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Tax Sales, Due Proces and Severed Mineral Interests in Oklahoma

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TAX SALES, DUE PROCESS AND SEVERED MINERAL INTERESTS IN OKLAHOMA

INTRODUCTION

Currently in Oklahoma, the owner of a previously severed, nonproducing[1] oil, gas and other mineral interest stands to lose that interest if the surface estate owner defaults in payment of ad valorem taxes. The severed, nonproducing mineral owner is not entitled to notice of tax resale[2] other than constructive notice by publication which does not include the name of the mineral owner.

The Oklahoma Supreme Court's latest restatement of the rule is contained in *Christie-Stewart, Inc. v. Paschall.*[3] *Christie-Stewart* and its forerunners[4] have consistently upheld against constitutional due process attacks the adequacy of notice provided severed mineral interest owners under Oklahoma's tax resale provisions. Yet the resultant taking seems indeed harsh to Oklahoma mineral owners. An amendment to present ad valorem tax law is now pending in the Oklahoma legislature.[5] The bill, if enacted, would provide for separate assessment of mineral interests and afford greater protection of mineral estate property rights.

This comment discusses the problem of adequacy of notice accorded severed mineral owners under Oklahoma tax resale statutes by (1)

1. Once minerals are produced and gross production tax paid, the mineral estate is deemed to have been severed for ad valorem tax purposes, so that a tax resale purchaser does not take title to the minerals, but only to the surface estate. Dilworth v. Fortier, 354 P.2d 1091 (Okla. 1960); Peteet v. Carmichael, 191 Okla. 593, 131 P.2d 267 (1943); McNaughton v. Beattie, 181 Okla. 603, 75 P.2d 400 (1937); Meriwether v. Lovett, 166 Okla. 73, 26 P.2d 200 (1933).

For the sake of brevity, further reference in this article to mineral rights is intended to refer to nonproducing mineral interests unless stated otherwise.

2. This discussion is aimed primarily toward tax resale and resultant resale deeds. Although mineral interest owners are not afforded personal notice of the initial foreclosure proceeding (the original sale level) personal notice to mineral owners is required before a deed can be executed to a purchaser under original sale provisions. Walker v. Hoffman, 405 P.2d 57 (Okla. 1965); Martin v. Atkinson, Warren & Henley Co., 195 Okla. 19, 154 P.2d 945 (1945).

3. 502 P.2d 1265 (Okla. 1972), *vacated and remanded,* 414 U.S. 100 (1973).

4. Colonial Royalties Co. v. Sitler, 298 P.2d 1060 (Okla. 1956); Jenkins v. Frederick, 208 Okla. 583, 257 P.2d 1058 (1952); Cornelius v. Jackson, 201 Okla. 667, 209 P.2d 166 (1948), *appeal dismissed,* 335 U.S. 906 (1949).

5. Okla. H.B. 1627, 35th Legis., 2d Sess. (1976).

examining the Oklahoma tax sale structure and notice provisions, and discussing (2) the *Christie-Stewart* holding, (3) possible due process and policy considerations, (4) protective measures available to current severed mineral interest owners, and (5) a prospective view and consideration of the proposed legislation.

TAX SALE STRUCTURE AND NOTICE PROVISIONS

Initially it is helpful to outline the somewhat complex procedures and notice requirements under Oklahoma tax foreclosure statutes. These provisions and other basic facts are set out now as a framework for understanding the considerations involved in the subject of tax sales, due process and severed mineral interests in Oklahoma.

All property in the state, both real and personal, is subject to assessment and taxation on an ad valorem basis.[6] The entire tax on a particular tract of real property is levied upon the surface estate.[7] The mineral estate is not separately assessed[8] nor may its value be considered in setting the amount of tax.[9] Tax rolls containing the names of owners of the real property are prepared by the county assessors.[10] The names enrolled are those of the owners of the surface estate who are charged with the duty of paying the ad valorem tax.[11] The names of any severed mineral interest owners do not appear on the tax rolls. The rolls are forwarded to county treasurers who levy the tax.[12]

If the surface owner defaults in payment of ad valorem taxes, the tax foreclosure statutes come into play. The sale proceeds along a series of three so-called levels.

Original Sale[13]

This first level consists of public sale of the property by the county

6. OKLA. STAT. tit. 68, § 2404 (1971).
7. Jenkins v. Frederick, 208 Okla. 583, 257 P.2d 1058 (1952); Cornelius v. Jackson, 201 Okla. 667, 209 P.2d 166 (1948), *appeal dismissed*, 335 U.S. 906 (1949); State v. Kirchner, 185 Okla. 129, 90 P.2d 1055 (1939); State v. Shamblin, 185 Okla. 126, 90 P.2d 1053 (1939).
8. Jenkins v. Frederick, 208 Okla. 583, 257 P.2d 1058 (1952); Cornelius v. Jackson, 201 Okla. 667, 209 P.2d 166 (1948), *appeal dismissed*, 335 U.S. 906 (1949); State v. Kirchner, 185 Okla. 129, 90 P.2d 1055 (1939); State v. Shamblin, 185 Okla. 126, 90 P.2d 1053 (1939).
9. State v. Shamblin, 185 Okla. 126, 90 P.2d 1053 (1939).
10. OKLA. STAT. tit. 68, § 2472 (Supp. 1975).
11. *E.g.*, Jenkins v. Frederick, 208 Okla. 583, 257 P.2d 1058 (1952).
12. OKLA. STAT. tit. 68, § 24201 (1971).
13. OKLA. STAT. tit. 68, §§ 24311, 24313-28 (1971); OKLA. STAT. tit. 68, § 24312 (Supp. 1975).

treasurer, subject to a two year redemption period.[14] The treasurer is required to give notice of original sale by publication, in a newspaper in the county in which the land is located, and by certified mail to the last owners of record according to the tax rolls.[15] However, "failure to receive said notice [by certified mail] shall not invalidate [the original] sale."[16] As severed mineral owners do not appear on the treasurer's rolls they are not named in the publication notice, nor are they entitled to receive certified mail notice of the original sale.

The successful bidder at the original sale[17] receives a certificate, in effect a lien upon the land for delinquent taxes.[18] If there is no individual purchaser at the original sale, the land is "bid off" in the name of the county.

If the land remains unredeemed upon expiration of the two year redemption period, the certificate holder may demand a certificate deed, which vests an absolute fee simple title in the grantee.[19] However, the certificate holder is first required to serve written notice of intent to demand a certificate deed upon the resident owner of the land. Nonresident owners and those whose whereabouts are unknown and cannot by "the exercise of reasonable diligence" be ascertained may be served by publication notice.[20]

"Owner" for the purposes of this section only has been construed to mean not only the surface owner whose name appears upon the tax rolls, but also the owner or owners of any severed mineral interest.[21]

Purchase of Certificate After Original Sale

Although not a recognized level per se, this aspect is better understood if explained as a separate step in the procedure. During the period after original sale and before resale, if the land remains in the hands of the county and has not been redeemed, anyone offering to pay the "full amount due" may obtain a certificate and lien upon the property.[22] If redemption has not occurred at the end of the two year period, the certificate holder may demand a certificate deed in the same

14. OKLA. STAT. tit. 68, § 24311 (1971).
15. OKLA. STAT. tit. 68, § 24312 (Supp. 1975).
16. *Id.*
17. "The person who offers to pay the full amount due on any parcel of land shall be considered to be a successful bidder." OKLA. STAT. tit. 68, § 24313.1 (1971).
18. OKLA. STAT. tit. 68, § 24316 (1971).
19. OKLA. STAT. tit. 68, § 24323 (1971).
20. OKLA. STAT. tit. 68, § 24323 (1971).
21. Walker v. Hoffman, 405 P.2d 57 (Okla. 1965); Martin v. Atkinson, Warren & Henley Co., 195 Okla. 19, 154 P.2d 945 (1945).
22. OKLA. STAT. tit. 68, § 24313.1 (1971).

manner and subject to the same notice requirements as if he had acquired the certificate at the time of the original sale. Thus, notice must be served on both the surface owner and any severed mineral interest owner.

Upon expiration of the redemption period, if the land has not been redeemed and no one has acquired a certificate, the foreclosure process continues to the next level.

Resale[23]

The property is again offered at public sale.[24] Prior to resale, the county treasurer is required to give notice in the same manner as that prescribed under the original sale notice provisions, except that notice may be given by posting on the courthouse door if no newspaper exists in the county.[25] Under this section, as under the notice of original sale provision, the owner afforded notice by certified mail and named in the publication or posted notice is the owner as shown by the tax rolls.[26]

The resale purchaser is entitled to a resale deed, vesting fee simple title to both the surface and the nonproducing mineral estates in the grantee.[27] If there are no individual purchasers at resale, the property is deeded in the name of the county commissioners and the next level of the process is reached.

Commissioners' Sale[28]

At this level, "taking" by the county is deemed to have become complete and absolute. Upon execution of a tax resale deed all right of redemption is cut off.[29] Public notice of commissioners' sale is given

23. OKLA. STAT. tit. 68, §§ 24329-30, 24332-37 (1971); OKLA. STAT. tit. 68, § 24331 (Supp. 1975).

24. OKLA. STAT. tit. 68, § 24329 (1971).

25. OKLA. STAT. tit. 68, § 24331 (Supp. 1975). The question arises as to what the effectiveness of publication notice would be, should the treasurer choose to place the notice in a specialized journal such as a "legal news," which is common practice in some areas.

26. OKLA. STAT. tit. 68, § 24331 (Supp. 1975).

27. OKLA. STAT. tit. 68, § 24335 (1971); Cornelius v. Jackson, 201 Okla. 667, 209 P.2d 166 (1948), *appeal dismissed,* 335 U.S. 906 (1949); Secrest v. Williams, 185 Okla. 449, 94 P.2d 252 (1939).

28. OKLA. STAT. tit. 68, §§ 24338-40 (1971). This level is mentioned only to complete the explanation of the three tier system, and is not within the scope of this article.

29. Sherrill v. Deisenroth, 541 P.2d 862 (Okla. 1975).

solely for the purpose of attracting buyers rather than for apprising former owners.[30]

From the foregoing summary, it can be seen that a severed mineral interest owner is provided personal notice only in the instance of demand by a certificate holder for a certificate deed. Should the property remain unpurchased throughout the resale level, notice to the mineral owner is constructive only by publication in the county or by posting. Furthermore, purchase, at either level, of the surface estate vests in the purchaser ownership of a nonproducing mineral estate,[31] whether previously severed or unsevered.[32]

The Oklahoma Supreme Court has steadfastly maintained that due process of law mandated by the Constitution of the United States is adequately met by the state's foreclosure law. The court's reasoning on the issue of due process and its reasons for distinguishing between certificate deed notice and resale notice are examined in the following discussion of *Christie-Stewart, Inc. v. Paschall.*[33]

CHRISTIE-STEWART, INC. V. PASCHALL

The Supreme Court of Oklahoma decided in *Christie-Stewart, Inc. v. Paschall* that the due process clause of the fourteenth amendment to the United States Constitution[34] is not offended by the provision calling for notice of tax resale to be given to mineral owners solely by publication.

Defendants, the Paschalls and Ross, had previously acquired 15/16ths of the minerals under a 40-acre tract. The other set of defendants, Garrett and Vaughn, claimed the minerals by virtue of a 1956 tax resale deed, occasioned by the surface owner's failure to pay ad valorem taxes. The Paschalls and Ross did not receive notice, either personal, or by mail or posting, of either the original sale or the resale.[35] Plaintiff, Christie-Stewart, acquired separate oil and gas leases from

30. OKLA. STAT. tit. 68, §§ 24338-40 (1971); Legg, *Tax Sales and the Constitution,* 20 OKLA. L. REV. 365, 368 (1967).

31. *E.g.,* Christie-Stewart, Inc. v. Paschall, 502 P.2d 1265 (Okla. 1972), *vacated and remanded,* 414 U.S. 100 (1973) (resale deed); Ball v. Autry, 427 P.2d 424 (Okla. 1966) (certificate deed).

32. Cornelius v. Jackson, 201 Okla. 667, 209 P.2d 166 (1948), *appeal dismissed,* 335 U.S. 906 (1949); Secrest v. Williams, 185 Okla. 449, 94 P.2d 252 (1939).

33. 502 P.2d 1265 (Okla. 1972), *vacated and remanded,* 414 U.S. 100 (1973).

34. U.S. CONST. amend. XIV, § 1.

35. Neither was there any indication that they had actual knowledge of the fact of the surface owner's default in payment of ad valorem taxes.

both sets of defendants in 1963, and after production was obtained in 1965, brought suit to quiet title and for determination of ownership of the minerals.

Sufficiency of the resale notice was the only question before the court. The county treasurer had issued notice solely by publication in accordance with the statutory system then in effect. The publication notice did not name the Paschalls or Ross. Justice Jackson noted:

> Since oil and gas interests in land are not separately taxed on an ad valorem basis the names of the mineral owners do not appear in the County Treasurer's records. We have held that the Treasurer is not required to search the County Clerk's records to ascertain the names of the owners of the land.[36]

The court ruled that the very existence of the resale statute coupled with publication is sufficient notice to all interest holders. All persons having an interest in land, including mineral owners, are charged with notice of the taxing statutes. The tax resale statutes set a definite date, time and place for resale; thus, all owners are on notice to take appropriate steps for the protection of their interests. Furthermore, mineral interest and other owners have two years from the time of the original sale to make inquiry of any foreclosure and to redeem.[37]

Mullane v. Central Hanover Bank & Trust Co.[38] and other cases,[39] relied upon by the intermediate appellate court[40] in support of its finding against the resale purchasers, were rejected and distinguished. In those cases, publication notice was found inadequate to put interested parties on notice because there was no statutorily designated time or place for the relevant action or proceeding. "In each of [those] cases the landowner was not aware that he should examine the published notices. He could not forecast with certainty when, if ever, an action would be filed."[41]

In both *Christie-Stewart* and in the earlier case of *Walker v. Hoffman*,[42] the supreme court found that due process requires personal

36. 502 P.2d at 1268.

37. It is possible for a mineral interest owner to pay taxes assessed against the surface in order to protect his interest and in so doing to acquire an equitable lien against the surface for the amount of taxes paid. Cochran v. Godard, 182 Okla. 506, 78 P.2d 692 (1938).

38. 339 U.S. 306 (1950).

39. Wisconsin Electric Power Co. v. City of Milwaukee, 352 U.S. 948 (1956); Walker v. City of Hutchinson, 352 U.S. 112 (1956); New York v. New York, N.H. & H.R.R., 344 U.S. 293 (1953).

40. Court of Appeals of Oklahoma, Div. No. 2.

41. 502 P.2d at 1267.

42. 405 P.2d 57 (Okla. 1965).

notice to severed mineral owners upon a certificate holder's demand for a certificate deed, but that personal notice is not required *prior* to tax resale. The court explained in *Christie-Stewart*:

> In Walker v. Hoffman we held that an applicant for a county treasurer's *certificate deed* must give notice to the severed mineral interest holders. *Mullane* clearly applies where an application is made for a treasurer's certificate deed. This is because the timing of the application is left to the applicant and the burden of providing adequate notice and due process is imposed upon the applicant. In Resales the County Treasurer gives notice by publication (to owners who already statutorily know the time and place of the sale) that the land will be sold at the time and place specified by the statute unless the taxes are paid. Thus the publication notice of Resale is supplemental to other action which had conveyed a warning to the owners of interests in the land. The Supreme Court in *Mullane* said this has been the traditional and acceptable use of publication.[43]

After the *Christie-Stewart* decision the Oklahoma legislature amended the notice requirements of the resale statute.[44] As stated previously,[45] in addition to giving notice by publication, the county treasurer is now required to notify owners by certified mail. Perhaps this amendment was an attempt by the legislature to shore up what it considered inadequate notice to all interested owners in light of the holding in *Christie-Stewart*. If this was in fact the goal, it was not achieved. The "owners" to be notified by certified mail are those appearing on the tax rolls, *i.e.*, only the surface owners. Consequently, the severed mineral interest owners do not benefit from the amendment and are not entitled to personal notice, unless the Oklahoma court determines that "owners" under the resale notice statute includes owners of the severed mineral interest. A similar inclusive definition of "owners" is recognized in the certificate deed provision of the statute.[46]

The decision in *Christie-Stewart* was appealed to the United States

43. 502 P.2d at 1268 (emphasis in original).
44. OKLA. STAT. tit. 68, § 24331 (Supp. 1975).
45. See note 15 *supra* and accompanying text.
46. This occurrence is unlikely however, due to the difference in statutory language in the two sections. Under the section referring to notice prior to demand for certificate deed, it is specifically stated that notice shall be served and returned "in the same manner as that of summons in courts of record." OKLA. STAT. tit. 68, § 24323(b) (1971). On the other hand, notice of resale is not to be served, but rather given by publication and supplemented by certified mail notice, with the further proviso that failure to receive the mailed notice will not invalidate the resale. OKLA. STAT. tit. 68, § 24331 (Supp. 1975).

Supreme Court.[47] After oral argument, the Supreme Court vacated and remanded without reaching the constitutional issues. The Court grounded its decision to remand on the applicable statute of limitations.[48]

On remand, the Oklahoma court found appellants had not " 'preserved the right to challenge the trial court's holding that the state's . . . statute of limitations is a bar to their mineral rights claim . . . .' "[49] The constitutional issue was not reached.

Because the original decision was vacated on appeal, it is not within the doctrine of stare decisis. However, should the question come properly before the court again, there is no reason to believe the strong dicta of the original opinion would not be followed.

DUE PROCESS AND POLICY CONSIDERATIONS

As phrased by the Supreme Court in *Mullane*,

> [a]n elementary and fundamental requirement of due process *in any proceeding which is to be accorded finality* is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.[50]

Oklahoma has resolutely applied the principles of *Mullane* to its statute allowing service of process by publication. *Bomford v. Socony Mobil Oil Co.*[51] held that publication service is clearly inadequate where with due diligence the names and addresses of interested parties "are known or readily ascertainable from sources at hand."[52] Of course, *Bomford* dealt with judicial proceedings whereas tax foreclosures are administrative proceedings.[53] Nevertheless, the termination of a mineral owner's property rights is of certain finality whether the termination is obtained under tax sale statutes or by judicial mandate.

As a practical matter, notice by publication is of limited value. However, when publication is the only form of notice, and it fails to

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47. 414 U.S. 100 (1973).
48. OKLA. STAT. tit. 12, § 93 (3), (6) (1971).
49. 544 P.2d 505 (Okla. 1974) (footnote omitted), *petition for cert. filed*, 44 U.S.L.W. 3594 (U.S. Apr. 9, 1976) (No. 75-1435).
50. 339 U.S. 306, 314 (1950) (emphasis added).
51. 440 P.2d 713 (Okla. 1968).
52. *Id.* at 718.
53. The United States Supreme Court has applied *Mullane* requirements to a condemnation proceeding which was essentially administrative in nature. Walker v. City of Hutchinson, 352 U.S. 112 (1956); *see* Comment, *The Constitutionality of Notice by Publication in Tax Sale Proceedings*, 84 YALE L.J. 1505, 1512 n.55 (1975).

designate the parties whose interests are affected, its deficiency becomes patent. As the *Mullane* Court observed,

> [c]hance alone brings to the attention of even a local resident an advertisement in small type inserted in the back pages of a newspaper, and if he makes his home outside the area of the newspaper's normal circulation the odds that the information will never reach him are large indeed. The chance of actual notice is further reduced when . . . the notice required does not even name those whose attention it is supposed to attract, and does not inform acquaintances who might call it to attention. In weighing its sufficiency on the basis of equilavence with actual notice, we are unable to regard this as more than a feint.[54]

Of course, there are interests and policy considerations which might best be served by allowing the mineral as well as the surface estate to vest in a tax sale or resale purchaser. For instance, the state's interest in encouraging exploration and development of oil and gas would be enhanced where the lessee must contract with only one owner (the tax purchaser) as opposed to the lessee's securing leases from a number of fractional mineral interest owners.[55] In addition, requiring personal notice to all owners of a severed mineral interest could discourage the use of tax foreclosure sales. The cost of notifying a large number of owners in any single foreclosure action could easily consume the income derived from the tax sale.

Although tax foreclosure is not favored by the courts,[56] the need for stability and reliability of titles derived from valid tax sales and resales may be desirable. The present five year statute of limitations, however, offers ample security for these purposes.[57]

Conversely, there are policy considerations on the other side of the coin. Obviously, speedy and sure collection of revenue is the primary goal of the governmental entity rather than an endeavor to take title to an assortment of real estate in the county. It is reasonable to assume that if the mineral owners were afforded some means of learning of a default in payment of ad valorem taxes, most mineral owners would readily pay the taxes in order to preserve their interests.

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54. 339 U.S. at 315.

55. Infinitesimal shares are not unheard of, such as a fractional interest of 15,925/1,224,440,064 ths. Francisco, *Land Is Still the Issue*, 10 TULSA L.J. 340, 356 n.38 (1975).

56. "We conclude the removal of a citizen from his land by reason of tax delinquency is repugnant and offends the innate sense of justice in each citizen." Sherill v. Deisenroth, 541 P.2d 862, 867 (Okla. 1975).

57. OKLA. STAT. tit. 12, § 93 (3), (6) (1971).

Oklahoma has long recognized the concept that minerals comprise an estate in land separate and apart from the surface estate. The mineral estate is freely alienable and severable from the surface.[58] Yet this separate estate is dissolved by operation of law under the taxing statutes. The treatment of mineral interests under tax foreclosure laws seems antithetical to the treatment accorded such interests elsewhere in Oklahoma law. The unique position enjoyed by interests in mineral estates is evidenced by Oklahoma's Marketable Record Title Act.[59] This title legislation, contrary to most, if not all, other states which have adopted similar marketable record title legislation, specifically excepts previously severed mineral and royalty interests from operation of the thirty year statutory period under which other property interests are extinguished.[60]

Oklahoma is one of the major petroleum producing states and severed mineral interests are not uncommon in the state. Oftentimes a mineral interest holder has no idea of the identity of the surface tract owner, and certainly no knowledge of whether the surface owner is paying ad valorem taxes as they become due. It also seems reasonable to assume that some, if not many, mineral owners in the state are unaware of the irretrievable taking possible under tax foreclosure laws and are likewise unaware that they are due no actual notice prior to the taking.

REMEDIES AVAILABLE TO CURRENT MINERAL INTEREST OWNERS

While the notice requirements under the present statute are of questionable validity, the mineral owners are afforded limited means for protecting their interests. Mineral owners could make annual inquiry of the county treasurer in the county in which the property is located to ascertain whether ad valorem taxes are delinquent. The mineral interest holder can pay the taxes himself in the event of default by the surface owner, thereby acquiring an equitable lien upon the surface for the amount of taxes paid.[61] This remedy implies that the mineral owner has knowledge of the consequences of tax foreclosure upon the surface estate.

58. *E.g.*, Jenkins v. Frederick, 208 Okla. 583, 257 P.2d 1058 (1952); Cuff v. Koslosky, 165 Okla. 135, 25 P.2d 290 (1933).

59. OKLA. STAT. tit. 16, §§ 71-80 (1971).

60. OKLA. STAT. tit. 16, § 76 (Supp. 1975); Hicks, *The Oklahoma Marketable Record Title Act*, 9 TULSA L.J. 68, 98 (1973).

61. Cochran v. Godard, 182 Okla. 506, 78 P.2d 692 (1938).

Another protective measure is that of production of the minerals and payment of gross production taxes. As noted previously,[62] payment of gross production taxes upon producing minerals is considered an "in lieu" tax, insulating the mineral estate from operation of the ad valorem tax foreclosure provisions.[63] Of course, production by the mineral owner may not be economically feasible. If the interest lies in an unproven area, the owner might meet with little success in finding a lessee willing to embark on a costly exploration project.

It is possible that the mineral owner could obtain a separate assessment of the oil and gas minerals. Coal and asphalt interests have been separately assessed,[64] and the separate assessment constitutes an effective severance of those minerals for purposes of the ad valorem tax.[65] However, the validity of a severance of oil and gas interests in this manner is questionable. There is authority for the proposition that oil and gas mineral interests may not be separately assessed under present statutes.[66]

CONCLUSION

When property is purchased at ad valorem tax foreclosure sales, the purchaser under Oklahoma law takes not only the surface estate, but also any nonproducing mineral estate whether previously severed or unsevered. Under the present resale notice provisions, severed mineral interest owners receive no personal notice of tax resale, even though their names and addresses are in most instances readily ascertainable from land records.

This situation appears most clearly to come within the ambit of constitutionally inadequate notice proscribed by *Mullane v. Central Hanover Bank & Trust Co.* Yet the Oklahoma court has recently reaffirmed the sufficiency of notice under the state's resale tax statute.

62. See note 1 *supra.*

63. Dilworth v. Fortier, 354 P.2d 1091 (Okla. 1960); Peteet v. Carmichael, 191 Okla. 593, 131 P.2d 767 (1943); McNaughton v. Beattie, 181 Okla. 603, 75 P.2d 400 (1937); Meriwether v. Lovett, 166 Okla. 73, 26 P.2d 200 (1933).

64. Central Coal & Coke Co. v. Carselowey, 40 F.2d 540 (N.D. Okla.), *aff'd*, 45 F.2d 744 (10th Cir. 1930). "[W]hile there is no statute in Oklahoma authorizing a severance of the mineral estate from the surface [for ad valorem tax purposes], there is none forbidding it . . . ." 45 F.2d at 744.

65. Mitcham v. Bowers, 199 Okla. 558, 188 P.2d 363 (1947). A distinction was drawn between inherent characteristics of coal and asphalt from those of oil and gas, the former being permanently situated and their value more readily measured while the latter is of a fugacious nature, difficult to evaluate in place.

66. *See* State *ex rel.* Comm'rs of Land Office v. Continental Oil Co., 273 P.2d 1002 (Okla. 1954).

Owners of nonproducing severed mineral interests are most probably unaware of the threat posed to their property under the foreclosure provisions. If mineral interest holders have knowledge of the potential taking in case of ad valorem tax delinquency, there are few effective means of protection available.

Legislation now pending before the Oklahoma legislature contains a sure and logical solution.[67] The proposed amendment to section 2419 of title 68 calls for separate assessment and taxation of any mineral interest when title to the minerals is in one other than the surface owner. Under this proposal separate evaluation and taxation would effectively sever the mineral estate for ad valorem tax purposes.

Of course, the mineral interest owner would for the first time in Oklahoma be required to pay ad valorem tax on nonproducing minerals. Yet that would be a small price to pay, in order to be rid of the ever-present danger of deprivation of property without due process of law. Only the tax purchaser stands to lose the windfall available under current Oklahoma law.

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67. Okla. H.B. 1627, 35th Legis., 2d Sess. (1976).