy with this result, so they got the Legislature to pass a new law, known as the Relinquishment Act of 1931, which undertook to vest title in the landowners as to 15/16ths of all minerals under their lands. The constitutionality of this new act was quickly challenged, and in 1932, in Empire Gas & Fuel Co. v. State, the Texas Supreme Court wasted no time in declaring the new act unconstitutional.

Finally, in 1931 the Legislature also passed a new sales act providing that, for sales thereafter of State lands, the State would retain only a 1/16th royalty.

So, for sales of mineral-classified public free school land in Texas after September 1, 1895, but before August 21, 1931, the State owns the minerals under those lands, but the surface owner has the right to lease those lands and receives one-half of the bonus, royalty and other consideration payable by the lessee. The lease must be on a form approved by the General Land Office of the State and must be filed with and approved by the General Land Office.

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