

Oklahoma Senate Bill 212:

This Statutory Bar Against Aliens Acquiring ‘Land’ May Be Less Generous Than the Constitution, and the Attorney General Opined That This Bar Does Not Cover ‘Oil and Gas’ or ‘Minerals’

By Kraettli Q. Epperson



This article explores the constitutionality of Oklahoma Senate Bill 212 (SB 212), effective as of Nov. 1, 2023, which bars aliens from acquiring and owning Oklahoma “land” and provides comments on whether – according to Oklahoma Attorney General Opinion 2024-2 (dated Feb. 6, 2024) – such statutory bar covers “oil and gas” and “minerals.”

BACKGROUND AND PURPOSE

SB 212 was enacted by the 2023 Oklahoma Legislature and became effective Nov. 1, 2023. Such legislation amended an existing statute (60 O.S. Section 121) and, for the first time, directed all county

clerks in the state of Oklahoma to refuse to accept and record any “deed” conveying “land” that fails to have an affidavit “included as an exhibit to the deed” “attesting” that the grantee is either a citizen of the United States or a noncitizen (an alien) who is or shall become a bona fide resident of Oklahoma.

It appears that this statutory amendment was intended to aid in implementing the Oklahoma Constitutional prohibition that provides:

No alien or person who is not a citizen of the United States, shall acquire title to or own land in this state, and the Legislature shall enact laws whereby all persons not citizens of the United States, and their heirs, who may hereafter acquire real estate in this state by devise, descent, or otherwise, shall dispose of the same within five years upon condition of escheat or forfeiture to the State: Provided, This shall not apply to Indians born within the United States, nor to aliens or persons not citizens of the United States who may become bona fide residents of this State; And Further, That this section shall not apply to lands now owned by aliens in this State.^[1]

In 1910, the state Legislature enacted 60 O.S. Sections 121-127, titled “Alien Ownership of Land: Ownership of Personal and Real Property by Aliens” (herein the “statutory bar”), to implement this constitutional prohibition. Such legislation was amended in 2023 by SB 212; thereafter, Section 121 provided that no “person who is not a citizen of the United States shall acquire title to or own land in the State of Oklahoma, except as hereafter provided,” with limited specified exceptions found in Sections 121-127.

Under the statutory bar, 1) such alien can acquire and hold rights to personal property (Section 121) (see the discussion on personal property below); 2) current owners of land (as of 1910) who are aliens can continue to own such land (Section 122); 3) any alien who is or shall become a bona fide resident of Oklahoma can acquire and hold land in Oklahoma so long as they are a resident, but such resident alien must dispose of such land within five years of ceasing to be a resident (Section 122); 4) any nonresident alien acquiring land by “devise, descent or by purchase, where such purchase is made under any legal proceeding foreclosing liens in favor of such alien, may hold the same for five (5) years from the date of so acquiring such title” (Section 123) (but see the discussion of the constitutionality of this Section 123 below); 5) any alien holding title to land contrary to these statutes can convey “fee simple title” if done before escheat proceedings are begun, so long as not conveying to an alien or to a citizen of the U.S. in trust to evade these prohibitions (Section 124); 6) upon receiving information of land being held contrary to these provisions, the Oklahoma attorney general or the district attorney for the county where the land is located shall undertake escheat proceedings but must give a 30-day notice before initiating such proceedings (Section 125); 7) if the alien owner of land is a minor or of unsound mind, extra steps are required during the escheat proceedings (Section 126); and 8) upon completion of the escheat proceedings, the land shall be sold with the proceeds held for the owner for one year before the funds are paid to the state school fund (Section 127).

The Oklahoma Legislature enacted this SB 212 apparently due to a perceived dramatic increase in the acquisition of land around the nation and in Oklahoma by aliens, including alien-owned entities, which have been allegedly carrying out illegal activities. The language in SB 212 directs the local county clerks – who are responsible for recording all land instruments in order to give to the public notice of their contents (e.g., deeds, mortgages, releases, liens, easements, plats, restrictions, decrees, judgments, etc.) – to refuse to accept and record any “deed” conveying “land” without an affidavit being attached to it.^[2] The affidavit (herein the “non-alien affidavit”) is to be signed by each grantee, swearing they are either a citizen of the United States or a noncitizen (an alien) who is or shall become a bona fide resident of Oklahoma.

In a brochure published in response to SB 212, the Oklahoma Association of Realtors (OAR) explained the reason for this legislative amendment:

Summary: Foreign land ownership has become a salient political issue across the nation for a variety of reasons. In Oklahoma, an increasing number of foreign actors have used loopholes and taken advantage of the State’s marijuana industry to engage in illegal black market operations. The

Oklahoma Legislature passed SB212 in 2023 to provide a prosecutorial framework which law enforcement can use to regulate and punish these illegal, foreign actors.



Confirmation of this assertion by the OAR, that curtailing illegal marijuana business activities was the reason for this legislative action, is found on the face of one of the three affidavit forms promulgated by the Oklahoma attorney general (herein “AG”). The AG is directed by the terms of the SB 212 amendment to Section 121 to “promulgate a separate affidavit form for individuals and for business entities or trusts.” The AG has promulgated three separate affidavit forms (*i.e.*, individual, nonexempt business/trust and business/trust exemption). The affidavit for business/trust exemption has language that echoes the concerns of the OAR. To be eligible to use this business/trust exemption affidavit, the grantee must be (per Section 121) “a business entity that is engaged in regulated interstate commerce in accordance with federal law.” The entity must swear, on the “business/trust exemption” affidavit, “4. ... I further acknowledge and understand that an entity engaged in or supporting the cultivation of marijuana in Oklahoma is not ‘engaged in regulated interstate commerce in accordance with federal law.’”

NEW ENFORCEMENT TOOLS

This new approach shifts part of the burden of enforcement from the AG and the local district attorneys to the local county clerks, who will act as “gatekeepers.” If the “deed” fails to have the appropriate affidavit attached to it – swearing that the grantee is a U.S. citizen or is (or intends to be) a bona fide Oklahoma resident – it will not be accepted for recording.

The three affidavit forms, listed above, contain positive assertions that 1) the affiant is at least 18 years old and has personal knowledge of the statements being made, 2) the affiant is the grantee of the land or the authorized agent of the entity/trust grantee, 3) the individual grantee is a U.S. citizen or bona fide resident alien (or intends to be) of Oklahoma, or the trustees and all direct and contingent beneficiaries and a business’s direct and indirect owners are U.S. citizens or bona fide resident aliens (or intend to be) of Oklahoma, 4) generally, this acquisition is in accordance with the terms of Section 121 *et seq.*, 5) no funding sources were used in violation of this law and 6) acknowledging that U.S. citizens or resident aliens can acquire and hold title to land in Oklahoma. The pre-SB 212 process for initiating an escheat process continues to be described under this amended Section 121 and the remaining unamended Sections 122-127.

QUESTIONABLE PARTS OF THIS STATUTORY BAR – BOTH PRE-SB 212 AND POST-SB 212

The SB 212 Statutory Bar Against Aliens ‘Indirectly’ Owning ‘Land’ by ‘Business Entities and Trusts’ Appears to Be at Least Partially Unenforceable in the Face of the Cartwright Decision Recognizing Domesticated Alien Corporations as Bona Fide Residents

The constitutional bar and the implementing statutory bar, both of which were adopted in 1910, remained unchanged until the passage of SB 212 in 2023, which amended one of the sections (Section 121) of the statutory bar.

In the interim, Enrolled Senate Bill No. 11 was adopted in 1979, and it provided, in pertinent part:

Section 1. The Oklahoma Senate calls upon every citizen with knowledge of non-resident alien land purchases to report to their local District Attorney or to the Attorney General. The Attorney General is directed to conduct an investigation into foreign land investment in Oklahoma and to report to the Oklahoma Senate by May 1, 1979. No action shall be taken against any non-resident land purchaser who has rights by treaty to purchase and own land within the United States.

In response to this senate bill, on May 1, 1979, the AG published the “Non-Resident Alien Ownership of Land in Oklahoma: Report of the Oklahoma Attorney General” (herein the “AG Alien Report”)

In 1979, following the issuance of its “AG Alien Report,” then-current AG Jan Eric Cartwright issued a formal opinion announcing its position against alien ownership of Oklahoma land:

1. *An alien may not directly or indirectly acquire title to or own land in the State of Oklahoma.*
2. *An alien who can be shown to have taken up bona fide residence in this State may acquire and hold lands during the continuance of such bona fide residence; provided, that if such resident alien shall cease to be a bona fide inhabitant of this State, the said alien shall within five years from the cessation of such bona fide residency alienate the lands so held.*
3. *A nonresident alien may hold land in Oklahoma only if the said nonresident alien acquired it by devise, descent or by purchase, where such purchase was made under a legal proceeding foreclosing a lien in favor of such alien, and land acquired by such means may be held for only five years.*
4. *Title to land which has been conveyed in violation of Article XXII, Section 1 of the Oklahoma Constitution, and 60 O.S. 121 (1971), has escheated to the State of Oklahoma.*
5. *The word "person" as used in the Oklahoma Constitution, Article XXII, Section 1, and 60 O.S. 121 (1971), includes bodies corporate, and such bodies do not avoid the provisions thereof by obtaining articles of domestication to transact business in the State of Oklahoma.*[\[3\]](#)

In 1979, a scholarly article was published in the *Oklahoma Bar Journal*[\[4\]](#) that outlined the history behind the adoption of the constitutional bar and the statutory bar and discussed the 1979 AG opinion (1979 OK AG 286).

In 1981, the Oklahoma Supreme Court issued an opinion that overruled the AG’s position that a foreign corporation, which became domesticated, was barred from acquiring and owning land in Oklahoma.[\[5\]](#)

In this *Cartwright* case, the AG initiated a state court proceeding to cause the escheat of Oklahoma land held by a corporation formed in Canada but properly domesticated in Oklahoma. After discussing the terms of the constitutional bar, the court held, “We conclude that the drafters of the Oklahoma Constitution did intend to include corporations within the terms ‘person’ and ‘alien’, as they are used in Section 1 of Article 22 of the Oklahoma Constitution.”[\[6\]](#) And further, “For the above stated reasons, we hold that the drafters of the Oklahoma Constitution meant to include corporations within the restrictions on alien ownership provided for at Section 1 of Article 22.”[\[7\]](#)

However, thereafter, the court held, “After examining the Constitutional and statutory provisions dealing with the treatment of domesticated corporations, we conclude that a foreign corporation, once it has complied with the domestication procedures established under Oklahoma law, is, for the purposes of restrictions on alien land ownership, a resident of the State – and thus no longer subject to the restrictions of Article 22, Section 1, of the Oklahoma Constitution.”[\[8\]](#) The court also stated its ruling another way: “For this reason, we believe it was the intent of the drafters of the Constitution that domesticated corporations be considered ‘bona fide residents’, as that term is used in Article 22, Section 1. In short, we hold that although alien corporations are subject to the restrictions on land

ownership, such restrictions are no longer applicable once the alien corporation becomes a ‘bona fide resident of the State’, and that such residency is accomplished when the alien corporation becomes a domesticated corporation in Oklahoma.”[\[9\]](#)

Therefore, the *Cartwright* decision appears to reject the restriction as stated in the 1979 AG opinion and as stated in 2023 through SB 212 (amending Section 121), which restrictions prohibit an alien from acquiring or holding title to “land in this State either directly *or indirectly through a business entity or trust.*” The *Cartwright* decision clearly holds that a domesticated foreign corporation is not subject to such constitutional bar.

In addition, shares in a corporation or units in a limited liability company are personal property, not real property, and arguably, such interests do not constitute ownership in real property or land.[\[10\]](#) Consequently, it appears an argument can be made that the language in the constitutional bar applying a bar to acquiring and owning “land” but not to acquiring and owning personal property would not bar such stock/unit ownership. In addition, the language of Section 121 in both the pre-SB 212 and post-SB 212 versions does not expressly bar such ownership of personal property. To the contrary, both versions of Section 121 provide, “He or she shall have and enjoy in this state such rights as to personal property as are, or shall be accorded a citizen of the United States under the laws of the nation to which such alien belongs, or by the treaties of such nation with the United States.” Absent evidence that a particular country fails to provide reciprocity to allow U.S. citizens to own personal property in such other country, the Section 121 restriction on an alien owning land “*indirectly through a business entity or trust*” appears to be problematic when considered alongside the holding in *Cartwright*.

After the *Cartwright* decision was issued, two more scholarly articles were issued to summarize the rules on alien ownership of land in Oklahoma in light of that case.[\[11\]](#)

Taken together, 1) the primary holding of the *Cartwright* decision – which established that any *domesticated* alien corporation is not subject to the restrictions of Article 22, Section 1 – combined with 2) the constitutional and statutory authority for aliens to acquire and hold personal property (such as corporate shares and LLC units) appear to raise a significant question: How is it possible to reconcile the *Cartwright* holding (based on the Oklahoma Constitution) with the Legislature’s SB 212, which seeks to *statutorily* prohibit an alien from acquiring and owning title to “land in this State either directly *or indirectly through a business entity or trust?*” In the absence of language in this statutory bar defining a “business entity,” it could be asserted that such targeted entities would include a domesticated alien corporation. This is problematic.

A deeper analysis of the *Cartwright* decision discloses only a very limited instance allowing the state to prevent an “alien” from “indirectly” owning Oklahoma land through a domesticated alien corporation. The *Cartwright* holding provides (para. 40), “Nothing in our holding today, however, should be taken to mean that such rights [for aliens to own land] would be afforded a sham corporation, set up by individual aliens solely to avoid the restrictions of Article XXII, Section 1, when such entities are not in fact operated as legitimate corporations.”

Nevertheless, in the absence of proof that a particular corporation is a “sham” corporation, the holding of *Cartwright* strongly suggests that the Legislature might not be empowered to bar the “indirect” acquisition or ownership of Oklahoma land by a domesticated alien corporation (or other “domesticated entities”).

However (as discussed in detail in the next section of this article), even if the state is constitutionally empowered to enact legislative procedures to bar aliens from acquiring and owning Oklahoma land, there are express constitutional limits (in Art. 22, Section 1) on this process as to timing and procedures. Such constitutional limits on this process do not appear to be properly reflected in the verbiage used by the Legislature in the language they adopted in 1910 for Section 123. Such timing and procedures, set forth in the Constitution, arguably expressly allow *any* alien to initially acquire Oklahoma land and hold it for at least five years. It is only after the passage of such five-year period that an escheat proceeding can be initiated and then completed to cause an alien to lose the title to

their land (after a 30-day advance notice of the intent to file the escheat action). As discussed later, such constitutional language appears to be contrary to the Legislature's original (1910) attempt in Section 123 to prohibit the initial acquisition of title by a nonresident alien, except when acquired by probate or foreclosure proceedings.

Under the Constitution, It Is Arguable That All Aliens, Including Nonresident Aliens, Can Acquire and Own Oklahoma Land, but Such Aliens Must Dispose of It Within Five Years



In order to enforce a bar against aliens acquiring and owning title to Oklahoma land, there logically appears to be three possible options: 1) making any conveyance to an alien void *ab initio*, leaving the legal and equitable title in the grantor (due to no livery of seisin), 2) making any conveyance to an alien act as an automatic conveyance (escheat) to the state or 3) making the conveyance to the alien valid but allowing the initiation of a court proceeding at a later specified point in time to take the title away from the alien (escheating) and give it to the state or sell it.

The public policy against aliens owning Oklahoma land is made clear in Art. 22, Section 1 of the Constitution: "No alien or person who is not a citizen of the United States, shall acquire title to or own land in this state."

However, the timing and process to implement this policy is also clearly set forth in this section of the Constitution: "The Legislature shall enact laws whereby all persons not citizens of the United States, and their heirs, *who may hereafter acquire real estate in this state by devise, descent, or otherwise*, shall dispose of the same within five years upon condition of escheat or forfeiture to the State."

None of the scholarly articles listed above, which discuss many of these matters, mention this particular issue ("otherwise" acquisition), nor does the 1979 AG opinion or the *Cartwright* case deal with this issue.

No language in the constitutional or statutory bars attempts to make the conveyance to an alien void *ab initio*, and the Oklahoma Supreme Court has held that the bar in this constitutional language is not self-executing but is achieved only by the completion of an escheat proceeding in a court.^[12] Also, logically, if the conveyance to an alien was automatically void, there would be no need for the constitutional and statutory bars to provide for a subsequent escheat process.

The Legislature is empowered by the Constitution to establish an escheat process, but the same constitutional provisions make it clear that such escheat proceedings cannot begin until after 1) the

alien acquires the title to the land and 2) an additional five years have elapsed. In addition, the Legislature itself recognized the title the alien acquired “improperly” is valid enough to be transferred to a third party (non-alien), so long as it occurs before the escheat proceeding begins. Such escheat proceeding is not begun until at least 30 days after the alien is given formal notice of the state’s intent to start such proceeding – giving the alien owner a short period of time to validly convey “fee simple title” to a third party (Section 124).

There appears to be the possibility of confusion about whether *all aliens* can acquire and then hold title to land for at least five years or *only a limited group*. This is due to the Legislature’s choice of words used in Section 123 (which language is the same in both the original and current versions). This wording fails to repeat the language of the Constitution as to the allowed groups of alien grantees who can acquire and hold land for five years. The Constitution allows any alien to acquire land and to hold title to such land for five years when such alien acquires title “by devise, descent, or otherwise.” The Legislature appears to redefine this third group (or otherwise) to be narrowed to only those aliens who acquire title “by purchase, where such purchase is made under any legal proceeding foreclosing liens in favor of such alien.” (Section 123).

In addition to allowing the acquisition and owning of title to “land” by an alien through probate (*i.e.*, by “devise [granted by terms of a will] or descent [granted by statutory intestate succession]”), the Constitution expressly allows an alien to also acquire title in a means “otherwise” than just through a probate, meaning the ability to acquire title “in a different manner” – not just through a probate.^[13] Hence, it is arguable that the Legislature overstepped its authority when it redefined and shrank this third class to only consist of a foreclosing alien lien creditor.

It is reasonable to argue that *any* alien person, whether an individual or a “business entity or trust,” can acquire title to land in Oklahoma and hold it for at least five years and, thereafter, continue to hold valid title until and unless an escheat proceeding is completed. Consequently, it appears that according to the Constitution, any alien – whether a resident or nonresident – can acquire and hold title to Oklahoma land for at least five years.

Assuming this hypothesis is correct that any alien – whether a resident or nonresident – can acquire and hold title to land for five years, then any attempt by the Legislature to “bar” an alien from acquiring and holding title to land is unconstitutional. The Legislature’s new attempt under SB 212 (re: Section 121) to direct a state officer – the local county clerk – to refuse to accept a deed for recording because it fails to include an affidavit stating the grantee is not an alien appears to violate this constitutional provision.

It should be noted that any deed is valid between the parties upon its execution and delivery to the grantee or a third party without any recording with the county clerk being needed for such validity.^[14] The lack of recording does prevent third parties from being on constructive notice of this transfer of title. Therefore, if the deed is not recorded, the alien grantee would be unable – in a practical sense – to either 1) secure a mortgage using this land as collateral or 2) get a title opinion or title insurance to sell the land to a third party because it would be impossible to confirm the alien’s *recorded* interest in this land.

The SB 212 Bar to Aliens Owning ‘Land’ Does Not Apply to ‘Oil and Gas’ or ‘Minerals’

As noted above, the limitations against aliens, created by the constitutional and statutory bars, only pertain to “land.”

The purpose of this portion of this article is not to provide a broad discussion of the history and nature of minerals in general or oil and gas in particular in Oklahoma. Instead, it is only to discuss the initial (2023) and then revised (2024) position of the AG concerning whether these constitutional and statutory bars cover “oil and gas” and other “minerals” because these interests might arguably constitute “land.”

Initially, in 2023, the AG gave the following informal written answer to a question posed to his office by the Oklahoma Land Title Association (“OLTA” – the Oklahoma title industry association):

Question: The statute says, “acquire title to or own land,” but the affidavit says, “land or minerals.” We want to confirm that the affidavit will also apply to mineral interests since they are real property interests is that correct?

Answer: *Yes, the definition of land in 60 O.S. §6 includes soil, rock, other substance, and pore space (including oil or gas).*

It is correct that the type of property interest covered by the constitutional and statutory bars is “land.” It is also correct that 60 O.S. §6 (relied on by the AG for its initial position) defines “land.”

However, the AG reconsidered its initial position, which included “oil and gas” in the definition of “land” as used in the statutory bar language of Section 121. In the later formal AG Opinion 2024-2, the AG reversed its earlier position based on a further review of the language of 60 O.S. §6. The new position of the AG is that 1) based on statutory interpretation, “oil and gas” is not included in the statutory definition of “land,” and therefore, no affidavit is required to be attached to a deed or other conveyance of “oil and gas,” and 2) based on statutory discretion (granted in the language of Section 121), deeds to “minerals” are not subject to the requirement to have an affidavit attached to a deed or other conveyance of “minerals” (meaning all minerals, whether solid, liquids or gases).

More specifically, the AG issued its OK AG Opinion 2024-2, dated Feb. 6, 2024, in response to a formal request for an opinion from Oklahoma Sen. Brent Howard that asked, “What instruments are not subject to the affidavit requirement in title 60 section 121 (Supp.2023) of the Oklahoma Statutes?”

In response to such question, the AG gave this response:

As of November 1, 2023, section 121 requires the filing of an affidavit when recording a deed with an Oklahoma county clerk. (S.B. 212, 2023 Leg., 2023 Leg., 59th Sess., 2023 Okla. Sess. Laws ch. 327, §1). *In addition, the amendments mandate this office promulgate template affidavits and vest it with the authority to declare one or more deeds exempt from the affidavit requirement. Pursuant to that authority, this office concludes that the following instruments and entities are exempt from the affidavit requirement in Section 121:*

1. Deeds where the grantee is a domestic governmental body, including, for example, the United States, the State of Oklahoma or a political subdivision thereof, or a Tribe;
2. State or federal court orders and decrees in probate proceedings, divorce actions, quiet title actions to cure a defect in title, or other judicial orders and decrees affecting title to land;
3. Deeds that do not convey or otherwise transfer title or ownership when recording the instrument, including transfer on death deeds and correction deeds; and
4. *Deeds conveying only oil and gas interests.*

In a more detailed discussion in the 2024 opinion, the AG explained that in addition to its ability to provide an answer to this formal question based on statutory interpretation, it was empowered by the Legislature (Section 121) to exempt any additional deeds where it deemed it was appropriate to do so. In regard to the AG’s grant of discretionary authority under Section 121 to exempt additional deeds from the affidavit requirement, the AG explained (in footnote 2):

This declaration does not determine whether these instruments are otherwise exempt from the provisions of section 121 and shall not be construed in such a manner. Instead, this declaration is made only under the express authority in title 60, section 121 (Supp.2023). Such authority provides: “The Attorney General shall promulgate a separate affidavit form for individuals and for business entities or trusts to comply with the requirements of this section, *with the exception of those deeds which the Attorney General deems necessary* when promulgating the affidavit form.”[\[15\]](#)

Specifically, in regard to whether deeds conveying title to “oil and gas” required an affidavit, the AG explained (in part D), based on a statutory construction:

As detailed above, Oklahoma has both constitutional and statutory provisions restricting alien ownership of land. However, neither article XXII, section 1, nor title 60, section 121, supply a definition of “land”. However, it is settled that land is a subpart of real property, which is a subpart of property. 60 O.S. 2021 §§ 4-5.

Further, until 2011, title 60 of the Oklahoma Statutes defined “land” as “the solid material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock or other substance.” 60 O.S. Supp. 2010, §6. Relying on this definition, the Oklahoma Court of Civil Appeals determined that “[t]he word ‘land’ includes not only the surface, but also the minerals found below it.” *Boswell Energy v Arrowhead Homes*, 1999 OK CIV APP 36, ¶ 8, 976 p.2d 1113, 1116. Notably, however, following *Boswell*, the Legislature amended the definition of land in section 6 to state, as it currently does:

A. Land is the solid material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock or other substance, and includes any pore space.

B.

1. As used in this section, “pore space” means any interstitial space not occupied by soil or rock, within the solid material of the earth, and any cavity, hole, hollow or void space within the solid material of the earth.
2. As used in this section, pore space is real property and, until title to the pore space or rights, interests or estates in the pore space are separately transferred, pore space is property of the person or persons holding title to the land surface above it.
3. Notwithstanding the ownership of the pore space, *nothing in this section shall alter or be construed to alter the ownership of, or rights associated with the oil or gas*, as those terms are defined in Section 86.1 of Title 52 of the Oklahoma Statutes, *that may be within the pore space.*[\[16\]](#)

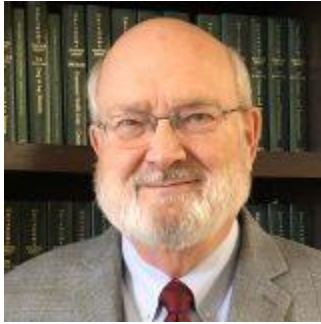
If the meaning of a statute is ever in doubt an amendatory legislative act is presumed to clarify the existing law’s ambiguity, *Texas Cnty, Irrigation and Water Res. Ass’n v. Oklahoma Water Res. Bd.*, 1990 OK 121, ¶ 6, 803 P.2d 1119, 1122. The 2011 amendments to section 6 are presumed to clarify whether contents of pore space are within the term “land” and they are unequivocally not included within the term. Currently, land is the solid material of the earth, including the pore space, but excluding the contents of the pore space. 60 O.S.2021, § 6. Logically, contents of pore space means fluids and gases, like oil and gas, and therefore, deeds conveying only oil or gas transactions are declared exempt from the affidavit requirement in title 60, section 121.

In addition to excluding “oil and gas” by the process of statutory construction, the AG used its discretion (granted by the Legislature in Section 121) to conclude (in footnote 3) that deeds to “minerals” would also be excluded from the need to be accompanied by a non-alien affidavit by stating:

Further, this declared exemption [for oil and gas] includes assignments and leases of only oil and gas interests. Furthermore, as detailed below, the 2023 amendments to section 121 are intended to only affect surface interests where marijuana can be grown. There being no intent to affect any minerals, hard or soft, this office declares, in its discretion, that deeds conveying only subsurface mineral interests are necessarily exempt from the affidavit requirement in title 60, section 121.

CONCLUSION

Deeds (and similar instruments, such as leases and assignments) that convey any interest in “minerals” or “oil and gas” are not subject to the requirement of SB 212 and, consequently, do not need to have a non-alien affidavit attached to it to be eligible for filing with the county clerk. It is hoped that this article prompts further discussion on these topics.



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ENDNOTES

[1] OK Const., Art. 22, Section 1: Aliens – Ownership of land prohibited – Disposal of land acquired (herein the “constitutional bar”).

[2] 16 O.S. Sections 15-16.

[3] 1979 OK AG 286.

[4] Steven L. Barghols, “Alien Ownership of Oklahoma Urban Real Property,” 50 *OBJ* 2439 (1979).

[5] *Cartwright v. Hillcrest Investments, Ltd.*, 1981 OK 27, 630 P.2d 1253.

[6] *Id.*, Para. 8.

[7] *Id.*, Para. 14.

[8] *Id.*, Para. 26.

[9] *Id.*, Para. 31.

[10] 60 O.S. Sections 4, 5, 6 and 9; 18 O.S. Sections 1040 and 2032.

[11] Michael Kuzow, “Corporate Aliens and Oklahoma’s Alien Landownership Restrictions,” 16 *Tulsa L. J.* 528 (2013) (presented at the spring 1981 Energy Symposium); Jennifer Scott Morardi, “Alien Ownership of Land in Oklahoma,” 79 *OBJ* 233. (2008).

[12] *State ex rel Short v. Benevolent Inv. & Relief Assn.*, 1924 OK 1043, para. 9, 232 P. 35, 39: “These sections [Art. 22, Sections 1 and 2] have been held by this court not to be self-executing.”

[13] *Websters*, “otherwise,” adv. “in a different manner, ... in other circumstances, ... in all other respects.”

[14] 16 O.S. Sections 15-16.

[15] 60 O.S. Supp.2023, §121(B)(emphasis added).

[16] 60 O.S.2021, §6 (emphasis added).

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