

ORAL RULINGS OF THE COURT ON MOTIONS HEARD

AUGUST 13, and 14th, 1951

BEFORE: Honorable Carl A. Hatch, Judge

THE COURT: You may proceed upon that understanding. \*\*\*\*\*

Other counsel in the case, do you have any final suggestions you want to make. I might say this, gentlemen, originally it had been my intention, I had contemplated, these were more or less new problems to the Court, that I would take this case under advisement and perhaps render a written opinion. Perhaps due to the able manner in which all sides have presented the case, I do not feel at this time that it is necessary to take any of the matters under advisement. The Court may be wrong in its decision but it is not in doubt about the various questions which have been argued. On the last argument made and the testimony relating to the motion to suppress certain evidence as I indicated a while ago the procedure of proration which began in 1930 was a new matter to this State even as oil was new. I think the Commission did a very good job throughout all of its years. The laws of the State of New Mexico in creating the Commission placed upon the Commission its certain responsibilities and duties. Those responsibilities and duties are such that some of them cannot be delegated. The duty of making a proper proration is perhaps the highest duty which rests upon the Commission. From the evidence which has been introduced, I am convinced that the Commission did make the proper orders relating to the allowable on the state-wide basis. That was as far as the Commission has ever discharged its duty in making the allowables. From that point on all the authority of the Commission appears to have been delegated to Mr. Staley. Mr. Staley himself was indicated as a deputy of the Commission. His powers and duties and authority so far as any evidence before the Court is concerned were never defined nor set forth other than he was a deputy of the Commission.

I cannot believe that he was a deputy authorized to execute the gravest and most responsible power of the Commission, that of making the proper proration order. That is exactly what Mr. Staley did. He took the information which he compiled in his capacity as an engineer of the Lea County Operators Association and in cooperation with the association paying the expenses and doing all of the work and with a staff furnished by the association, he actually made the allocation; not only to the different wells, but to the different fields and pools in the state. I don't think there can be any dispute as to that. That was the act of Mr. Staley, not the act of the Commission. Now, I am convinced from the Champlin case that was read if Mr. Staley had been employed and authorized to gather this data and perhaps make the application, as he did, and it was referred to the Commission; and even if they had accepted without question data he had assembled and the allocations made by him as the act of the Commission itself, all the acts would have been valid. There are various reasons why I think the allocations are not valid and chief among - (Continued page 2)

them, perhaps chief, it is the opinion of the Court that the Commission never made an order allocating to the different fields and pools their rightful share of the state allowable which the Commission did make and never made an order allocating to the individual wells their prorata part of the whole amount or that the pool was entitled to. Now, even if the government is correct that there can be no collateral attack upon an order of this kind, it is the very basis of the prosecution. It must always be remembered this is a criminal action and we can take nothing by averment or implication. The government would have to show an order, and as yet no order appears in this case about the Commission making any allocation to the fields, pools, or other individual wells. I must sustain the motion to suppress.

We pass now to the other arguments which have been advanced. First, the argument made by Mr. Neal, rather an ingenious argument but it doesn't appeal to the Court. I would just merely call attention to this one fact that the crime of conspiracy was a crime under 88, it was a crime after the revision, it is the same identical crime, no change whatever was made in the law. The conspiracy existed even before and continued afterwards. Now, counsel says the conspiracy or the unlawful agreement is the gist of the offense. Quite true, but no offense can be committed until an overt act takes place. These overt acts continued after the change. Counsel says as to that that would make the overt act itself a crime. I do not agree with that. The conspiracy follows the overt act just as the overt act follows the conspiracy. It takes them both to make a crime and the two continued before and after the revision.

Now the constitutionality of the New Mexico Law, the next point raised. Counsel for the government contended earnestly that this Court is bound to uphold the statute of New Mexico if it can be done and indulging every presumption in favor of constitutionality of the Act. I agree with that especially in a case of this kind. I do not believe the trial court should hold an act of this nature unconstitutional unless it was beyond reasonable doubt. Well, I have many doubts as to the argument that this Act is unconstitutional. On the contrary my opinion is instead of doubting its constitutionality my opinion is that the New Mexico Conservation Act is constitutional, that the delegation of powers to the Governor, the State geologist and the Land Commissioner is not a delegation of legislative duties in the sense that counsel argues, it does set up additional duties which are administrative and executive in nature rather than legislative and therefore the designation of the Governor and the Land Commissioner and the State Geologist as members of this Board doesn't violate the rules against a delegation of legislative powers to the executive branch of the government. From what I have said, gentlemen, I think it disposes of all the questions that have been presented or have I overlooked any.