

MINERALS: Interpretation of a mineral reservation in a deed
STATE PARKS: conveying land to the State of Missouri. Type of
DEED: mining permissible.

February 20, 1942

State Park Board
Jefferson City,
Missouri

Attention: Mr. E. A. Mayes,
Ass't Director.

Gentlemen:



You request a reconsideration of our opinion under date of August 18, 1941, as to rights of strip mining iron ore under Meramec State Park, in view of additional facts contrary to those heretofore given.

Our former opinion held that open or strip mining, was not permissible in removing iron ore under a reservation in said deed reserving to said grantor all lead, iron, coal, fire clay, rock and other minerals including coal oils and natural gas in or on said land, or rising or coming therefrom, or that may hereafter be found therein or thereon, with the right to mine and remove and take out the minerals hereinabove referred to, storing the same, together with right of ingress and egress over and on said lands and to and from the public road leading to the most convenient market. The said road which is to be used for ingress and egress to be established over and on the most practical route. The said parties of the first part further reserve such timber as may be needed for mining purposes, and the timber so used to be taken from the lands hereinafter specified only. The said parties of the first part also reserve a water right-of-way to the Meramec River to be used in mining operations only, to wit:

"The North $\frac{1}{2}$ of the Northwest $\frac{1}{4}$,
the Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$,
and the Northwest $\frac{1}{4}$ of the North-
east $\frac{1}{4}$, of Section 8;

"The South $\frac{1}{2}$ of the Southwest $\frac{1}{4}$,
and the South $\frac{1}{2}$ of the Southeast $\frac{1}{4}$,
of Section 5; and

"The Northeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$
of Section 6; All in Township 40,
North of Range 1 West of the 5th. P.M.

"TO HAVE AND TO HOLD THE SAME,
unto the said party of the second
part and to its assigns forever,

"Covenants of Warranty and Defend,
excepting taxes for the year 1927
and thereafter.

Julian Pickles SEAL.
Laura Pickles SEAL."

The opinion, hereinabove referred to was premised on certain facts given this Department at the time which we now find were somewhat erroneous. Therefore, the above referred opinion has now been withdrawn and is no longer in effect. After careful investigation the following facts are now submitted to be the true and correct facts in the case.

The grantors in said deed who reserved said mineral rights when conveying said land to the State of Missouri, subsequently leased said mineral rights. We find that the iron ore in this particular locality is of the filled sink type common to Phelps, Crawford, Dent and other adjoining counties and such ore actually often out-crops at the surface in spots and will also be found at a depth sometimes of eighty-five or a hundred feet. That the most economical method of mining said ore of this particular type is by open-cut method in which the overburden of dirt is removed and said iron ore is recovered by quarry methods of mining. Eminent mining engineers and geologists familiar with said property and mineral deposits state that open-cut or quarry mining is the only practical and feasible method of mining said iron ore as it occurs at said location. Furthermore, there have been many mines opened in the above referred to counties during the past seventy-five years and iron ore has been produced from said district in practically in every instance by the open-cut method. Furthermore, tunneling for iron ore at this location is very dangerous

for the reason the roof is likely to cave in due to the fact there is no caprock for support. That said timber reserved in said deed for mining operations is used for platforms, roads, etc. Furthermore, said lessees under this deed are anxious to remove said iron ore in large quantities as quickly as possible, said iron ore to be used for the manufacture of pig iron for use by the national government for national defense.

In *Korneman v. Davis*, 219 S. W. 904, 281 Mo., 242-243, a fundamental rule in construing a deed is that all of the words within the four corners of the instrument must be considered together and given effect.

"It is true that when there is a latent ambiguity in a description of land, the circumstances and situation of the parties, and the construction they have put upon the deed by their acts, are admissible in evidence. (*Tetley v. McElmurry*, 201 Mo. 392; *Gas Co. v. St. Louis*, 46 Mo. 121; *Union Depot Co. v. Railroad*, 131 Mo. 291) * * * * *

"It is also ruled that in construing a deed all the words of the deed within its four corners must be considered together and given effect and that words stating the estimated quantity or area are part of the description of the land and must be so considered in fixing the identity of the tract conveyed. In *Davis v. Hess*, 103 Mo. 1.c. 36, Black, J., said: 'The rule of law is well settled that the call for quantity may be resorted to for the purpose of making that certain which otherwise would be uncertain. * * *. In deeds as well as in wills and contracts, we are to determine the intention of the parties thereto, and this is done by taking the instrument as a whole.'"

In *Rudd v. Hayden*, 97 S. W. (2d) 35, l.c. 36, the Court of Appeals of the State of Kentucky construed a reservation of mineral rights which reads:

"All minerals, coal, clays, spars, oilgases and every other kind and character of mineral cement, oil, gases, &c not included in the above general description, in on and under the after described land, together with the exclusive right to mine same and a right of way across said premises and ingress and egress over said land, for the purpose of operating any mine or mines and privilege of using water in their operation and in fact the full mining right and privilege in and to the following described land, viz.:"

Under the above reservation it was the desire to mine the limestone which, to a certain extent, was similarly located as said iron ore on and in said land, and this is what the court had to say:

"Although the question was presented in a reservation of minerals instead of in a grant, the reason for the rule is aptly stated in *Beury v. Shelton*, supra: 'It is a well known fact, and known of course to the parties to the deed here involved, that the section where this deed was to operate was a limestone country, where the land is everywhere underlain with limestone, and where it crops out on practically every tract of land that is not bottom land, and where it makes its appearance in manner varying from huge cliffs, as in the case here, to small outcroppings on various parts of the land. It is on the land everywhere, either breaking through it, or lying under it at different depths. In this country it is a

part of the soil, and a conveyance that reserves the limestone with the right to remove it would reserve practically everything and grant nothing.'

"* * * * *

"Certainly the 'ordinary and popular' significance of the word 'cement' as used in this deed would be a substance containing the chemical ingredients to be found in limestone, and we are unable to escape the conclusion that the word as used in the deed before us was intended to include 'cement rock' or limestone, from which one or more of the various types of cement might be manufactured."

It was also contended that only such minerals were intended to be conveyed as are mined. The court defined not only the word "mine" as not being limited to cases where a shaft is sunk into the ground but may include "open-cut", "strip" or "hydraulic" methods of mining, and then in discussing the words used to convey said minerals found in, on and under the property said:

"* * * * * Furthermore, the term 'mine' is not limited to those cases where a shaft is sunk into the ground, but may include 'open cut,' 'strip,' or 'hydraulic' methods of mining. Also, it will be observed that the deed conveys the minerals, in, on, and under the property. There could be no possible reason for sinking a shaft to obtain minerals found on the surface. We think it is clear that the phrase used in the deed before us was not intended to have the narrow application for which appellant contends."

The terms in the above mineral reservation, construed by the Kentucky Court of Appeals, in many respects are the same in the reservation we are attempting to construe and likewise the facts in the above case are analogous to the facts in the instant case.

In view of the facts, the only practical and economical method to mine said iron ore at the time the State of Missouri purchased said land, and now, is by open or quarry mining; that for the last seventy-five years there was considerable mining for iron ore in this particular district and in most every case said mining was done in this manner; that to tunnel for said ore would be hazardous, slow and expensive and very apt to result in the caving in of said mine. Also, in view of the authority construing a similar provision to that construed in the mineral reservation in question holding that it was proper to open-cut or quarry mine limestone which is located similar to the iron ore in Meramec State Park, it was evidently the intention of the parties at the time said deed was executed and mineral rights reserved to open-cut and quarry mine said iron ore. Furthermore, while this is not a determining factor as to the type of mining which may be used, it is a factor that should be considered, namely, that the national government is anxious to obtain said iron ore for use in manufacturing mechanized equipment, munitions, arms, etc., for national defense.

Therefore, it is the opinion of this Department that such reservation in said deed conveying said land to the State of Missouri permits said iron ore to be removed by such methods known as the open-cut, quarry or strip mining. However, such iron ore should be removed in the manner and at the least possible damage to the owner of the surface, who is the State of Missouri.

Respectfully submitted

AUBREY R. HAMMETT, JR.
Assistant Attorney General

APPROVED:

ROY MCKITTRICK
Attorney General

ARR:EAW