DEPARTMENT OF CONSERVATION: Authority of commission to grant a permit authorizing individual or corporation to drill for oil on the grounds of Evansville Hospital.

June 11, 1943.

Hon. Hugh A. Barnhart, Director,
Department of Conservation,
140 North Senate Avenue,
Indianapolis, Indiana.

Dear Sir:

This is in answer to your recent request for an opinion as to the authority of the State Conservation Commission to grant a permit or make a lease for some individual or corporation to drill for oil on the grounds of the Evansville Hospital, which belongs to the State, in Woodmere section of Evansville, Indiana.

I understand that your Commission is not so much interested in what officer or agency of the State has authority to grant a permit for oil well purposes, but as a conservation matter you are concerned in finding out what State Board or official has authority to protect the interests of the State in the oil under its land because it may be that oil of considerable value lies under the land and from which the State should receive a revenue, but which may be drawn off by wells sunk on lands adjoining the State owned property.

While oil and gas under land belongs primarily to the owner of the land, such land owner has no absolute title to the gas or oil until it is removed and reduced to his ownership. From this settled law in Indiana it follows that one can sink a well on his own land or land leased by him for that purpose and recover and dispose of all the oil or gas that comes up through his well although it comes from under the adjoining land owned by others.

Thornton Oil & Gas, Vol. 1, Sec. 43-45;

However desirable it may be, under the circumstances, to grant a lease and conserve the State's interest, this can not be legally done without some statutory authority.
Burnett v. Abbott, 51 Ind. 254;  
McCaslin v. State, 99 Ind. 428;  
State ex rel. v. Hart et al., 144 Ind. 107;  
Matthews v. Goodrich et al., 102 Ind. 557, 569.

Also, in The State v. The Portsmouth Saving Bank, 106 Ind. 435, the rule is expressed in the syllabus of the case as follows:

"Public officers have no authority to dispose of the State's lands except such as is conferred by positive statute, and sales without such authority are void, unless ratified."

Other States have found themselves in a like situation and have found it necessary to enact laws conferring upon some Board or Commission authority to grant oil well leases or permits on public land such as school grounds, hospital lands and other State owned lands.

Summers, Oil & Gas, Vol. 6, Ch. 30.

The State of Illinois in 1941 created the "Illinois Petroleum Lease Commission" which was empowered to grant permits and leases in respect to any lands of the State.

Ill. Revised St. 1941, Ch. 104, Sec. 39, and following sections.

The Evansville Hospital and ground was acquired for hospital purposes by the State under Chapter 122 of the Acts of 1883. The hospital was later turned over to the Trustee, and Chapter 159 of the Acts of 1927 gives the following power to the Board of Trustees of the hospital:

"The board of trustees of the Southern Hospital for Insane (Evansville State Hospital) is hereby authorized to sell, convey and transfer any land belonging to such hospital for the insane, when, in the judgment of such board of trustees, the sale of such land would be for the best interests of the hospital, and to use the money derived from the sale of such land to purchase any other land contiguous to the lands belonging to such hospital, and which, in the judgment of the board
of trustees, would constitute a desirable addition thereto."

Burns' Ind. St. Ann. 1933, Section 22-1105.

My opinion is that the language of this provision cannot be construed to give the hospital Board of Trustees any authority to grant an oil well lease on the hospital land.

My attention has also been called to the following statute which gives the Auditor of State the right to sell certain State owned lands, and, it is argued that if the Auditor has authority to sell land this impliedly gives him the power to dispose of a lesser interest in the land.

Section 11, Ch. 162, Acts of 1889, Burns' Ind. St. Ann. 1933, Sec. 62-216, is as follows:

"The auditor of state is hereby authorized and directed to sell, under the provisions and conditions of this act, all lands of the state upon which there is no public building, or which is not in actual use by any of the institutions of this state, or which has not been set apart by law for state purposes, the proceeds thereof to be paid into the general fund in the treasury of state: Provided, That the square known as University Square in Indianapolis shall not be sold under the provisions of this act."

This section is a part of an Act dealing generally with "swamp lands," "saline lands" and other public land which was not to be put to any governmental use, but was held by the State for sale and for development by the citizens. The statute was not intended by the legislature to give the Auditor of State any authority to execute a gas well permit on land devoted to an important public use such as the Evansville Hospital land.


A similar situation over the oil and gas lease question arose in California in 1923. A Writ of Mandate was asked to compel the Surveyor General to issue a permit to drill for oil on the grounds of the Norwalk State Insane Hospital. It ap-
peared that the hospital grounds had been acquired by the State for hospital use, and the hospital and grounds were under the control of a Board of Directors and Managers. The Writ for a Mandate was asked upon authority of an Act which reserved to the State for sale, on a rental and royalty basis, all mineral deposits "on land belonging to the State." The Supreme Court of California ruled that this oil leasing Act concerning the mineral under State land did not apply to the hospital lands. The court pointed out that the oil leasing Act expressly mentioned among other special lands "river beds, overflowed and submerged land," and said:

"We cannot see that these provisions concerning lands held by the state by virtue of its sovereignty, and its public lands offered for sale under its public land laws, shed any light upon the question as to whether or not the statute was intended to apply to lands already devoted to a public use."

McNeil v. Kingsbury, 213 Pac. 50.

There is no question, of course, but that the State legislature could authorize the granting of a permit or lease for oil well purposes on the grounds of the Evansville Hospital, but in my opinion no existing statute grants that right.

DEPARTMENT OF FINANCIAL INSTITUTIONS: Building and Loan Associations. Whether rural associations may differentiate between its shares of common stock in the matter of payment of dividends.

June 12, 1943.

Department of Financial Institutions,
Hon. H. B. Robb, Supervisor,
Building and Loan Division,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter relative to the right of a named rural loan and savings association to declare and pay dividends upon its Class A and B Common Shares at a different rate