



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Kenneth T. Cuccinelli, II
Attorney General

June 24, 2010

900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

Mr. Bradley C. Lambert
Chairman, Virginia Gas & Oil Board
Department of Mines, Minerals and Energy
P.O. Box 900
Big Stone Gap, Virginia 24219

Dear Mr. Lambert:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask whether pursuant to Senate Bill 376, as enacted by the 2010 Session of the General Assembly,¹ the Virginia Gas and Oil Board is authorized to render decisions and issue orders to determine property rights based on the interpretation of deeds and contracts.

Response

It is my opinion that Senate Bill 376 does not expand the authority of the Virginia Gas and Oil Board to decide ownership claims involving conflicting claimants to gas royalties, property rights disputes, or contract interpretation.

Applicable Law and Discussion

The Virginia Gas and Oil Board ("Board") is a citizen board staffed by the Division of Gas and Oil ("Division" or "DGO") within the Department of Mines, Minerals and Energy ("DMME").² Among other responsibilities, the Board is tasked with approving or denying applications allowing for compulsory pooling or unitization for unleased interests in gas well drilling units.³

¹ 2010 Va. Acts ch. 730.

² See VA. CODE ANN. § 45.1-361.1 through 45.1-361.26 (2002 & 2009 Cum. Supp.). The current Act has an extensive legislative record that has been outlined in prior opinions of the Attorney General. See Op. Va. Att'y Gen.: 2009 at 94; *id.* at 102.

³ See Sections 45.1-361.21, 45.1-361.22; see also Sections 45.1-361.14, 45.1-361.15 (setting forth general and specific duties of the board. Although the term "compulsory pooling" is not defined in the Code, it is a term of art in the gas and oil industry and, for purposes of this Opinion, the term means the pooling of interests within a drilling unit pursuant to § 45.1-361.21 or § 45.1-361.22). See also 2009 Op. Va. Att'y Gen. 94, 94. The federal government provides for a "compulsory unitization" and requires "lessees to unitize operations...if unitized operations are

When units include owners who are unknown or who cannot be located, or when there are conflicting claims of ownership of the gas resource or the land in the forced pooled unit, any royalties payable by the operators to those possible owners are paid into an escrow account established by the Board.⁴ Royalties claimed by conflicting or unknown claimants are held in the Board's escrow account until the conflicting claims can be resolved by agreement between the parties or by court order.⁵

The General Assembly has not delegated to DMME or that agency's divisions and boards the power to decide matters involving interpretation of contracts or deeds. Indeed, the Act contains a specific cautionary directive to the Board emphasizing its lack of authority to make decisions based on contract or deed interpretations:

The factors in subsection C of [§ 45.1-361.11] are not intended to and shall not be construed to authorize the Director, or the Board under § 45.1-361.36, to supersede, impair, abridge or affect any contractual rights or obligations now or hereafter existing between the respective owners of coal and gas or any interest therein.^{6]}

The most conclusive evidence of the legislature's continuing intent to limit the Board's jurisdiction, is found in § 45.1-361.22(5), which provides that:

The Board *shall order payment* of principal and accrued interest, less escrow account fees, from the escrow account to conflicting claimants *only after* (i) a final decision of a court of competent jurisdiction adjudicating the ownership of coalbed methane gas as between them or (ii) an agreement among all claimants owning conflicting estates in the tract in question or any undivided interest therein. [Emphasis added.]

This language is clear and unambiguous and the statute must be interpreted according to that plain meaning.⁷

The 2010 Session of the General Assembly revisited this statute and enacted significant revisions, including adding a third avenue for claimants seeking payment out of escrow arbitration by agreement of all affected parties.⁸ It is essential to note, however, that the General Assembly did not change the wording of § 45.1-361.22(5) that provides for payments from escrow "*only after*" one of the now three contingencies has occurred. Thus, the power of the Board to pay out escrowed funds in conflicting claims situations remains limited to the three enumerated situations.⁹

required" to prevent waste, conserve natural resources, or protect correlative rights. See 30 C.F.R. § 250.1301(b) (2008).

⁴Sections 45.1-31.21(D), 45.1-361.22(2).

⁵Section 45.1-361.22(5).

⁶Section 45.1-361.11 (2002).

⁷*Browning-Ferris Indus. v. Residents Involved in Saving the Env't.*, 254 Va. 278, 284, 492 S.E.2d 431, 435 (1997).

⁸2010 Va. Acts ch. 442.

⁹"In determining legislative intent, the rule is clear that where a power is conferred and the mode of its execution is specified, no other method may be selected; any other means would be contrary to legislative intent and, therefore,

The 2010 Session of the General Assembly also enacted Senate Bill 376.¹⁰ This legislation creates a new statute, § 45.1-361.21:1, and provides, in relevant part, that:

A conveyance, reservation, or exception of coal shall not be deemed to include coalbed methane gas. Nothing in this section shall affect a coal operator's right to vent coalbed methane gas for safety purposes or release coalbed methane gas in connection with mining operations. The provisions of this section shall not affect any settlement of any dispute, or any judgment or governmental order, as to the ownership or development of coalbed methane gas made or entered prior to the enactment of this provision.¹¹


Nothing in the plain language of this enactment purports to create new authority or to expand the existing authority of the Board to adjudicate mineral ownership rights.

Conclusion

Accordingly, it is my opinion that Senate Bill 376 does not expand the authority of the Virginia Gas and Oil Board to decide ownership claims involving conflicting claimants to gas royalties, property rights disputes, or contract interpretation.

With kindest regards, I am

Very truly yours,


Kenneth T. Cuccinelli, II
Attorney General

unreasonable.” Commonwealth v. County Bd. of Arlington Cty., 217 Va. 558, 577, 232 S.E.2d 30, 37 (1977). “Where a power is expressly set out in a statute ... another power will not be inferred.” Harris v. USAA Casualty Ins. Co., 37 Va. Cir. 553, 572 (Norfolk Cir. 1994).

¹⁰Senate Bill 376 was signed into law April 13, 2010, and became effective immediately due to an emergency enactment clause. 2010 Va. Acts ch. 730.

¹¹*Id.*