

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-220699

DATE: May 14, 1986

MATTER OF: Bureau of Land Management, Department of the Interior - Disposition of Forfeited Bonus Bids Received At Competitive Mineral Lease Sales

DIGEST:

When the high bidder for a mineral lease offered by the Bureau of Land Management does not execute a lease, the one-fifth bonus submitted with the bid is forfeited. Section 35 of the Mineral Lands Leasing Act of 1920, as amended (30 U.S.C. § 191), provides that all money received from sales, bonuses, royalties, and rentals are to be distributed under that section. Therefore, the forfeited bonuses are to be distributed in the same manner as other lease proceeds to which section 35 is applicable.

The Bureau of Land Management of the Department of the Interior (BLM) requests a decision on the disposition of forfeited bonus bid receipts it holds as deposits against the completion of certain competitive mineral leases. We conclude that these forfeited receipts should be distributed in the same manner as other lease proceeds.

In conducting the competition for these leases, BLM receives one-fifth of the bonus bid from the winning bidder as a deposit pending completion of the lease. The lease is executed only if the bidder pays the remaining four-fifths of the bonus bid and the first year rental within 30 days of notice of bid acceptance. If the bidder does not complete payment within this time period, the bonus bid deposit is forfeited to BLM.

We are asked if these amounts should be transferred to Interior's Minerals Management Service for distribution under section 35 of the Mineral Lands Leasing Act in the same way as other lease proceeds subject to section 35, or instead should be deposited as miscellaneous receipts in the General Fund of the U.S. Treasury. The Interior Solicitor's Office has advised BLM that the moneys should be considered "money received from sales" or "money received from * * * bonuses" under the Mineral Lands Leasing Act, both of which are subject to section 35 distribution. We are told that the Solicitor's Office cites Watt v. Alaska, 451 U.S. 259 (1981) in support of this view.

Unless otherwise authorized by law, all receipts are to be deposited in the general fund of the Treasury as miscellaneous receipts, under 31 U.S.C. § 3302. Section 35 of the Mineral Lands Leasing Act of 1920, as amended, is codified at 30 U.S.C. § 191. Under the provision -

"All money received from sales, bonuses, royalties * * * and rentals of the public lands under the provisions of this chapter [Leases and Prospecting Permits] * * * shall be paid into the Treasury of the United States * * *."

Fifty percent of this amount is then required to be paid to the State where the leased land or deposits are located (ninety percent to Alaska); forty percent to the Reclamation Fund established under the Reclamation Act of 1902; and the remaining 10 percent is to be credited to miscellaneous receipts.

Under 43 C.F.R. § 3120.5 (1985), the successful bidder at a mineral lease sale conducted by BLM is required within 30 days of notice to execute lease forms, pay the balance of the bonus bid as well as the first year's rental and the publication costs. If this is not done or the bidder otherwise fails to comply with applicable regulations, the one-fifth bonus accompanying the bid is forfeited. 43 C.F.R. § 3120.6.

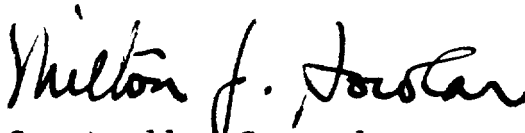
Our review of the legislative history of section 35 does not indicate that any special consideration was given for receipts which are retained because of the high bidder's failure to execute a lease, as contrasted to the retention of the amounts received subsequent to the signing of a lease. Since under section 35, forfeited amounts are not distinguished from other moneys properly retained by BLM, and not returned to the payor, they should be considered as "money received" under that provision.

Moreover, under 43 C.F.R. § 3120.7 Interior has the right to offer a lease to the next highest bidder if the high bid is rejected. This may be done if the difference between the two bids is no greater than the one-fifth of the rejected bid. The effect of this provision is to assure that the receipts from the sale to the next highest bidder, including the forfeited one-fifth bonus bid, shall not be less than the bid originally offered. In this circumstance, the failure to include the forfeited one-fifth bonus bid in the section 35 distribution would reduce the amounts received by the affected states and by the reclamation fund (other than for Alaska) even though the total amount received for the lease equals or exceeds the total original bid, which would be distributed under section 35. We do not believe that this result was

intended. As moneys properly received and retained by the United States, the amounts forfeited should be distributed under section 35.

According to the request for our decision, the Interior Solicitor's Office considers Watt v. Alaska, cited above, as supporting the disposition of forfeited bonus bids under section 35, notwithstanding the later enactment of the Wildlife Refuge Revenue Sharing Act of 1964 which contained a different sharing formula. In that case, the Supreme Court of the United States held that revenues from oil and gas leases on federal wildlife refuges consisting of reserved public lands must be distributed under section 35. The Court concluded that the term "minerals" in section 401(a) of the Wildlife Refuge Revenue Sharing Act, 49 Stat. 383, as amended in 1964 by Pub. L. No. 88-523, 78 Stat. 701, applies only to minerals on acquired refuge lands. We considered the same issue in 55 Comp. Gen. 117(1975) but concluded that all revenues from oil and gas found on wildlife refuge lands, whether the lands were acquired or reserved, were subject to the Wildlife Refuge Revenue Sharing Act rather than the Mineral Lands Leasing Act. The question at hand does not really concern which leases are subject to section 35, but only how forfeited bids on lands which are subject to section 35 are to be treated. Accordingly, we do not think that Watt v. Alaska is relevant in determining the question presented to us. For future reference in appropriate cases, however, we would consider our holding in 55 Comp. Gen. 117 modified to the extent necessary to conform to the Supreme Court's decision.

Accordingly, for the reasons indicated, we conclude that the one-fifth bonus paid by a high bidder for a mineral lease and forfeited to the United States upon failure to execute a lease, is to be distributed in the same manner as lease proceeds otherwise subject to section 35 of the Mineral Lands Leasing Act of 1920, as amended.

for 
Comptroller General
of the United States