

Landmen Working in Ohio

This article is a follow-up to the article I wrote last year regarding legislation regarding Landman working in Ohio. Some of the information contained herein was in my prior article.

As background:

House Bill 493 was introduced in March of 2012 by Representative Okey and others. Among other things it proposed to require the registration of Landman and the use of Disclosure Forms when buying minerals or leasing oil and gas. The bill, as introduced, stated that no land professional may operate in Ohio without first registering with and obtaining a registration certificate from the Division of Oil and Gas Resource Management. A land professional in this bill was defined as person that engaged in:

- a. Negotiating the acquisition or divesture of mineral rights regarding oil and gas,
- b. Negotiating business agreements for the exploration or development of oil and gas, and
- c. Securing the pooling of interest in oil and gas.

As you can see, the above definitions would not only include just about all Landmen working in oil and gas in Ohio, but many other individuals that never thought of themselves being a Landman.

It also proposed a Disclosure Form mandated to be used when negotiating with a new lessor. The Disclosure Form contained many items, including, but not limited to that the fact that lessor received:

- a. A thorough explanation of the company that the Landman worked for,
- b. A thorough explanation of the lease, including how long the lease may last,
- c. The right to ask for a separate land-use agreement, and
- d. The right to ask for a no surface use lease.

Fortunately, the bill never got any further than the Ohio House Agriculture and Natural Resource Committee.

Later in the year the Ohio Department of Commerce looked at taking the position that the existing ORC Sections 4735 which deals with real estate brokers could also be applicable to certain Landmen. The Commerce Department viewed the leasing of oil and gas and possible other oil and gas related transactions as a real estate transaction. Excepted from the code is any person defined as a "regular employee", when the employee is performing the acts or transactions for

Landmen Working in Ohio Continued

his employer's account. The term regular employee typically means a W-2 employee. This would obviously not include some "Independent Landmen" unless the Landman was acquiring a lease for his own account.

Members of the Landman Subcommittee of OGGA under the leadership of Joe Haas, along with members representing the Ohio Petroleum Council, the AAPL and other professional organizations had two meetings with the Department of Commerce. This committee worked diligently to find a satisfactory solution. It was clear from those meetings that main issues being addressed were confined to Landmen that were primarily engaged in leasing activities not for their own account but on behalf of others.

In order to find a compromise position, the Landman's Subcommittee made its recommendations to the Department of Commerce which included:

Registration:

1. An Oil and Gas Land Professional (OGLP) shall mean a person who is primarily engaged in the direct negotiations with mineral owners (Lessors) for the acquisition of oil and gas leases covering land located in Ohio.

2. No person shall act as an OGLP in the State of Ohio unless the person first registers with and obtains a registration certificate from the Department of Commerce. The following individuals shall be exempt from registration:

- i) an attorney licensed to practice law in Ohio;
- ii) a person acquiring an oil and gas lease for his or her own account;
- iii) an employee, member, officer, owner of the Company which is the initial Lessee under the oil and gas lease;
- iv) a current and in-good standing member of a national organization of persons working as landmen which provides continuing education and which maintains a code of ethical standards, such as the American Association of Professional Landmen (APPL), or a local affiliated association/chapter of such organization.

3. The initial registration shall be for two years and renewed annually thereafter by January 1 after the second anniversary. The registration shall cover the entire state of Ohio.

Disclosure Form

Prior to signing a Lease the mineral owner shall be provided a disclosure form which will include the following

1. A statement that the land professional is duly registered (with registration number) or exempt from registration,

Landmen Working in Ohio Continued

- 2. the identity and address of the Lessee the land professional is representing,
- 3. A statement that prior to signing the lease the landowner has the right to consult with an attorney of the landowner's choosing,
 - i) A statement advising the landowner that there are resources he/she may wish to review on the oil and gas leasing process, which may be obtained from the Ohio Department of Commerce. Ohio Farm Bureau,
 - ii) Ohio Oil and Gas Association,
 - iii) Ohio Division of Oil and Gas Resource Management, and/or
 - iv) American Association of Professional Landmen

4. If the Disclosure Form is not signed by at least one of the Lessors, the land professional shall maintain evidence that the Disclosure Form was provided to the Lessors before the lease was signed.

"It is our responsibility to act fairly without making any false statements or representations."

As of this writing no new legislation has been introduced by either the Ohio House or Senate regarding Landmen and it does not appear that current administration will proceed with enforcement of ORC 4735.

As some of you know I recently gave a brief update on the above at the OOGA Winter Meeting and it is my opinion that most of the issues regarding Landmen and their conduct may be avoided by all of us acting in a professional manner. The main point I wanted to convey at that meeting and in this article is that we (Landmen) are generally the first contact that the public has with our industry and we are not only representing ourselves, our client or company, but also our industry! The AAPL Code of Ethics clearly defines our responsibilities as Professional Landman. It is our responsibility to act fairly without making any false statements or representations.

In closing, go to your local land association meetings, learn as much as you can and become involved by volunteering to serve your local chapters or the AAPL. I can honestly say that my most rewarding endeavors in the industry have been serving the MLBC, AAPL, OOGA and other industry organizations in one capacity or another and not only did it make me a better person and Landman, it allowed me to foster many lasting friendships.

Best Regards,
Jud Byrd