1983

Robert W. Adkins v. The Division of State Lands of The State of Utah : Appellant's Brief

IN THE SUPREME COURT OF THE STATE OF UTAH

ROBERT W. ADKINS, Plaintiff-Appellant, vs. THE DIVISION OF STATE LANDS OF THE STATE OF UTAH, Defendant-Respondent.	)	Case No. 19170

APPELLANT'S BRIEF

Appeal from a Judgment of the Third
Judicial District Court of Salt Lake County
Honorable Philip R. Fishler, Judge

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TABLE OF CONTENTS

TABLE OF STATUTES, RULES, CASES
AND AUTHORITIES CITED

STATUTES AND RULES CITED

CASES CITED

COLLATERAL AUTHORITIES

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APPELLANT'S BRIEF

NATURE OF THE CASE

This is an action for a declaratory judgment that a mineral lease appellant entered into with the Division of State Lands is valid and in full force and effect, despite the Division's attempted cancellation of the lease.

DISPOSITION IN LOWER COURT

After hearing cross-motions for summary judgment, the court held that appellant had not protested the cancellation actions within the time required by 65-1-9(2) Utah Code Annotated 1953, and had failed to comply with the notice, filing of claim, and cost bond provisions of the Governmental Immunity Act (Title 63, Chapter 30, Utah Code Annotated 1953). Respondent's motion for summary judgment was granted, and the action was dismissed with prejudice.

RELIEF SOUGHT ON APPEAL

Appellant seeks reversal of the judgment of the trial court and remand to the trial court for entry of a declaratory judgment to the effect that the lease entered into between appellant and the Division of State Lands is a valid lease, is in full force and effect despite the attempt of the Division of State Lands to cancel it, and that the term of the lease is to be extended for a period equivalent to that needed to litigate the matter.

STATEMENT OF FACTS

On March 10, 1980, Robert W. Adkins applied to the Division of State Lands for an oil, gas, and hydrocarbon lease on the following described property in San Juan County:

> Lots 3, 4, 5, and 6, the south half of the northwest quarter, and the south half of Section 2, Township 27 south, Range 20 east, Salt Lake Base and Meridian.
>
> The north half of the southeast quarter of Section 8, Township 27 south, Range 21 east, Salt Lake Base and Meridian.

The application was granted and under date of March 24, 1980, Adkins and the division entered into Lease No. ML37794 (R. 5, 18).

On March 25, 1981, the Division of State Lands sent Adkins a letter telling him that the 509.18 acres in Section 2 had previously been withdrawn from oil and gas leasing, and therefore that property was being deleted from the lease, and he would receive a refund of $1,020 paid in rentals on the deleted portion (R. 18, 22). On May 19, 1981, Adkins wrote to the Department of Natural Resources protesting the action of its Division of State Lands and requesting a hearing (R. 23).

On August 12, 1981, the Division of State Lands and Forestry sent a letter to Adkins telling him

> Please be advised that on August 12, 1981, the Land Board upheld the partial cancellation of the above-numbered lease with respect to T27S, R20E, Section 2: Lots 3, 4, 5, 6, S½ NW¼, S½, thus rejecting your formal appeal.

Also on August 12, 1981, the Division's Minerals Resource Specialist notified Adkins that the land located in Section 8, Township 27 south, Range 21 east, SLM, had also been withdrawn, and that he would recommend to the Director that the lease be cancelled (R. 70). On August 17, 1981, the Director did cancel the lease, without notifying Adkins of the action (R. 71). On October 29, 1981, Adkins wrote to the Division, asking whether the lease had in fact been cancelled, and "pursuant to Section 65-1-9" requested a hearing (R. 25).

On February 26, 1982, the Division of State Lands sent the following notice to Adkins:

> This letter will serve as notice that the Land Board, on November 10, 1981, considered your appeal of the Director's action of August 17, 1981, cancelling ML37794 OG&H.
>
> By unanimous vote of the Land Board, the Director's action was upheld.

Prior to the cancellation of the lease, the rentals were paid timely, and subsequent to the cancellation, the rentals were tendered timely by Adkins, but they were not accepted by the Division of State Lands.

Adkins did not file another "protest" with the Division of State Lands or with the Board of State Lands, but on February 13, 1982, notified the Treasurer of the State of Utah that the action of the Board of State Lands would be tested in the court. Adkins did not file with the Attorney General

a notice of his claim that the action of the Division of State Lands was invalid and did not file a claim against the State of Utah. On June 8, 1982, he filed an action in the District Court of Salt Lake County without filing an undertaking for costs.

On June 14, 1966, the State Land Board had purported to withdraw from oil and gas leasing the property in Section 2, Township 27 south, Range 20 east, covered by the lease with Adkins. At that time there was no statute authorizing the State Land Board to withdraw lands from oil and gas leasing. Such authority was given later by Chapter 183, Section 4, Laws of Utah 1967.

On June 8, 1967, after authority had been given, the State Land Board withdrew the 80 acres lying in Section 8 (R. 38).

When the Adkins lease was entered into, the withdrawals were not shown on the plat maps maintained by the division (R. 79).

ARGUMENT

I

PLAINTIFF COMPLIED WITH THE "PROTEST" REQUIREMENTS OF 65-1-9(2) UTAH CODE ANNOTATED 1953 PRIOR TO FILING THIS ACTION.

The letter from the Division of State Lands dated March 25, 1981, informed Adkins that the land lying in Section 2 was being deleted from the lease. The letter from the Division dated August 12, 1981, was a recommendation to the Director that the lease be cancelled with respect to the 80 acres as well as the "previously deleted portions," and the recommendation was followed by the Director on August 17, 1981. In both instances Adkins protested, and the protests were considered and rejected by the Land Board.

But the court ruled that he had not complied with the statute because he had not protested the Land Board's ruling.

The statute relied upon by the Division and by the district court is 65-1-9(2) Utah Code Annotated 1953:

> No claimant for lands under control of the board can appeal for judicial review of a decision of the board involving any sale, lease, or disposition of state lands, or any action relating thereto, unless such claimant files a written protest with respect thereto with the board within 90 days after the final decision of the board relating to such matter; or, with respect to decisions rendered prior to the effective date of this act, within 90 days after such effective date. This provision shall not relate to disputes between the board and any party as to the ownership or title to any lands.

The above section was enacted in 1963, when all of the functions relative to state lands were under jurisdiction of the State Land Board. The Board was responsible for both policy and administration. Of necessity, it performed its functions through subordinates -- its staff. Since it is not uncommon for administrative staffs to make decisions that are, for all intents and purposes, final, it was reasonable to provide for submission of such matters to the Board to make certain that the action was Board action before permitting resort to the courts.

The section is not typical of statutes providing for administrative review. The difference between review and final action by a particular agency is pointed out in 2 Am.Jur.2d, Administrative Law, § 542:

> An appeal involves two tribunals, one of which has the power to decide in the first instance and the other to review on appeal a decision so made, and, dependent upon the applicable statutes and the distribution of functions in a particular agency, administrative review procedures may or may not possess the attributes of appeals in judicial proceedings. Even though a statute provides for an "appeal" it has been held that where the purpose of such appeal is only to expedite and facilitate the dispatch of business within the administrative setup and the officer to whom the appeal lies has the power to decide in the first instance and, on his own motion, to

> order a redetermination where no appeal is taken, the idea of a real appeal is excluded and although in form an appeal is presented the officer exercises original rather than appellate jurisdiction

Were the decisions to delete Section 2 and to cancel the lease "final decisions" within the meaning of 65-1-9(2)? They certainly had the appearance of finality. Had Adkins not acted, he would have had no lease. The fact that the agency action was by letter, rather than formal findings with an "order" does not prevent the decision from being final.

In Mid-Valley Distilling Corp. v. DeCarlo, 161 F.2d 485, 488 (3 Cir. 1947), a supervisor under the Federal Alcohol Administration Act had sent a letter to the distilling company, telling it that an attempted transfer of permits had resulted in the automatic termination of the permits. The company sought judicial review, and the supervisor argued that the letter merely informed the company of the automatic termination and was not an order. The Court of Appeals held that if the permits did not automatically terminate, the letter was an order, and was appealable.

As pointed out in 2 Am.Jur.2d, Administrative Law, § 585:

> Whether or not a particular administrative determination is an "order" or is final is determined by the substance of what the agency has purported to do and has done, and not by the label placed upon it. The mere informality of a decision does not prevent its review if it is otherwise final. Thus, a letter may constitute an appealable order or determination. * * *

It is necessary to consider 65-1-9(2) along with 65-1-1 and 65-1-2.1. Those subsequently enacted sections did away with the State Land Board and distributed its functions to a Division of State Lands and a Board of State Lands within the Department of Natural Resources.

> 65-1-1. Board of state lands -- Creation -- Transfer of powers and duties. -- There is created within the department of natural resources a board of state lands which, except as otherwise

provided in this act, shall assume all of the policy-making functions, powers, duties, rights, and responsibilities of the state land board, together with all functions, powers, duties, rights, and responsibilities granted to the board of state lands by this act. The board of state lands shall be the policy-making body of the division of state lands. Except as otherwise provided in this act, whenever reference is made in title 65, or in any other provision of law, to the state land board, it shall be construed as referring to the board of state lands where such reference pertains to policy-making functions, powers, duties, rights and responsibilities; but in all other instances such reference shall be construed as referring to the division of state lands.

65-1-2.1. Division of state lands -- Creation -- Power and authority. -- There is created the division of state lands, which shall be within the department of natural resources under the administration and general supervision of the executive director of natural resources and under the policy direction of the board of state lands. The division of state lands shall be the state land authority for the State of Utah, shall assume all of the functions, powers, duties, rights and responsibilities of the state land board except those which are delegated to the board of state lands by this act and is vested with such other functions, powers, duties, rights and responsibilities as provided in this act and other law.

Within the Department of Natural Resources as reorganized, the Director of Natural Resources had a right to make final decisions with respect to matters other than those determining policy for the Division of State Lands. The actions taken in deleting property from Adkins' leases and in cancelling the lease were final decisions by the Director (R. 68, 71), the letters written by Adkins in response to those decisions were protests, and the Division treated them as protests.

It is arguable that the Board of State Lands should not have been involved at all, because the actions did not involve policy-making, but the Board of State Lands purported to act upon them by way of appeal and hearing, voting unanimously to uphold the actions of the Director.

Under the holding of the district court, a person involved with the Division of State Lands would be required to file a protest with the Division,

obtain a ruling from the Board of State Lands, and protest the Board's decision. From a standpoint of administrative procedure or due process this does not make sense. Adkins' position was called to the attention of the highest powers in the Department of Natural Resources and those powers determined that the action taken by the director should be upheld. What possibly could be accomplished by a second appeal to the Board of State Lands or to the Director of Natural Resources?

II

THE GOVERNMENTAL IMMUNITY ACT DID NOT REQUIRE PLAINTIFF TO SERVE NOTICE OF HIS CLAIM, TO FILE A CLAIM AGAINST THE STATE, OR TO POST AN UNDERTAKING FOR COSTS IN ORDER TO HAVE HIS RIGHTS DETERMINED IN THIS DECLARATORY JUDGMENT ACTION.

The trial court held that Adkins could not maintain the action because he had not complied with certain provisions of the Governmental Immunity Act, treating the action as one against the state. In doing so, the court overlooked the fact that the lawsuit is really aimed at obtaining judicial review of administrative action.

Declaratory judgment actions have long been recognized as suitable for that purpose. See 22 Am.Jur.2d, Declaratory Judgments, § 31; and 26 C.J.S., Declaratory Judgments, § 68. Such an action, premised on the claim that an administrative agency has acted outside its authority or jurisdiction, is not an action against the state. Wisconsin Fertilizer Assoc. v. Karns, 39 Wis.2d 95, 158 NW2d 294, 297 (1968).

Even if the action is against the state, the requirements of the Governmental Immunity Act do not apply, recent decisions of this court

having recognized that the Governmental Immunity Act applies only to governmental functions. In Standiford v. Salt Lake City Corporation, 605 P.2d 1230, 1236 (Utah 1980), this court redefined governmental function, saying:

> We therefore hold that the test for determining governmental immunity is whether the activity under consideration is of such a unique nature that it can only be performed by a governmental agency or that it is essential to the core of governmental activity. Clearly, this new standard broadens governmental liability. However, the position is consistent with the plain legislative intent in § 65-30-1 et seq., to expand governmental liability.

In Standiford, the court held that operation of a public golf course was not a governmental function, and the rule announced in Standiford has been applied consistently since it was handed down in 1980. In Johnson v. Salt Lake City Corporation, 629 P.2d 432 (Utah 1981), the court held that operation of a sledding course by Salt Lake City was not a governmental function; and in Thomas v. Clearfield City, 642 P.2d 737 (Utah 1982), the court held that operation of a sewer system was not a governmental function.

Although the lands involved in this case happen to be state lands, the sale of land and the leasing of land for oil and gas purposes, or for other purposes, is not a function that is of such a unique nature that it can only be performed by a governmental agency, or one that is essential to the core of governmental activity. Ownership of the land is not the criterion. In Standiford, Johnson, and Thomas the properties involved were all owned by the particular municipality.

Even assuming that the leasing of land for oil and gas development is a governmental function for the purposes of the Governmental Immunity Act, Adkins was not required to comply with the notice provision, claim provision,

or cost bond provisions of the act. It is provided in 63-30-5 Utah Code Annotated 1953:

> Immunity from suit of all government entities is waived as to any contractual obligation and actions arising out of contractual rights or obligations shall not be subject to the requirements of sections 63-30-11, 63-30-12, 63-30-13 or 63-30-19 of this act.

Notice of a claim for injury to person or property is required by 63-30-11, but that is not what this suit is about; 63-30-12 requires the filing of a claim within one year after the cause of action arises; 63-30-13 requires the filing of such a claim with political subdivisions; and 63-30-19 requires the filing of an undertaking conditioned upon payment by plaintiff of taxable costs. None of these provisions governs this case because what plaintiff is litigating is essentially a contractual obligation.

The cases generally recognize that although in a lease there are some aspects of conveyance of an estate, a lease is also a contract, and the obligations as between the lessor and the lessee are contractual. See Medical-Dental Building Co. of Los Angeles v. Horton and Converse, 21 Cal.2d 411, 132 P.2d 457, 462 (1942).

The New World Dictionary of the American Language (1979) defines "lease" as follows:

> A contract by which one party (landlord, or lessor) gives to another (tenant, or lessee) the use and possession of lands, buildings, property, etc., for a specified time and for fixed payments.

See also 9 Words and Phrases (Perm. Ed.) pp. 427-428.

The trial court apparently regarded this proceeding as being governed by 63-30-6 Utah Code Annotated 1953, which does not eliminate the notice claim, and bond requirements:

> Immunity from suit of all governmental entities is waived for the recovery of any property real or personal or for the possession thereof or to quiet title thereto, or to foreclose mortgages or other liens thereon or to determine any adverse claim thereon, or secure any adjudication touching any mortgage or other lien said entity may have or claim on the property involved.

A state lease is not like the kinds of claims that are described in 63-30-6 which for the most part, are those arising out of rights not dependent upon state action. Here we are considering a written agreement, formally executed by the state, and the right of the state to repudiate the agreement.

III

THE STATE LAND BOARD'S ATTEMPTED WITHDRAWAL FROM OIL AND GAS LEASING OF LANDS IN SECTION 2 WAS INVALID BECAUSE IT WAS OUTSIDE THE POWERS OF THE BOARD.

In 1961, in order to aid the preservation and development of potash deposits, the Utah State Legislature, by statute, withdrew certain state lands from oil and gas leasing.

The lands withdrawn included Section 2, Lots 1, 2, 7, 8, and the south half of the northeast quarter of Township 27 south, Range 20 east, Salt Lake Base and Meridian. Chapter 155, § 1, Laws of Utah 1961; 65-1-99 Utah Code Annotated 1953. In 1963 additional lands were withdrawn by legislative enactment. Chapter 165, § 1, Laws of Utah 1963; 65-1-104 Utah Code Annotated 1953. Neither of these statutes withdrew the property in Section 2 that was included in the Adkins lease, but on June 14, 1966, the State Land Board purported to withdraw that property from oil and gas leasing. The minutes of a meeting of the State Land Board of June 14, 1966, contained the following notes:

> The Staff recommended that the balance of Sec 2, Lots 3, 4, 5, 6, S½ NW¼, S½ [Township 27 south, Range 20 east, Salt Lake Base and Meridian] be withdrawn from oil and gas leasing by the State Land Board.
>
> After discussion and consideration, the Board unanimously passed the following motion made by Mr Hatch, seconded by Mr. Henderson:
>
> I move we concur with the Staff's recommendation.

As of June 14, 1966, there was no statutory provision authorizing the state land board to withdraw lands from oil and gas leasing. Instead, the statutes instructed the state land board to issue mineral leases. The following provisions are pertinent:

> 65-1-18. The state land board may issue mineral leases for exploring, developing and producing oil and gas or for prospecting and mining purposes, upon any portion of the lands or mineral interests of the state.
>
> 65-1-24. The board shall cause all public lands now owned by the state, or lands to title to which may hereafter be vested in the state, to be classified and registered and thereafter sold or leased. * * *

It was not until 1967 that the legislature conferred upon the State Land Board the power to withdraw lands from oil and gas leasing. At the time of the attempted 1966 withdrawal, the first paragraph of 65-1-45 Utah Code Annotated 1953 read as follows:

> Except as otherwise provided by law, applications to lease shall be considered in the order filed; provided, that when simultaneous applications are filed the land board shall let the land to the applicant who will pay the highest rental therfor; and provided further, that applications to lease land already under lease shall not be received before the date following the expiration of said lease, and all such applications received on such day shall be considered simultaneous.

By Chapter 183, § 4, Laws of Utah 1967, the foregoing paragraph of 65-1-45 was amended to read as follows:

> Except as otherwise provided herein applications to lease state lands for mineral purposes shall be considered in the order in which they are filed. The division of state lands shall have the authority to withdraw state lands from leasing, but unless state lands are withdrawn and except as otherwise provided herein, the division shall lease the land to the first qualified applicant who has filed an application in accordance with rules and regulations promulgated by the board of state lands.

In light of the history of 65-1-45, it is reasonable to assume that prior to the amendment in 1967, the power to withdraw lands from oil and gas leasing had not been granted to the State Land Board but had been retained by the legislature, and that the Board's action in attempting to withdraw certain lands from leasing was invalid.

In Hirsh v. Ogden Furniture & Carpet Co., 51 Utah 558, 172 P. 318 (1918), at issue was whether notice of filing a remittitur had to be given to the opposing party. Subsequently, the legislature amended the statute to provide for notice. In holding that notice had not been required prior to the amendment, the court said:

> As we read the statute, plaintiffs' counsel had a perfect legal right to have the remittitur go down and to file the same in the district court just as was done. Nor is there anything in the statute which required him to serve notice on appellant or its counsel that the remittitur had been sent down and filed in the district court. That such was the case is, we think, made clear from the fact that since this motion was determined in the district court the Legislature has amended section 3351, supra (chapter 115, Laws Utah 1917, § 388), by requiring service of notice on the adverse party in case a remittitur is sent down as was done in this case, and that the time within which the cost bill must be served and filed dates from the service of such notice. If service of notice had thus been required under the statute as it stood, it would have been a useless ceremony to have amended it. Clearly the legislative construction was that the old statute did not require notice, and therefore they amended it so that service of notice was required.

See also 73 Am.Jur.2d, Statutes, § 236:

> In making material changes in the language of a statute, the legislature can neither be assumed to have regarded such changes as without significance, nor to have committed an oversight or to have acted inadvertently, to the contrary, the general rule is that a change in phraseology indicates persuasively, and raises a presumption, that a departure from the old law was intended, particularly where the wording of the statute is radically different. * * *

IV

INASMUCH AS APPELLANT WAS THE FIRST APPLICANT, THE DIVISION OF STATE LANDS WAS OBLIGATED TO ISSUE TO HIM A LEASE ON THE PROPERTY IN SECTION 2.

The lands in Section 2 had been leased on March 18, 1955, under Oil and Gas Lease ML6790, MLA5436.

The minutes of the State Land Board of June 14, 1966, state that "ML6790 was cancelled on February 14, 1966, for non-payment of rental for the portion of its term from January 1, 1966, until April 1, 1966." In light of the statutory provisions then obtaining, the statement that the lease was cancelled is obviously incorrect, and in connection with the motions for summary judgment, Adkins filed an affidavit to the effect that he had not been able, at the time of the hearing, to obtain affidavits establishing the circumstances under which the earlier lease ended. It would appear, however, that the lease ended by its own terms.

At the hearing, it was suggested (R. 136) that the court might take notice of the prior lease, and this court may do the same. The prior lease was issued to Walter L. Morrison on March 15, 1955. It contained the following provision:

> Section 2. TERMS OF LEASE -- This lease, unless terminated at an earlier date as hereinafter provided, shall be for a primary term of ten years from and after January 1 next succeeding the date of issuance hereof and for so long thereafter as oil or gas or either of them are produced in commercial quantities from the leased premises.

Thus under the terms of the lease, it was to expire on December 31, 1965, so there was no "portion of its term from January 1, 1966, until April 1, 1966." As of January 1, 1966, the term had expired and the lease therefore was not cancelled by action of the State Land Board.

At the time the earlier lease expired, 65-1-45 Utah Code Annotated 1953 provided:

> Except as otherwise provided by law, applications to lease shall be considered in the order filed; provided, that when simultaneous applications are filed the land board shall let the land to the applicant who will pay the highest rental therefor; and provided further, that applications to lease land already under lease, shall not be received before the day following the expiration of said lease, and all such applications received on such day shall be considered simultaneous.
>
> In all cases where lands become available for leasing by the state because they are newly acquired or because a previous mineral lease is cancelled or otherwise terminated by the board, such land shall be offered for mineral lease by the following procedure: [Competitive bidding procedures set out.]

As of June 14, 1966, the competitive bidding provisions did not apply because the land was not newly acquired and was not available for leasing because a previous mineral lease had been cancelled or terminated by the Board. It was then the obligation of the State Land Board to lease the property to the first qualified applicant, or to the one offering the best terms, if the applications were filed simultaneously.

At the time the lease was entered into with Adkins the land had been available for leasing for some 14 years, and it was not necessary for the

Division of State Lands to send out notices that the land had become available for oil and gas leasing. The availability of the land for leasing could have been ascertained by any other party as easily as it was ascertained by Adkins.

V

THE DIVISION OF STATE LANDS IS ESTOPPED FROM ASSERTING THAT LEASE OF THE LANDS TO ADKINS IS INVALID.

When the Division of State Lands announced to Adkins that the properties in Section 2 were being deleted from plaintiff's lease, the only basis assigned therefor was that they had been previously withdrawn. In neither case did the Division of State Lands make any suggestion to plaintiff that the lease was invalid because of the failure of the Board to follow competitive bidding (simultaneous offering) procedures. The Division was fully aware of this basis for cancelling the lease (R. 68, 71), but nothing was said about the procedures in the letters denying Adkins' protests, and nothing was said about them in the answer to the complaint in this action. Adkins acted to his detriment, initiating a lawsuit to test the question of whether the Board had power to withdraw the lands included in his lease. Because of the Board's failure to raise the question of compliance with the competitive bidding provisions, plaintiff has incurred great expense, including attorney's fees, and the expenditure of time and effort to litigate the question of the right of the land board to withdraw the property. The Division should not be heard, at this stage of the proceeding, to state that the lease was properly cancelled because of the failure of the Division of State Lands to follow prescribed leasing procedures.

This court has recognized that in a proper case the doctrine of estoppel may be applied against the state. In Utah State University v. Sutro & Co., 646 P 2d 715, 718-720 (Utah 1982), the court pointed out the necessity of estopping the state in some instances in order to prevent injustice, particularly where the activities involved are not authorized by law, but are not inherently evil.

In the present case the Division of State Lands misled Adkins into believing that certain lands were available for leasing, that he was qualified to lease them and, finally, that the only basis for challenging the leases was that they had been withdrawn. The rights of third persons are not involved, the state is engaged in business, and critical questions of public policy are not involved. The state therefore should be estopped from asserting the invalidity of the lease and the need to follow simultaneous posting procedures.

CONCLUSION

Adkins did all that could reasonably be expected of him in protesting the action taken by the Division of State Lands. The action taken by the Division was final action, and that final action was protested within the time required by statute. The protest was duly considered at a hearing before the Board of State Lands and the action of the Director with upheld. This suit was brought to review that action.

The selling and leasing of land is not a type of operation uniquely suited to performance by a governmental agency, and is not at the core of government activity, and therefore Adkins was not required to comply with the provisions of the Governmental Immunity Act respecting notice of claim, filing of claim, and filing of an undertaking for costs. Moreover, even if the

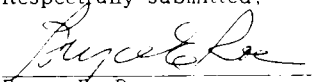
leasing of lands is a governmental function, the action involves a contract between Adkins and the Division of State Lands and the notice, claim and undertaking provisions do not apply.

The State Land Board in 1966 had no authority to withdraw lands from leasing for oil and gas, and the implication from the statutes enacted in 1961 is that the legislature itself had decided what lands should be withdrawn from oil and gas leasing and included those lands in statutory provisions. It may be assumed that when the legislature gave to the Division of State Lands the right to withdraw lands from oil and gas leasing it intended to change the statute then in effect.

Inasmuch as the lands in Section 2 had been available for leasing for more than 14 years, it was not necessary for the Division of State Lands to follow the competitive bidding procedures presently prescribed by 65-1-45, and the lease entered into was valid and enforceable.

The judgment of the district court should be reversed and the case remanded with directions to enter a judgment declaring that the lease between the Division of State Lands and Robert W. Adkins is valid and in full force and effect, and that Adkins is entitled to have the term of the lease extended by the length of time required to establish the validity of the leases, subject only to his paying the necessary rentals.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of July, 1983, I served the foregoing Appellant's Brief upon David L. Wilkinson and Anne M. Stirba, attorneys for defendant-respondent, by depositing two copies thereof in the United States mails, postage prepaid, addressed as follows:

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