

GOLD: Mineral rights under private property belong to the owner of the land.

4-20
April 11, 1934.



Honorable A. L. McCawley
Member, House Representatives
Cathage, Missouri

Dear Sir:

We hereby acknowledge a request for an opinion dated March 6, 1934, which is as follows:

"In asking you for an opinion as to whether the State or the individual has title to gold that may be found on an individual's land, that is, gold in its virgin state under ground as other minerals, I am fearful that the question is not one on which an humble member of the legislature would have the right to ask for the opinion of your department. In fact, I am not certain whether an individual member of the General Assembly has the right to request your opinion on any subject. I think perhaps it would be more regular if the request should come in the form of a resolution from the house of which the legislator is a member.

"However, I am pressed for an answer to the above question.

"I am standing on the proposition that the owner in fee simple of land in Missouri is the owner of all mineral including gold, silver, platinum, etc. that is found on his land.

"In opposition to this view it is contended that gold found on a farmer's land in Missouri belongs to the State. My antagonist is standing on the proposition laid down in Cooley's Blackstone, page 295, Volume 1.

"If not improper for you to do so, I will appreciate an opinion from your department as to

whether the land owner, or the State, owns virgin gold which may be found on his land in Missouri.

"It is contended that Missouri being under the common law except otherwise provided by statute, and Gold at common law being classified as Royal metal, and one of the King's prerogatives, therefore belongs to the State.

"It has also been suggested that in those states where gold mining has been commercially profitable, the legislators have by appropriate enactment, provided that the ownership of gold found on ones land belongs to the land owner, and not to the State.

"In Missouri of course we have not as yet engaged commercially in the mining of gold though gold in small quantities have been found here and there, and it might be that the New Deal will reveal deposits of gold in Missouri hitherto undreamed of."

Cooley's Blackstone, Vol. 1, 4th Edition, Section 12, page 294, provides as follows:

"A twelfth branch of the royal revenue, the right to mines, has its original from the king's prerogative of coinage, in order to supply him with materials; and therefore those mines which are properly royal, and to which the king is entitled when found, are only those of silver and gold. (t) By the old common law, if gold or silver be found in mines of base metal, according to the opinion of some, the whole was a royal mine, and belonged to the king; though others held that it only did so, if the quantity of gold or silver was of greater value than the quantity of base metal. (u) But now by the statutes 1 W. and M. st. 1, c. 30, and 5 W. and M., c. 6, this difference is made immaterial; it being enacted, that no mines of copper, tin, iron, or lead, shall be looked upon as royal mines, notwithstanding gold or silver may be extracted from them in any quantities;

but the king, (or *persons claiming royal mines under his authority,) may have the ore, other than tin-ore in the counties of Devon and Cornwall, paying for the same a price stated in the act. This was an extremely reasonable law; for now private owners are not discouraged from working mines, through a fear that they may be claimed as royal ones; neither does the king depart from the just rights of his revenue, since he may have all the precious metal contained in the ore, paying no more for it than the value of the base metal which it is supposed to be; to which base metal the land-owner is by reason and law entitled." (*295)

On the otherhand the text writers of recent date are not in accord with Blackstone, and in Walsh, The Law of Property, second edition, page 26, Section 24, I find the law stated thus:

"Under the common law of England, all mines of gold and silver belonged to the King, not as an incident of sovereignty, but by virtue of the royal prerogative. The right to these mines was part of the crown's 'regalian rights' and was based upon the supposed necessity of owning and controlling them in order to provide and issue currency for purposes of trade, and to supply means for the defense of the kingdom. The crown could grant the mines with the land, in which case the grantee became sole owner of the mines with the land, exactly as in the case of mines of any other kind. As a matter of fact, the crown did grant 'all mines' and therefore mines of gold and silver in the lands included in the charters under which the American colonies were settled. It follows, therefore, that where such mines are now the property of any state, or of the United States, they are held by the state or nation as proprietary owner, exactly as where they are the property of a private individual. Therefore, where title to property has been acquired by private individuals through grant or patent from the state or nation under laws regulating the settling of land or otherwise, if the grant or

patent be without reservation, they take mines of gold or silver with the land as part of it; and it may be taken as generally true that in the different states as well as under patents from the United States, private ownership of land carries with it ownership of the gold and silver mines therein, except where such mines have been expressly reserved. After the crown had granted away the gold and silver mines in the lands covered by the Colonial Charters it no longer had any right to such mines, to which the state or nation could succeed on their separation from England. Certainly the ownership of these mines is not an incident of sovereignty, since they could be transferred by the crown at pleasure, and therefore the states and the nation did not succeed to them by virtue of sovereignty. In New York, gold and silver mines have been reserved in all grants by the state, and by statute it is expressly asserted that the state by virtue of its sovereignty is owner of all such mines. In other states, and in public territory of the United States, it is generally held that private ownership of the land carries with it title to gold and silver mines therein unless they are expressly reserved to the state."

Corpus Juris, Vol. 40, page 756, Section 114, provides as follows:

"According to the common law of England, mines of gold and silver, although on private property, were the exclusive property of the crown, by virtue of the royal prerogative, and did not pass in a grant by the king under a general designation of lands or mines; and if metalliferous ores contained gold or silver to such an extent as to be worth extracting, but the ores could not be obtained without interfering with the gold or silver, the whole of such ores belonged to the crown, and, except as limited by statute the crown had the right to work not

only gold and silver mines, but also all mines containing gold or silver worth extracting. The crown's ownership also extends to other mines and minerals in public reserves, other public lands, and the beds of rivers. But where minerals in which there is no gold or silver are in private lands, they belong to the owner of the land, unless they were reserved in a grant of the land by the crown."

Corpus Juris, Vol 40, page 358, Section 115, provides as follows:

"In the United States title to, and right of control and disposition of, minerals in public lands is generally in the federal government, except to the extent that it is in the local state government by virtue of original settlement, as in case of the original thirteen states, or by cession or grant from the federal government; and it has been the policy of the government to preserve and protect its interest in the mineral wealth of the public domain. As to private lands the owner of the surface is prima facie entitled to the minerals under it; and neither the state nor the federal government has title, as an incident of sovereignty, to mines or minerals found within their boundaries upon the lands which belong to individuals. And when the title to public land passes by patent or grant to another, the right to the minerals generally passes with it, unless such right is reserved."

CONCLUSION.

It is the opinion of this office that in Missouri, one who owns private land in fee, owns not only the surface but also the minerals under the land, including gold within the surface boundaries, and that neither the State of Missouri nor the Federal Government has any title to the gold under the land as an incident to sovereignty or prerogative. If either the State or Federal Government have any interest in gold located under private owned land in Missouri, it is because they reserved this title to the mineral when they granted the land patent, or because they

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subsequently purchased or were granted the mineral rights under privately owned land as any other purchaser or grantee would acquire these rights. Those "regalian rights" which were once a part of the king's prerogative have never prevailed in this county, and in New York gold and silver mines belong to the state, not because of the state's prerogative or sovereignty, but because these rights were expressly given to colonial New York in the king's charter and have since been expressly reserved by the state in all of her land grants to private ownership.

Respectfully submitted.

WM. ORR SAWYERS
Assistant Attorney General.

APPROVED:

ROY McKITTRICK

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