Summer 1965

Oil and Gas—Substantial Evidence—Seismic Data and Order for Drilling Unit: Vogel v. Corporation Comm'n, 399 P.2d 474 (Okla. 1965).

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Recommended Citation

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RECENT NATURAL RESOURCES CASES

OIL AND GAS—SUBSTANTIAL EVIDENCE—SEISMIC DATA AND ORDER FOR DRILLING UNIT*—In Vogel v. Corporation Comm’n, the Oklahoma Corporation Commission issued its order establishing a drilling unit for the production of gas and distillate from a designated common source of supply. The plaintiffs in error appealed from the order, asserting that it was not supported by substantial evidence because the evidence consisted of expert opinions based solely on seismic data. In affirming the order, the Oklahoma Supreme Court applied the familiar substantial evidence rule to the effect that the court will not substitute its judgment for that of the corporation commission and that an order of the corporation commission establishing drilling units will be affirmed if it is supported by substantial evidence. The court observed that it was not necessary to decide whether or not the opinion of an expert based solely on seismic data may provide the necessary substantial evidence, because the testimony of an expert witness revealed that his opinion was also predicated upon information derived from wells drilled in the area.

From the standpoint of the principle applied and the results reached, the Vogel case presents nothing novel. Something new is presented by the Vogel case, however, to the extent that the opinion reveals a probable attitude of the court toward the validity of drilling unit orders issued on the basis of expert opinion derived only from seismic data.

In applying the broad principle underlying the substantial evidence rule, the court has not been inclined to recognize specific standards to be applied in determining whether or not the evidence in a given case is substantial. In the Vogel case, the court revealed an inclination to refuse to establish any fixed minimum standard to be so applied. From the opinion in Vogel, one gathers that it cannot be said that an order must be reversed for lack of substantial evi-

1. 399 P.2d 474 (Okla. 1965).
dence if it is supported by opinion evidence which is based on seismic data alone.

From the standpoint of its practical impact, the *Vogel* case does much to encourage a practice of establishing drilling units on the sole basis of seismic data. Such a practice can be of significance to any owner of an operating interest who is not interested in participating in a proposed drilling operation because he is subject to compulsory participation in exploratory drilling, or to compulsory assignment of his interest under a pooling order. It is to lessors as a class, however, that such a practice can present the greatest disadvantages.

Lessors, as a class, are traditionally likely to feel abused by the results flowing from issuance of a drilling unit order. From the date such an order is issued, all lessors in each drilling unit are effectively pooled and share in production from the unit on the basis of acreage contributed. Beyond objecting to the requirement that he share royalty with other lessors, the lessor is also likely to object to the control placed upon density of drilling. The lessor has come to regard the size of the drilling unit as having a very direct impact upon his economic well being. With only one well normally permitted in each drilling unit, the lessor is likely to regard the establishment of a large drilling unit as a conspiracy to deprive him of a right to insist upon the drilling of additional wells.

To extend a measure of protection to the lessor, legislation has been enacted which imposes limits upon the authority of the corporation commission with respect to the size of drilling units to be authorized for common sources of supply of oil. There is no such limit with respect to the size of drilling units to be authorized for common sources of supply of gas. The initial classification of the common source of supply as gas or oil is significant, for the reason that if the area has been designated as a common source of supply for gas by the corporation commission, the completion of an oil well in the designated area does not require respacing under the statute limiting the size of spacing units for a common source of supply of oil, and the royalty owners in the unit will share in the royalty on oil produced from the unit. As a result, one may expect a lessor reasonably to feel that such an important order as the

3. Ibid.
initial order establishing drilling units should require something more than an educated guess of an expert predicated solely upon seismic data regarding the probable content of the structures revealed by the seismic data.

The statutes relating to field-wide unitization require that the unit area shall include only so much of a common source of supply that has been defined and determined to be productive of oil and gas by actual drilling operations. In the case of the drilling unit, it would be unrealistic to impose such a requirement for the reason that only one well on each unit is authorized in the absence of some special exception, and such a requirement would effectively prevent the establishment of drilling units until after the drilling of a productive well on each proposed unit. It should not be unreasonable, however, on the question of classification of the common source of supply to require evidence that is more revealing than the information provided by seismic data regarding the probable presence of gas, as distinguished from oil, if the size of the unit sought exceeds the statutory limit on the size authorized for oil.

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