

Oil and Gas 101: The Basics for County Boards of Education

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Over the past couple of months there have been more and more county boards of education discussing the potential of entering into the oil and gas leases. Although private landowners have been doing this for years, the new "hot landowner" being approached by developers are county boards. Since the discovery of the Marcellus Shale natural gas play, the rush is on in West Virginia for the acquisition of oil and gas rights. Your county board may be the next to have its door knocked. Some savvy county boards may even want to be proactive and initiate the process.

With regard to a county board of education being able to enter into oil and gas leases, West Virginia Code § 18-5-7 provides, "The board by the same method prescribed for the sale of school building and lands, may also lease for oil or gas or other minerals any lands or school sites owned in fee by it. The proceeds of such sales or rents shall be placed to the credit of such funds or funds of the district as the board may direct."

So, whether a county board of education has its door knocked, or begins to initiate the process on its own, several old maxims and proverbs you may have learned in Kindergarten can help you get the most out of your oil and gas experience.

1. Follow the rules.

Oil and gas leases executed by county boards are subject to public bidding requirements. Make sure to provide ample public notice, advertise in publications, clearly identify the subject property or properties, publish the advertisement in well-circulated news outlets for at least two weeks, and do not play favorites with one interested developer. This will ensure your oil and gas lease is valid and in compliance with applicable law.

2. Haste makes waste.

Once you are contacted by operators or interested lessors, take your time negotiating with them and developing your lease or deeds for the bidding process. Many developers will try to rush negotiations or the public auction process in order to close quickly; the Marcellus Shale play has made mineral acquisition very competitive in West Virginia. Rushing through this process may lead to fewer beneficial lease protections or lackluster deals. There is no worse feeling than executing a deal and getting better offers the next day. If you feel pressured, remember you are in control. Be patient; if you feel adamantly about retaining or deleting certain portions in your bid specifications, work through it and stand firm.

3. Don't sell yourself short.

Since this latest oil and gas boom is so new, it is not uncommon for landowners to undervalue their mineral holdings. If you receive an offer from one developer or landman that sounds too good to be true, do not be afraid to shop around; not only are you required to under the public bidding requirements, you may find another developer willing to pay you much more. Do not be afraid of the developer waking away if your rental or royalty percentage demands are too high. Even if they do, someone else may come along and bid.

4. Be prepared.

To speed up the lease or deed negotiation process, it may be wise to develop a standard or preferred lease document that you could dispatch for a public bid once you hear developers are interested in your property. This goes a long way toward advancing your interests, and often will yield better results; if you show you are educated about oil and gas operations and legal documents, developers and landmen will have more respect for your positions.

5. Do your homework.

News about astronomical rentals and bonus payments for oil and gas leases or deeds are all over local news outlets and landowner blogs. Many of these articles or posts list the latest offers received for various counties and locations within the Marcellus Shale outcrop. Keep yourself educated on your area's progress. This way, once a developer shows interest and you begin a public bid, you can be certain you are getting the best deal for your county board.

6. There is no such thing as a stupid question.

As all educators know, one of the worse attitudes a student can display is one of feigned knowledge. If you do not know what a developer, lawyer, or expert is talking about, cannot make out what a certain lease provision means, or are worried about the equipment and operations involved in drillings wells, ask. In such a specialized field, something as small as deleting a lease provision could put you in the hole – perhaps even literally. Given your responsibility to the public interest and the bidding process, you cannot take this maxim lightly.

7. If you don't have anything nice to say...

It is very easy to see people across the negotiating table or auction bid as an adverse party. Once this occurs, correspondence and meetings can become counter-productive and may even hurt your ultimate deal. Whether it is the superintendent of your county board, a landman from Texas, or a lawyer drafting the leases, everyone involved in your negotiations are professionals and should act that way. The more amiable and open a negotiation becomes, the better outcome for everyone involved. If you encounter a pushy or rude representative in the process, take a step back and attempt to put yourself in his position.

8. There's no "I" in team.

If you are the one responsible for developing a public auction or contact with prospective bidders, remember that you are not on your own. The more people within your organization that can help, the better. Many skills are needed for successful auctions and negotiations, and they may not be present in one person. For example, patience and diligence are certainly necessary virtues in oil and gas work, but so are flexibility, planning, and cautious risk-taking. In addition, many developers new to the Marcellus Shale play are arriving from Texas and other places in the Midwest, and may not be acquainted with the laws and customs of West Virginia. Locating the right person to connect with these professionals during the public auction process may also facilitate a smoother process.

9. Play fair.

With the large amounts of money being thrown around in the Marcellus Shale play, it is important to strike a good balance between zealous negotiation and greed. Always be upfront with potential bidders. Often, these developers have spent a good deal of money in locating your parcel, studying geology, and examining title. If you are uncertain about title, previous gas leases, or the amount you are willing to accept as bonus and rental payments, do not hide this information in order to get higher offers. Just as an unfair landman gets a bad reputation, landowners and even public bodies can get a bad reputation within the industry. If the developers do not think dealing with your organization is worth the headache and expense, you will receive fewer offers.

10. Learn from your mistakes.

Lease or deed executions and public auctions are not an exact science. If you finish an auction and negotiation and are unhappy about the outcome, analyze what happened. If you have additional properties to let or sell, make sure to adjust your tactics, documents, bid specifications, or even your bid

representative to ensure a more successful experience the next time. The Marcellus Shale play, the driving force behind the new push for oil and gas sales and leases in West Virginia, is forecasted to be one of the largest in the country, and could continue development for decades. There will be other chances; just make sure to address previous mistakes.

11. Ask for help.

If you find yourself struggling or overwhelmed with the construction, drafting, advertising, or bidding process, ask for help. There are many experienced brokers and lawyers that can help you through the process. The more information you provide them concerning the property, your goals or limitations, or your concerns, the easier the project will become. Do not put yourself in a position where it is too late to get help from professionals; once executed, there is very little that can be fixed on leases and deeds without costly legal action.

Should you have any questions on this issue or any issues please feel free to contact a member of Dinsmore & Shohl's [Education Law Practice Group](#).