

1962

## R. S. McKnight v. State Land Board and Erving Wolf : Plaintiff's Brief

Utah Supreme Court

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**IN THE SUPREME COURT  
of the  
STATE OF UTAH**

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R. S. McKNIGHT,

**FILED**  
*Plaintiff,*

**FILED**

28 1962

—VS—

Clerk, Supreme Court, Utah

STATE LAND BOARD,

Case No. 9728

*Defendant,*

ERVING WOLF,

*Intervenor,*

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**PLAINTIFF'S BRIEF**

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**C. M. GILMOUR**  
**Kearns Building**  
**Salt Lake City, Utah**



# IN THE SUPREME COURT of the STATE OF UTAH

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R. S. McKNIGHT,

*Plaintiff,*

—vs—

STATE LAND BOARD,

*Defendant,*

ERVING WOLF,

*Intervenor.*

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## PLAINTIFF'S BRIEF

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### JURISDICTION

This is a review by certiorari of the lawfulness of a decision of defendant denying plaintiff's applications for oil and gas leases on certain state lands and awarding such leases to Erving Wolf, Intervenor.

The decision of defendant was dated June 14, 1962. On July 27, 1962, plaintiff filed in this Court its Petition

for Writ of Certiorari to review and annul said decision. Writ of Certiorari was issued by this Court on July 27, 1962, and was served upon defendant the same day. Pursuant to said writ and order of the Court, defendant certified and filed with the Court on August 2, 1962, the record, proceedings and evidence taken in the case.

The jurisdiction of the Court to review the decision is based upon its original jurisdiction to issue writs of certiorari as conferred by Section 78-2-2, U.C.A. 1953, Article VIII, Section 4, of the Constitution of Utah, and Rule 65 B (b) (2), (3) and (g), upon the grounds that defendant as an inferior tribunal or board has exceeded its jurisdiction, abused its discretion and has not regularly and lawfully pursued its authority as conferred by the laws of the State of Utah.

### THE PROCEEDINGS BELOW

The formal hearing before defendant, under the authority of Sections 65-1-9 and 10, U.C.A. 1953, was conducted March 22, 1962, Bryant H. Croft, Esq., a member, presiding. Thereafter, by findings of fact, conclusions of law and decision, dated June 14, 1962, defendant erroneously concluded and adjudged that Erving Wolf, Intervenor, was entitled in preference and priority to plaintiff to the issuance of oil and gas leases covering the state lands in question.

### QUESTION PRESENTED

The question is whether the Intervenor, Erving Wolf, is the first qualified applicant for oil and gas leases on certain state lands where his applications, although filed prior in time to those of plaintiff, did not comply with specific requirements of the act in that (a) they

were not accompanied by statements of his qualifications under oath, and (b) they did not include offers to accept all of the requirements of the act.

## UTAH STATUTES INVOLVED

“65-1-86. *Oil and gas leases—Mineral interests—Provisions of act controlling.* — No oil and gas leases of lands or mineral interests belonging to the state of Utah shall be made or issued from and after the effective date of this act except in the form and manner provided by this act; . . .

“65-1-87. *Qualifications of applicants for oil and gas leases.* — Oil and gas leases shall be issued only to applicants therefor who at the time of filing application and at the time of acceptance of application for lease by the state are either citizens of the United States, or associations of such citizens, or corporations organized under the laws of the United States or any state or territory thereof; . . .

“65-1-88. *Applications for oil and gas leases—Royalty—Determination of average production.* — Except as otherwise provided by section 65-1-45, Utah Code Annotated 1953, as amended by this act, *oil and gas leases in units not exceeding 640 acres or one section, whichever is larger, shall be issued to the applicant first applying for the lease who is qualified to hold a lease under this act. Applications for lease shall be on forms to be provided by the state land board and shall include applicant's name, address and offer to accept all of the requirements of this act. Applications must be accompanied by payment of the filing fee and rental for the first year together with a statement under oath over applicant's signature of his qualifications as required by this act. Applications filed by an attorney in fact acting in behalf of the applicant shall not be accepted unless there is sufficient evidence on file with the land board that the applicant authorized the attorney in fact to apply for and execute the lease on his behalf. . . .*” (Italics supplied).

## STATEMENT OF FACTS

The undisputed facts of the case, as here set forth, are taken in part from defendant's findings of fact, in part from the transcript of testimony and in part from the Exhibits introduced into evidence. Only those facts pertinent to the issue of the case are included herein.

State Mineral Lease No. 3548, issued January 2, 1952, containing 703.40 acres in Section 36, T. 11 S., R. 25 E., S.L.M., State Mineral Lease No. 3783, issued January 2, 1952, containing 640 acres in Section 32, T. 15 S., R. 19 E., S.L.M., and State Mineral Lease No. 3782, issued January 2, 1952, containing 640 acres in Section 36, T. 15 S., R. 19 E., S.L.M., all expired on February 1, 1962. Under the law, February 2, 1962, became a one-day simultaneous filing period for new applications for oil and gas leases covering the lands included in the aforesaid three expired mineral leases. (Findings 1-7)

On February 2, 1962, Erving Wolf, Intervenor, filed three separate applications for mineral leases covering said lands under application numbers 19120, 19140, and 19141. (Finding 8). As stated in defendant's findings of fact:

"9. Each of the three applications filed in the name of Erving Wolf on said tracts were on obsolete application forms; each had been signed in blank prior to February 2, 1962 by Erving Wolf in the presence of Miles A. Williams, a duly authorized notary public for the State of Utah; each had been filled out on February 2, 1962 on behalf of Erving Wolf by Miles A. Williams or his employee, Veiness Jones; and each was notarized by Miles A. Williams in the following words:

"Subscribed and sworn to before me this 2nd day of February, 1962, at Salt Lake City, Utah."

"10. Erving Wolf was not in Salt Lake City, Utah on February 2, 1962; he did not subscribe and swear to said applications on said date; but he did confer with Miles A. Williams by telephone at various times on said date about various lease applications including those described above.

"11. Each of the three applications filed by Erving Wolf, namely application numbers 19120, 19140, 19141 were each deficient in the following particulars:

- a. They were not on current forms provided by the State Land Board.
- b. They did not include an offer to accept all of the requirements of the provisions of Title 65, Chapter 1, Utah Code Annotated, 1953, as amended, governing the issuance of oil and gas leases and operations thereunder.
- c. They were not accompanied with a statement under oath, over the applicant's signature, of his qualifications as an Applicant for Oil and Gas Leases as defined in Section 65-1-87 and as required by Section 65-1-88, UCA, 1953 as amended."

There were also filed, on February 2, 1962, three separate applications for oil and gas leases, covering the same said lands, by Joseph Sherman and R. J. Hollberg, Jr., which were assigned application numbers corresponding to those assigned to the Erving Wolf applications. (Finding 14.) As stated in defendant's findings of fact:

"15. Each of said applications was signed by Joseph Sherman and R. J. Hollberg, Jr., each was filed on current forms containing a statement of citizenship provided by the State Land Board; and each was deficient when filed on February 2, 1962 in the following particulars:

- (a) Said applications were not accompanied by a statement under oath, over the signatures of the

applicants, of their qualifications as applicants for oil and gas leases as defined in Section 65-1-87 and as required by Section 65-1-88, UCA, 1953, as amended.

"16. Each of said applications was notarized by Donald G. Prince, an employee of the State Land Board, upon a date subsequent to February 2, 1962, upon the request of one of said applicants."

Also, on February 2, 1962, an application for an oil and gas lease covering one of the three tracts, to-wit, Section 36, T:15 S., R. 19 E. S.L.M., previously included in expired Mineral Lease No. 3782, was filed by Paul S. Callister, which was assigned application number 19141 to correspond to the same number assigned to the Erving Wolf and Messrs. Sherman and Hollberg applications covering the same tract. (Finding 19). As stated in defendant's findings of fact:

"20. Said application was signed by Paul S. Callister; was filed upon a current form containing a statement of citizenship provided by the State Land Board and was notarized by Mary Gooras, a duly authorized notary public for the State of Utah, in the following words:

"Subscribed and sworn to before me this 2nd day of February, 1962, at Salt Lake, Utah."

"21. The application filed by Paul S. Callister was signed by said applicant on February 2, 1962 in blank and was then presented by him to the Notary, Mary Gooras, a fellow employee, who, upon his request notarized his signature. The Notary, Mary Gooras, in notarizing said application for said applicant did not 'render an oath' to him and said application was not signed by the applicant in the presence of said notary. The application thus notarized was thereafter taken to the State Land office by applicant where he completed the application by inserting the necessary information in the spaces provided therefor and filed it in the office of the State Land Board."



Mr. Callister filed the aforesaid application with defendant in his own name but testified that he was in fact not filing in his own behalf but in behalf of his principal, C.S.B. Oil Exploration Corporation, and without there being any evidence on file with the defendant of his authorization to apply for and execute the lease on behalf of his principal. (R. 68-9, 79). He testified:

"A. I am the land man for several small corporations in Salt Lake and secretary for several of them.

"Q. Do you act independently of those corporations?

"A. No, I don't act independently." (R. 68)

Also:

"A. Well, I made out the application. I determined that this land would maybe be available for filing, and so I filled out the description here and put my name up there.

"Q. Now, did you represent anyone?

"A. Yes, this is filed in behalf of C.S.B. Oil Exploration Company.

"Q. Is there any place on this Exhibit so indicating?

"A. No, However, I used their check." (R.68-9).

The applications for oil and gas leases of plaintiff, R. S. McKnight, covering the said three tracts were filed under the general leasing provisions of the law on March 1, 1962, and were in all respects in full compliance with the law. As stated in defendant's findings of fact:

"26. On March 1, 1962, R. S. McKnight, 220 Altas Building, Salt Lake City, Utah; filed three applications with the State Land Board applying therein for oil and gas leases on the same three tracts of land upon which the prior applications, numbered

19120, 19140, and 19141, of Erving Wolf, Joseph Sherman and R. J. Hollberg, Jr. had been filed.

“27. The applications of said R. S. McKnight were complete and not deficient as to form in any particular.”

Defendant concluded that Erving Wolf, Intervenor, was the high bidder among the applicants and gave him a period of ten days from receipt of letter dated June 25, 1962, within which to file corrected new applications for oil and gas leases without loss of priority and with the corrected new applications to retain the original filing date of February 2, 1962. (Correspondence 35). Wolf, accordingly, filed new applications on July 3, 1962, for oil and gas leases of the lands in question dated July 2, 1962, which new applications were accompanied by a statement under oath of his qualifications under the Act, to-wit, that on July 2, 1962, he was a citizen of the United States, and which new applications also included his offer to accept all of the requirements of the Act. (Ex. 1-A, 1-B, 1-C).

## ARGUMENT

### POINT I

PLAINTIFF McKNIGHT WAS THE FIRST QUALIFIED APPLICANT TO APPLY FOR OIL AND GAS LEASES ON THE STATE LANDS HERE INVOLVED.

It is our contention that plaintiff, R. S. McKnight, was the first qualified applicant to apply for oil and gas leases covering the state lands in question. The Land Board found and concluded that the McKnight applications “were complete and not deficient as to form in any particular.” On the other hand the Land Board found that the Erving Wolf applications were deficient in

three respects and that the applications of Joseph Sherman and R. J. Hollberg, Jr. were also deficient. It concluded, erroneously we submit, that the deficiencies in these applications could be corrected by amendment or completion under Rule 6 of the Land Board regulations without the loss of priority in filing time. We respectfully submit that the finding of the Land Board that the application of Paul Callister, covering one of the three tracts of land, "was complete when filed" and "contained no deficiency" was clearly erroneous and incorrect.

If we are correct in our contention that the acknowledged deficiencies in the Wolf, Sherman and Hollberg applications could not be corrected without loss of priority, and that the Callister application was in fact deficient, it is clear that the leases should be issued to McKnight because he filed his applications before any of the deficiencies were corrected.

The Land Board concluded as a matter of law that "upon correction of the deficiencies in the applications . . . by the respective applicants" oil and gas leases should be issued with the following priorities:

"First: To Erving Wolf as the highest bidder on all three tracts.

"Second: To Joseph Sherman and R. J. Hollberg, Jr. on all three tracts, if Erving Wolf does not qualify by correcting the deficiencies herein noted.

"Third: If Erving Wolf, Joseph Sherman and R. J. Hollberg, Jr. do not qualify by correcting the deficiencies herein noted, then

To Paul S. Callister on the tract described in application No. 19141.

To R. S. McKnight on the tracts described in application Nos. 19120 and 19140.

It should be noted that the Land Board clearly recognized that Erving Wolf and Joseph Sherman and R. J. Hollberg, Jr. were not qualified at the time they filed their applications and that they would have to correct their applications in order to "qualify." The original applications of Wolf, Sherman and Hollberg and Callister were all filed February 2, 1962. McKnight filed his applications March 1, 1962. Wolf did not file his corrected applications until July 3, 1962. (This was within the 10 day period allowed by the Board for correction of the applications). Sherman and Hollberg did not file any corrected applications and are not only not contesting the decision of the Land Board, but, we are advised, have filed a request that their applications be withdrawn. Callister has not filed any corrected application because the Land Board concluded, erroneously, that his application was not deficient.

Section 65-1-88, UCA 1953, as amended, provides that oil and gas lease applications "*must be accompanied by payment of the filing fee and rental for the first year together with a statement under oath over applicant's signature of his qualifications as required by this act.*" Qualifications of applicants are set out in Section 65-1-87, which provides that "Oil and gas leases shall be issued only to applicants therefor who at the time of filing application and at the time of acceptance of application for lease by the state are either citizens of the United States" or associations of such citizens, or corporations organized under the laws of the United States or any state or territory, and duly qualified to do business in the State of Utah.

Section 65-1-88 also provides that oil and gas leases "*shall be issued to the applicant first applying for the*

*lease who is qualified to hold a lease under this act,”* and that such applications “*shall be on forms to be provided by the state land board and shall include the applicant’s name, address and offer to accept all of the requirements of this act.*” The Land Board correctly found that the Erving Wolf applications were deficient in the following three particulars:

- a. They were not on current forms provided by the State Land Board.
- b. They did not include an offer to accept all of the requirements of the act.
- c. They were not accompanied with a statement under oath, over the applicant’s signature, of his qualifications as an applicant for oil and gas leases as required by the act.

One of the applications filed by Wolf (marked 1-A at the hearing before the Land Board) was deficient in an additional respect. Mrs. Vennes Jones testified that *after* it had been notarized by Miles A. Williams she changed the description of the lands. She stated that she “changed it to a different Township and Range and changed the acreage and so forth.” (R.29) If the application had been properly sworn to in the first place, which we dispute, the oath should have been readministered. 1 Am Jur “Affidavits”, Sec. 28, p. 954.

Photo copy of Wolf’s original application marked 1-A and photo copy of one of his corrected applications, will be found in the Appendix to this Brief. The originals of all applications of all applicants are part of the record before the Court.

The legal conclusion reached by the Land Board that the deficiencies in Wolf’s applications “may be corrected by amendment or completion” and that if done within 10 days after notice they “shall retain their original

filing time” is clearly contrary to the statute which specifically provides (1) that oil and gas lease applications “must be accompanied \* \* \* with a statement under oath over the applicant’s signature of his qualifications as required by this act” and (2) that such leases “shall be issued to the applicant first applying for the lease who is qualified to hold under this act.” While Wolf, we may assume, is a citizen of the United States and therefore qualified to hold state oil and gas leases, he was not the first *qualified applicant* to apply for the leases. The requirements of the statute are mandatory. Applications for such leases “must” be accompanied by the statement of qualifications under oath; they “shall be on forms to be provided by the state land board,” and “shall include \* \* \* an offer to accept all the requirements of this act.” It was not until July 3, 1962, that Wolf filed applications complying with these mandatory statutory requirements. In the meantime McKnight’s application which the Land Board found were complete and regular in all respects had been on file for four months.

The Land Board erroneously concluded that the statutory deficiencies in the Wolf applications could be corrected by “amendment or completion” without loss of priority under Rule 6 of the Board’s Rules and Regulations. The Board concluded that under Rule 6 it was authorized to in effect waive or nullify mandatory requirements of the statute. Rule 6 provides as follows:

“Application for mineral leases will be received for filing in the office of the State Land Board during office hours. Except as hereinafter specifically provided, all such applications received, whether by U. S. Mail or by personal delivery over the counter, shall be immediately stamped with the exact date and time of filing. All applications presented for filing at the opening of the office for business on any

business day shall be stamped received as of 8:30 a.m. of that day. In the same manner all applications received in the first delivery of U.S. Mail of each business day shall be stamped received as of 8:30 a.m. of that day. The time indicated on the time stamp shall be deemed the time of filing unless the Director shall determine that the application is deficient in any particular or particulars. If an application is determined to be deficient, it shall be returned to the applicant with the instructions for its amendment or completion. If the application is resubmitted in satisfactory form within the time specified in the instructions, it shall retain its original filing time. If the application is resubmitted at any later time, it shall be deemed filed at the time of resubmission."

In connection with Rule 6 it is important to note that Rule 3 in part provides as follows:

"Failure to deposit sufficient fee and rental money shall constitute a deficiency and the application will not be considered filed until the deficiency is corrected."

The quoted portion of Rule 3 is consistent with the provision in Rule 6 that the time stamped on an application shall be deemed the time of filing unless the Director determines that the application is deficient in any particular or particulars. However, it is not consistent with the provision of Rule 6 to the effect that if an application is determined to be deficient and the deficiency is corrected within the time specified in instructions to the applicant it shall retain its original filing time.

In essence the Land Board's position is that by regulation it can determine which statutory requirements can be waived without loss of priority. In Rule 3 it is provided that failure to pay the filing fee and rental will result in the loss of priority. But the Land Board interprets

Rule 6 as authorizing it to waive the other requirement mentioned in the same sentence in the statute, namely that an application *must* be accompanied by a statement under oath as to the applicant's qualifications. The sentence of the statute covering both requirements is as follows: "Applications must be accompanied by payment of the filing fee and rental for the first year together with a statement under oath over applicant's signature of his qualifications as required by this act." There is nothing in the statute which would authorize the Land Board to down-grade the requirement that the application include a statement of the applicant's qualifications under oath. The mandatory nature of this requirement is made clear by the fact that the statute provides that the statement must be *under oath* and that the application "must" be accompanied by this statement and payment of the filing fee and rental.

The proposition that the Land Board cannot nullify or waive mandatory statutory requirements either by regulation or by its action is fully supported by the holding of this Court in the case of *Olsen Construction Co. v. Tax Commission*, 12 U 2d 42, 361 P. 2d 1112 (1961). In that case it was held that an administrative interpretation out of harmony and contrary to the express provisions of a statute cannot be given weight and, to do so, would in effect amend the statute."

A case directly in point and involving the question who is the first qualified applicant for an oil and gas lease under the Federal Mineral Leasing Act, is *McKay v. Wahlenmaier*, 226 F. 2d 35 (CCADC).

In this case it appeared that the Secretary of Interior, by regulations under the provisions of the Federal law had provided that each applicant for an oil and gas lease



would be required to furnish a statement that the application was being filed solely in his own behalf and not for any other person, association or corporation. It was also required that each application "must contain in substance" a statement of the interests, direct and indirect, held by the applicant in oil and gas leases on public lands in the same state. This requirement was in implementation of the Federal statute that no person could hold at any one time oil and gas leases exceeding in the aggregate fifteen thousand three hundred and sixty acres in any one state.

The Secretary by public notice, after cancellation of a prior lease on certain lands in New Mexico, had offered said lands for the simultaneous filing of lease bid applications. The notice recited that each applicant would be called upon to furnish an affidavit that the application was being filed solely on his own behalf and not for any other person. An application was filed on behalf of Culbertson and Irwin, Inc., a New Mexico corporation. E. A. Culbertson, President and owner of 23.7% of the stock of said company also filed an application in his individual capacity. Likewise, Wallace W. Irwin, Vice President and owner of 19.3% of the company's stock, filed an individual application in his own behalf. The three applications so filed by Culbertson, Irwin and their corporation, were identical in form. But none of the three made any reference to the other two applications. More than 800 other lease applications were also filed, including one by the appellee, L. C. Wahlenmaier. Culbertson's personal application was the first, and Wahlenmaier's the second, drawn at the public drawing. The Department awarded the lease to Culbertson and notified Wahlenmaier that his application was

being rejected. Following an unsuccessful appeal in the Department, Wahlenmaier brought his suit in the Federal District Court to declare and adjudge that Culbertson was not a qualified applicant on the ground that his application when filed failed to comply with the requirements of the statute and regulations. The District Court granted the relief prayed for by Wahlenmaier, cancelled the Culbertson lease and directed the Department to issue a lease to Wahlenmaier. On appeal to the Circuit Court the decision of the District Court was affirmed.

The Court in its opinion states:

"Section 17 is mandatory in directing that a lease be issued to the person (a) who first makes application and (b) who is qualified under certain other sections of the Act to hold a lease. Culbertson was qualified as a leaseholder under other pertinent provisions of the statute, so the question whether he was qualified under Section 17 to hold a lease is reduced to the inquiry whether he was the person who first made application.

This remaining issue may be clarified by restatement. It is whether Culbertson's application was in such form and was filed in such circumstances that he was entitled to have it entered in the drawing. In other words, was he properly qualified *as an applicant*? If he was not, the fact that his written request for the lease was the first one drawn did not make him "the person first making application" therefore. If he was not such "person," the lease was wrongfully issued to him and should have been cancelled, even though he was otherwise "qualified" under the Act to hold a lease.

The question whether Culbertson was a qualified applicant, which is the real issue here, should be sharply distinguished from the question whether he was otherwise qualified to hold the lease, which is conceded and therefore not in issue.

The facts concerning the form of Culbertson's application and the circumstances in which it was

filed are not in dispute. The Secretary found that his application was defective and that it was filed in an inherently unfair situation which would have caused it to be rejected had the real situation been disclosed before the drawing. Yet he refused to cancel."

"His failure to distinguish between a qualified applicant and a qualified leaseholder probably confused the Secretary and caused him to reach the erroneous conclusion that a lease held by one otherwise qualified to hold it could not be cancelled on the ground that the application was defective under a Departmental regulation and should not have been included in the drawing. For we observe that both before and after his decision in this case, the Secretary has not hesitated to hold that an application which fails to disclose the stockholder's interest, if any, in a corporation's federal leases "is properly rejected and will confer no priority on the applicant." Clifford Thorpe Woodward, A-25905 (Supp.) (June 15, 1951); S. J. Hooper, A-26976 and A-26996 (August 3, 1954)."

Although a different sort of question was involved in *Seaton v. The Texas Company*, 256 F. 2d 718 (CCADC) (1958), the Court did enunciate the general principle as follows:

"The statutory scheme for leasing to the first qualified applicant we think cannot be abandoned by according to the Secretary an excessive latitude thus to decide who is qualified by blurring or ignoring who is first and also qualified."

*McKenna v. Seaton*, 259 F. 2d 780 (CCADC) (1958), Cert. Den. 358 U.S. 835, on the other hand, represents the case where an "insignificant irregularity" in an application may properly be corrected without loss of priority in filing time. Here, the applicant did accompany his application with a statement that he owned no more

than the permitted acreage allowed under the statute but neglected to actually include the serial numbers of such acreage, such a listing at that time being a requirement for acquired land but not public land applications. The Court distinguished the *Wahlenmaier* case as being one of "serious violations which related definitely to the question of qualification," stating:

"He (the Secretary) simply gave more weight to three years of priority than to what he considered to be a curable irregularity in an application — an irregularity which had no special significance whatever in terms of a fair and reasonable administration of the land laws."

Decisions within the Department of Interior fully and amply support the proposition of the *Wahlenmaier* case that any significant omission in the application for an oil and gas lease may not be corrected without loss of priority of filing time. The amendment may be made, of course, within the time allowed by the Department but such application will take effect and be regarded as filed from the date of such amendment. For example, in *Clifford Thorpe Woodward*, A-25909 (Supp.) (1951), Gower SO-1951-22, the solicitor's opinion states:

"At the time when the application was filed, the Department's regulation on applications for non-competitive oil and gas leases provided in part as follows:

"\* \* \* The application must cover in substance the following points:

\* \* \* \* \*

"(c) A statement of the interests, direct and indirect, held by the applicant in permits and leases, and applications therefor, in the same State, identifying the records wherein such interests may be found. \* \* \*

(43 CFR, 1940 Ed., 192.23.)

"With regard to this requirement, Mr. Woodward's application contained only the following statement:

"My interest in the district is, that I visited it in 1921 and my mother owns forty (40 ac.,) acres in Section fourteen (Sec. #14) T. 11 N. — R. 26 W. SBM."

"This statement cannot be considered to be responsive to the requirement in the regulation. The purpose of the requirement was to enable the Department to enforce the provisions of section 27 of the Mineral Leasing Act, as amended (30 U.S.C., 1946 ed., Supp. III, sec. 184), which limits the amount of acreage which any one person can hold at one time under the Federal oil and gas leases.

"Although the defect in the application can be cured, the application cannot be considered to be in compliance with the regulations until such time as the defect is cured. Consequently, even if Mr. Woodward should not submit a statement with respect to his acreage holdings under Federal oil and gas leases on June 25, 1940, this submission could not be related back to that date. Cf. *Mary I. Chapman, Harry M. Kirchner*, A-25517, A-25688 (November 16, 1949). Mr. Woodward's application, if qualified, would be junior to the applications enumerated in the decision of January 16, 1951."

In *Mary I. Chapman*, 60 I. D. 376 (1949), it was held that applications for noncompetitive oil and gas leases would confer no rights upon the applicants where the applications did not comply with the requirements of the Department's regulations that the land applied for must be as nearly compact in form as possible or that an application submitted by an attorney in fact must be accompanied by the applicant's own affidavit as to citizenship and acreage holdings.

In *W. H. Burnett*, 64 I. D. 230 (1957), it was held that where an oil and gas lease application is filed jointly by two persons, one signing on his own behalf and as attorney in fact for the other, and the application is not, as to the asserted principal only, in compliance with the regulations and instructions in a matter that requires it to be rejected and returned without affording the applicants priority, it will not be considered as the sole application of the other applicant, but will be rejected in its entirety and will not earn any of the applicants any priority. The opinion states as follows:

“An offer signed by an attorney in fact or agent that does not comply with the regulations relating to such filings earns the offeror no priority until it is brought into compliance with the regulation.”  
Again:

“Accordingly, the manager’s decision rejecting and returning Burnett and Weinberg’s offer was proper because at that time it was not in compliance with the regulation.”

“Thereafter, the appellants refiled their application. However, before they did, Liss filed his application, and, as the Director held, as a prior application, it must be considered before action is taken on the appellants’ refiled application.”

Again, in *Celia R. Kammerman*, 66 I.D. 255 (1959), the Department held that an oil and gas lease offer must be rejected with loss of priority when it fails to comply with a mandatory requirement of the regulations. The opinion states:

“The rule imposing loss of priority on an offeror who does not comply with a mandatory requirement of the regulation is based upon the proposition that the Department, if it determines to issue an oil and gas lease for land not within the known geological

structure of a producing oil and gas field, is under a mandatory duty imposed by statute to issue to the first qualified person who files a proper application. An offeror who does not comply with a mandatory requirement of the regulation is not a qualified applicant and is not entitled to priority until the defect is cured. Cf. *McKay v. Wahlenmaier*, 226 F. 2d 35 (CADC 1955) ; *Madison Oils, Inc. et al*, 62 I.D. 478 (1955)."

*Walls v. Evans*, 265 P. 29 (1928) (Wyo.), directly illustrates the principle of law applicable to the case at bar.

That case involved the question which applicant was the first qualified applicant for a prospector's oil and gas lease of state lands in Wyoming. The Wyoming land board regulations provided that the lease should be granted to the "first duly qualified applicant who presents his application accompanied by the rental and fees."

On February 23, 1927, the commissioner received an application from one Evans accompanied by the \$1 fee but not the required \$210 of additional rental. On February 24, 1927, before the additional money was received, one Walls filed his application accompanied by the proper amount of fees and rental in the sum of \$211. The Commissioner wired Evans to forward the additional money which was received 'some hours' after the filing of Walls' application.

The Court ruled that Walls was entitled to the lease as the first qualified applicant and that the subsequent payment by Evans of the balance of the money could not be considered as an amendment of original application so as to retain its original filing time. The Court stated:

"It is argued by counsel for appellant that although the proper fee did not accompany the appli-



cation, such application should nevertheless be considered as having been filed on February 23, 1927, and that the actual payment of the necessary money should be considered as in the nature of an amendment of the application which should be held to have been properly allowed. We think that this point, however, is controlled by the recent decision of this court in the case of *Posvar v. Royce, Sheriff (Wyo.)* 258 P. 587, in which we held that an attempted filing of a petition in error, not accompanied by the fees prescribed by a rule of this court, and not actually filed by the clerk, is a nullity and cannot be considered as a duly filed petition in error until after the requisite fee had been paid. This principle is followed by the United States Land Office. In *re John F. Settje*, 21 Land Dec. 137; *Mather v. Brown*, 13 Land Dec. 545.

"It is apparent that the same rule must be applied in the case at bar. Rule 64 above mentioned as well as the instructions of the commissioner of public lands, required the application to be accompanied by the proper fees. The commissioner did not file the application of appellant until after he had received the sum of \$210. The attempted filing thereof, accordingly, on February 23 was a nullity, and the application of the respondent must be considered prior in time, in accordance with rule 64 above mentioned.

It is argued by counsel for appellant that rule 64 is unreasonable, should not govern in this case, and that the board properly exercised its discretion disregarding it and granting the lease to appellant. It has not been pointed out, and we cannot perceive why, the rule should be held to be unreasonable. It contravenes no provision of the statute or the Constitution which grants the board the authority to lease the public lands of this state. Assuming that the board, in the absence of the rule, would have had a discretion to have granted the lease either to respondent or appellant, it had authority to set bounds to



the exercise of that discretion in a reasonable manner.”

The Wyoming regulation, unlike the Utah statute, only required the application to be accompanied by the fees and rental. There can be no question, however, that if the Wyoming regulations had required the application to be accompanied by both the money *and* a statement under oath of the applicant’s statutory qualifications, the lack of a statement under oath would have required the Court to reach a similar conclusion, to-wit, that the application was a complete nullity.

See also: *State v. Martin*, 347 SW 2d 809 (Tex. Civ. App.), where it was held that a requirement that bids for oil and gas leases on school land be accompanied by payment in cash or its equivalent was one of substance, rather than procedure, and the school board could not waive the requirement and award a lease to a bidder who had submitted a check for an insufficient amount.

The Callister application may be disposed of very briefly. His application was deficient and a complete nullity for three reasons. Firstly, his application was not signed and the oath taken in the presence of a notary public. It was first signed out of the presence of a notary and thereafter handed to the notary for notarization. Secondly, his application although purporting to be an individual application was, according to his sworn testimony, filed not on his own behalf but on behalf of his principal, C.S.B. Oil Exploration Company, without any evidence of his power of attorney being on file or of record with the Land Board. Section 65-1-88 is explicit in stating that such application “*shall not be accepted*” unless such evidence is on file with the Board. Thirdly, he

added the description of lands and other information after the application had been notarized (R.68-70).

In respect to the oath, Callister testified (R. 70) as follows:

“Q. Did she render an oath to you in reference to this?

“A. No. she didn’t render any oath.

As stated in 39 Am. Jur. 499, Oath and Affirmation:

“The law requires the affiant to be in the personal presence of the officer administering the oath, not to the end that the officer may know him to be the person he represents himself to be, for it is not required that the affiant be identified, introduced, or personally known to the officer, but to the end that he be certainly identified as the person who actually took the oath.”

In *Spangler v. The District Court of Salt Lake County*, 104 Utah 584, 140 P. 2d 755 (1943), this Court stated:

“To constitute the taking of an oath, there must be definite evidence that the affiant was not only conscious that he was taking an oath, but there must be some outward act from which that consciousness can be definitely inferred, which cannot be done from the mere signature to a printed form of oath.”

By way of explanation of the reason why all of the applications filed on February 2, 1962, (a 1-day simultaneous filing period), were defective it should be pointed out that all of the applicants were acting under the great pressure of meeting a deadline. Mr. Hollberg testified that on February 1, 1962, he learned that the same day was the last day for the payment of rentals for the month of January on the prior leases covering the three tracts of land here involved. (R.52) Payment of the rentals for January was a necessary step to make February 2, 1962,

a 1-day simultaneous filing period following expiration of the prior leases. Hollberg and Sherman paid the January rentals shortly before 5 o'clock on the afternoon of February 1, 1962 (R. 47-48). On February 2, 1962, the applications were prepared and filed shortly before closing time on that date. (R.48). Mr. Hollberg also testified that four or five days after February 2, 1962, he stopped payment on the checks which had been submitted to the Land Board in payment of the January, 1962, rentals. (R.48). Mr. M. A. Williams, who acted as an agent of applicant Erving Wolf, testified that on February 2, 1962, he learned of the payment of the January rentals setting up the 1-day simultaneous filing period. He communicated with his principal and prepared applications which were filed later in the day. (R.40, 34-36) The record contains a brief filed on behalf of Mr. McKnight in which it was contended that payment of the January rentals on the prior leases by Sherman and Hollberg, who were strangers to the prior leases and who did not represent the lessees under those leases, and who later stopped payment on the rental checks, was not effective to establish February 2, 1962, as a valid 1-day simultaneous filing period, and that, consequently, all applications filed on that day were nullities. This contention has not been re-argued here because it is clear that even if February 2, 1962 should be considered as having been a properly established 1-day simultaneous filing period, all lease applications filed on that day by Wolf, Sherman and Hollberg and Callister were nullities because of fatal and substantial defects in all of the applications.

Under the Utah statute none of these applicants was the first qualified applicant. Plaintiff's applications were proper and complied with the statute in every respect

when filed on March 1, 1962. It follows that plaintiff was the first qualified applicant for the oil and gas leases in question.

The decision of the Land Board, here under review, was incorrect and directly contrary to the opinion of the Attorney General as shown in the brief filed with the Board and included in the record before the Court. The Attorney General advised the Board that on the evidence all of the simultaneous applicants (Messrs, Wolf, Sherman and Hollberg, and Callister), not having complied with the statute, their applications should be rejected.

Under the clear and undisputed facts of the case and under the clear and undisputed mandatory provisions of the statute, it is clear that plaintiff, R. S. McKnight, was the first qualified applicant for the oil and gas leases covering the state lands in question.

## C O N C L U S I O N

It is respectfully requested that the decision of the defendant, State Land Board, be reversed by this Court and that it be adjudged R. S. McKnight, plaintiff, is the first qualified applicant under the Act for the oil and gas leases covering the state lands here under review.

Respectfully submitted,

C. M. GILMOUR

Attorney for Plaintiff  
Kearns Building  
Salt Lake City, Utah

## APPENDIX

Application No. 19120STATE LAND BOARD  
Salt Lake City, Utah

## Application for Oil and Gas Lease of Mineral Land

State of ~~Utah~~ Colorado } ss:  
 County of Denver }

The undersigned, being first duly sworn, deposes and says that he is making application on behalf of:

Erving Wolf  
 Name  
P. O. Box 2002  
 Street  
Denver, Colorado  
 City State

Citizen of the United States, or who is a corporation or partnership authorized to do business in Utah, and hereby applies for an Oil and Gas Lease on the following described tract of land situated in Uintah County, Utah.

SUBDIVISION	Sec.	Twp.	Range	Mer.	Acres
All	36	11 S	25 E	S. L.	863.40

If a lease is granted, the lessee will be subject to all the provisions of the laws of the State of Utah governing the issuance of oil and gas leases and operations thereunder. Applicant offers \$1.00 per acre per annum rental, and the royalties as provided in Section 65-1-88 Utah Code Annotated 1953, and deposits herewith \$2,236.20 to pay rental for the first year of the lease and \$2.00 application fee. (Separate leases are made on non-contiguous tracts).

[Signature]  
 (Applicant's Signature)

Subscribed and sworn to before me this 2nd day of July, 1962  
 at Denver, Colorado, Notary

Notary Public Expires March 15, 1964

[Signature]  
 (Notary Public)  
Residing in Denver, Colorado

STATE LAND BOARD  
Salt Lake City, Utah

EXH 1-A

## Application for Lease of Mineral Land

State of Utah }  
County of Salt Lake } ss.

The undersigned, being first duly sworn, deposes and says that he is making application on behalf of:

Erving Wolf  
Name  
P. O. Box 2002  
Street  
Denver, Colorado  
City Statewho is over the age of 21, or who is a corporation or partnership authorized to do business in Utah, and  
hereby applies for a lease of mineral deposits in the following described tract of land situated in  
Utah County, for the purpose of mining Oil and Gas  
therefrom.

SUBDIVISION	Sec.	Twp.	Rge.	Mer.	Acres
<u>200</u>	<u>36</u>	<u>11S</u>	<u>25E</u>	<u>5L</u>	<u>863.40</u>
<u>Lot 3, ML 960, Lot 18, ML 9161, NW 1/4 NW 1/4 - ML 9158</u>					
<u>SW 1/4 NW 1/4 - ML 9159 - Conflict - These leases do not</u>					
<u>expire until Feb. 1, 1964</u>					
<u>lots 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16,</u>					
<u>NE 1/4 NW 1/4; S 1/4 NW 1/4; N 1/2 SW 1/4 SE 1/4 NW 1/4 - covered by ML 2548 which expired</u>					
<u>Feb 1, 1962 ML 2572</u>					

If a lease is granted the lessee agrees to commence active mining operations not later than  
December 31 of the year following the year in which the lease is approved by the State Land Board,  
except as in the lease otherwise provided. Applicant offers 1.00 (\$2.39 bonus 1st year) per acre per annum, rental, and the  
following royalties: 12 1/2%  
and deposits herewith \$ 2,236.20 to pay rental to the first day of January next succeeding, and  
\$ 2.00 application fee. (The fee being \$2.00 for each lease required to be made. Separate  
leases are made on non-contiguous tracts.)

(Applicant's Signature)

Subscribed and sworn to before me this 2nd day of Feb., 1962  
at Salt Lake City, Utah.

(Notary Public)