

SECURITIES DEPARTMENT: Acreage and drilling agreement of H.F. Wilcox is within the exemption of sub-section (f) of Sec. 7726, R.S. 1929.

May 26, 1936.

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Honorable Dwight H. Brown,
Secretary of State,
Jefferson City, Mo.

Attention: Corporation Department

Dear Sir:

This department is in receipt of your letter of May 21 requesting an opinion as to the following:

"I enclose herewith copy of recently proposed agreement to be issued and guaranteed by the H.F. Wilcox Oil and Gas Company of Tulsa, Oklahoma, a corporation engaged in the oil business whose common stock is listed on the New York Stock Exchange and approved exchange in the Securities Department.

"I will appreciate your opinion as to whether or not this instrument constitutes such an evidence of indebtedness as to be exempt under Paragraph F of Section 4 of the Missouri Securities Act."

Section 7726, R.S. Mo. 1929, as amended Laws of Missouri, 1931, page 352, and Laws of Missouri, 1935, page 360, relating to securities exempt from the provisions of the law relating to the Securities Department of the State, in sub-section (f) provides:

"Securities which at the time of the sale thereof are issued and fully listed upon duly organized stock exchanges to be approved by the commissioner, and securities

senior to any security so listed or represented by subscription rights which have been so listed upon any of such exchanges, and evidences of indebtedness guaranteed by any company the capital stock of which is so listed upon any of such exchanges."

We have examined the proposed Acreage and Drilling Agreement submitted to us and if the agreement be exempted by reason of subsection (f), supra, it must be by reason of its being an evidence of indebtedness. The agreement has been guaranteed by the H.F. Wilcox Oil and Gas Company, a Delaware Corporation, the common stock of which is listed upon the New York Stock Exchange.

The word "indebtedness" has been defined in 31 Corpus Juris, page 411, as follows:

"In statutes it should be liberally construed in accordance with the legislative intent. * * * The term 'indebtedness' has at times a signification far broader than the law dictionaries assign to it, a more general and common meaning, being often used in its large and general sense, and not in its technical one, not even involving of necessity the idea of money obligation. In its more general sense it is defined to be that which is due from one person to another, that which one person is bound to pay or perform to another. In this sense, it may include every obligation by which one person is bound to pay money, goods or services to another. * * *"

In the case of Matter of Robert, 4 Dem. Surr. (New York) 185, l.c. 198, the Court said:

"The word 'indebtedness' is not exclusively a term of legal technicality. It has at times a signification far broader than the law dictionaries assign to it, not even involving of necessity the idea of money obligation."

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In the instrument here under consideration, there is no question but that H.F. Wilcox guarantees to perform a distinct service and is "indebted" by reason of this agreement to carry out said obligation. The H.F. Wilcox Oil and Gas Company guarantees the performance of this agreement in a guaranty that reads as follows: "This well will be commenced on or before December 31, 1936, and the performance of the within contract by H.F. Wilcox is hereby guaranteed by H.F. Wilcox Oil and Gas Company, a Delaware Corporation."

Webster's New International Dictionary defines a "debt" to be:

"That which is due from one person to another, whether money, goods or services; that which one person is bound to pay to another or perform for his benefit."

CONCLUSION

In view of the foregoing, it is the opinion of this department that the Acreage and Drilling Agreement submitted is within the exemption of sub-section (f) of Sec. 7726, R.S. Mo. 1929 as amended, in that said agreement on the part of H.F. Wilcox is within the meaning of the term "evidence of indebtedness" as used in said section, and is guaranteed by a corporation, the common capital stock of which is listed upon a duly recognized stock exchange.

Respectfully submitted,

JWH:AH

JOHN W. HOFFMAN, Jr.,
Assistant Attorney General.

APPROVED:

ROY MCKITTRICK,
Attorney General.