meaning from the traditional argument that this property qualification reflects on a candidate's stake in and ties to the community.

Applying either the "traditional" or "compelling interest" test to the qualification at hand, the controlling decision of the United States Supreme Court in *Turner v. Fouche, supra,* and the well-reasoned decision of the Federal District Court for the Eastern District of Michigan in *Stapleton v. Clerk for City of Inkster, supra,* require me to conclude that the ownership of real or personal property assessed for taxes in a school district is not a valid requirement for the office of member of a board of education.

Therefore, I am constrained to conclude that the statutory requirement of ownership of real or personal property assessed for taxes as a qualification for the office of member of a board of education, as provided in Section 492 of the school code of 1955, is unconstitutional as violative of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

FRANK J. KELLEY,
Attorney General.

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COMMISSION OF NATURAL RESOURCES: Regulation of oil and gas operations on State owned lands.

SUPERVISOR OF WELLS: Regulation of oil and gas operations.

OIL AND GAS: Discretionary authority of Supervisor of Wells with regard to the issuance of drilling permits.

DRILLING PERMITS: Basis for denial by Supervisor of Wells.

The Supervisor of Wells may regulate or prohibit drilling for oil and gas if such operations cannot be conducted without causing or threatening to cause serious or unnecessary damage to or destruction of the surface, soil, animal, fish or aquatic life and property.

The Commission of Natural Resources may promulgate rules regulating and prohibiting the drilling for oil and gas on lands owned by the State and under the control and supervision of the Commission, when necessary to protect such lands from molestation, spoliation, destruction or depredation.

No. 4718 April 6, 1971.

Dr. Ralph A. MacMullan, Director
Michigan Department of Natural Resources
Stevens T. Mason Building
Lansing, Michigan 48926

You have requested my opinion on the following question:

". . . whether or not the environmental encroachment that would be caused by drilling operations on leased State lands in areas valuable for aesthetic and game propagation purposes is sufficient reason for

denial of a permit either by the Supervisor of Wells or by the Commission when the application meets all normal requirements."

In order that mining for oil and gas may be conducted in a manner consonant with a desire to protect the natural resources in this State from unwarranted waste and exploitation, Act 61 of the Public Acts of 1939 was enacted [Act 61 of the Public Acts of 1939, as amended, being M.C.L.A. § 319.1 et seq., M.S.A. § 13.139(1) et seq.].

The stated purpose of Act 61 of the Public Acts of 1939, as amended, is to provide for a Supervisor of Wells,[1] prescribe his powers and duties, provide for the prevention of waste and for the control over certain matters, persons and things relating to the conservation of oil and gas, and for the making, promulgation and enforcement of rules and regulations and orders relative thereto, and the enforcement of the provisions of the act (See title to Act 61 of the Public Acts of 1939, as amended).

The Supervisor of Wells is by Section 6 of Act 61 of the Public Acts of 1939, as amended, empowered to and directed to prevent the waste prohibited by the act. Section 4 of Act 61, P.A. 1939, as amended, provides:

> "It shall be unlawful for any person to commit waste in the exploration for or in the development, production, or handling or use of oil or gas; or in the handling of any product thereof." M.C.L.A. § 319.4, M.S.A. § 13.139(4)

Defining waste, Section 2 of Act 61 of the Public Acts of 1939, as amended, in relevant part states:

> "* * *
>
> "(1) As used in this act, the term 'waste' in addition to its ordinary meaning shall include:
>
> "* * *
>
> "(2) 'Surface waste,' as those words are generally understood in the oil business, and in any event to embrace . . . (2) *the unnecessary damage to or destruction of the surface, soils, animal, fish or aquatic life or property from or by oil and gas operations; . . .*" (Emphasis supplied) M.C.L.A. § 319.2, M.S.A. § 13.139 (2)

To the end that the Supervisor of Wells may in fulfillment of his duties prevent such waste, Section 6 of Act 61 of the Public Acts of 1939, as amended, further provides:

---

[1] Section 3 of Act 61 of the Public Acts of 1939 provided that the director of Conservation of the State shall act as supervisor of wells.

Section 253 of Act 380 of the Public Acts of 1965 transferred all powers, duties and functions then vested in the director of Conservation by a type I transfer to the Department of Conservation.

Section 1 of Act 262 of the Public Acts of 1966 amended Section 3 of Act 61 of the Public Acts of 1939 to read in relevant part: "The state geologist shall act as the supervisor of wells. . . ." M.C.L.A. § 319.3, M.S.A. § 13.139(3).

Act 353 of the Public Acts of 1968 amended Act 380 of the Public Acts of 1965 by changing the names of the commission, department and director of the Department of Conservation to the commission, department and director of the Department of Natural Resources respectively.

". . . [T]he supervisor, after consulting with the board, is specifically empowered:

"(a) To make and enforce rules and regulations subject to the approval of the commission, issue orders and instructions necessary to enforce such rules and regulations, *and to do whatever may be necessary with respect to the subject matter stated herein to carry out the purposes of this act, whether or not indicated, specified, or enumerated in this or any other section hereof.* (Emphasis supplied)

"* * *

"(1) To require by written notice immediate suspension of any operation or practice and the prompt correction of any condition found to exist which is causing or resulting or threatening to cause or result in waste." M.C.L.A. § 319.6, M.S.A. § 13.139(6)

Section 23 of Act 61 of the Public Acts of 1939, as amended, provides that:

"No person shall drill or begin the drilling of any well for oil and gas, geological information, key well for secondary recovery, or a well for the disposal of salt water, brine or other oil field wastes, or wells for the storage of dry natural gas or casinghead gas, or wells for the development of reservoirs for the storage of liquid petroleum gas, until the owner directly or through his authorized representatives shall have first made a written application to drill any such well and filed with the supervisor a satisfactory surety bond as provided in section 6 of this act, and received and posted in a conspicuous place at the location of the well a permit in accordance with the rules, regulations and requirements or orders made and promulgated by the supervisor. . . ." M.C.L.A. § 319.23, M.S.A. § 13.139(23)

This section further provides that:

". . . Upon receiving such written appplication and payment of the fee required, the supervisor shall within 5 days thereafter issue to any owner or his authorized representative, a permit to drill such well: Provided, however, That no permit to drill a well shall be issued to any owner or his authorized representative who does not comply with the rules, regulations and requirements or orders made and promulgated by the supervisor: . . ."

The foregoing language, though mandatory in appearance, should not be construed as depriving the Supervisor of discretionary authority to deny the issuance of a permit to drill since meaning must be given to the proviso [*Saginaw County Township Officers Association Inc. v. City of Saginaw* (1964), 373 Mich. 477]. Examination of this section and the remainder of the act constrain us to find that the processing of applications for permits to drill involves discretionary as well as ministerial functions.

Necessarily this section requires the Supervisor to reject those applications the contents of which clearly indicate that the proposed operation will not be in compliance with existing rules, regulations and orders of the Supervisor or the Commission.

Similarly, Section 6 of Act 61 of the Public Acts of 1939, as amended,

above quoted, empowers the Supervisor "to do whatever may be necessary . . . to carry out the purposes of this act," and further:

> "(1) To require by written notice immediate suspension of any operation or practice and the prompt correction of any condition found to exist which is causing or resulting or threatening to cause or result in waste." M.C.L.A. § 319.6, M.S.A. § 13.139(6)

If an application by its content indicates that the proposed operation will result in, cause or threaten to result in or to cause prohibited waste, it must be rejected, or a permit to drill, conditioned upon compliance with requirements sufficient to abate the threatened waste, may alternatively be granted.

In *Southfield Woods Water Company v. Commissioner of State Department of Health* (1958), 352 Mich. 597, plaintiff sought a writ of mandamus compelling the defendant to approve a two-year extension of plaintiff's use of leased land pursuant to M.C.L.A. § 325.201 et seq., M.S.A. § 14.411 et seq. That statute provides that it shall be unlawful to construct any water system, including wells and well structures, without previously obtaining a permit from the State Health Commissioner. Denying the writ, the Court states at page 599:

> "Issuance of the well permit, if sought, would require exercise of defendant's judgment and discretion to see that certain factors were subserved in the interests of protection of the public health. This would involve more than a purely ministerial act. . . ."

In *Toan v. McGinn* (1935), 271 Mich. 28, 34, the Court states:

> ". . . To support mandamus, plaintiffs must have a clear legal right to performance of the specific duty sought to be compelled; defendants must have the clear legal duty to perform such act; and it must be a ministerial act, one 'where the law prescribes and defines the duty to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment.' . . ."

We do not find that the language of Section 23 of Act 61 of the Public Acts of 1939, as amended, prescribes or defines the duty to be performed with such precision and certainty as to leave nothing to the exercise of judgment or discretion; the statute clearly conditions issuance upon compliance with requirements defined by rules, regulations and orders promulgated by either the Supervisor of Wells or the Commission. (See R 299.1101 - 299.2102, Michigan Administrative Code of 1954, 1963 Annual Supplement, pp. 2835 - 2859.)

If the discretion of the Supervisor is not explicitly stated, and we believe that section 6(a) indicates a pervasive discretionary authority, such discretion must necessarily be implied.

> ". . . In exercising supervision over the health of several millions broad discretionary powers must be necessarily granted, and it is only when that discretion is abused that the courts will interfere." *Salowitz v. State Board of Registration in Medicine* (1938), 285 Mich. 214, 220.
>
> " 'It is true that an administrative agency may not, under the guise of its rule-making power, abridge or enlarge its authority or exceed the powers given to it by the statute, the source of its power. * * * How-

> ever, "the authority of an administrative board or officer, * * * to adopt reasonable rules and regulations which are deemed necessary to the due and efficient exercise of the powers expressly granted cannot be questioned. This authority is implied from the power granted." ' " *Ranke v. Corporation & Securities Commission* (1947), 317 Mich. 304, 309. See also *Coffman v. State Board of Examiners in Optometry* (1951), 331 Mich. 582.

In 42 Am. Jur., Public Administrative Law, Section 26, Page 316, it states:

> "Administrative boards, commission, and officers have no common-law powers. Their powers are limited by the statutes creating them to those conferred expressly or by necessary or fair implication. . . . In determining whether a board or commission has a certain power, the authority given should be liberally construed in light of the purposes for which it was created, and that which is incidentally necessary to a full exposition of the legislative intent should be upheld as being germane to the law. . . ."

In particular then, may the Supervisor of Wells, after consulting with the advisory board and with the approval of the Commission, adopt rules and regulations and issue orders and requirements proscribing oil and gas operations from any designated area? We find that such authority is included in the powers given and the duties imposed by the statutes above digested. Such authority, however, must be exercised in the manner precribed by the statutes.

To the extent that oil and gas operations can be conducted from a given location without causing unnecessary damage to or destruction of the surface, soils, animal, fish or aquatic life or property, oil and gas operations cannot be proscribed therefrom, nor can the applicant be denied a permit to drill therefrom. See *Certain-Teed Products Corporation v. Paris Township, supra,* and *City of North Muskegon v. Miller* (1929), 249 Mich. 52.

The damage or destruction resulting, caused or threatened by the operation at a given location must be "unnecessary." The statute does not contemplate that no damage or destruction will result from operations. It prohibits damage arising from careless, imprudent operations—damages that may be prevented by appropriate measures. To proscribe an activity from a given area, it must be determined, and a finding must be made that the destruction or damages that would flow from its activity would be very serious, *City of North Muskegon v. Miller, supra.*

In the *North Muskegon* case, the city obtained an order restraining drilling of an oil well in violation of a city ordinance. The Court upheld the drilling ordinance as reasonable. To quote from the opinion of the Court:

> ". . . The courts have particularly stressed the importance of not destroying or withholding the right to secure oil, gravel, or mineral from one's property, through zoning ordinances, unless some very serious consequences will follow therefrom. *Village of Terrace Park v. Errett* (C.C.A.), 12 Fed. (2d) 240. The effect of the zoning ordinance in the cause at issue amounts almost to a confiscation of the property. . . . (p. 57)

"* * *

" 'Legislatures may not, under the guise of the police power, impose restrictions that are unnecessary and unreasonable upon the use of private property or the pursuit of useful activities.' *Washington, ex. rel. Seattle Title Trust Co., v. Roberge,* 278 U.S. 116, 121 (49 Sup. Ct. 50). (p. 58)

"* * *

". . . There is testimony, although disputed, that the drilling of the oil well and the raising of the brine from the well might endanger the city water supply and result in contamination of the water well. This would be sufficient reason for the refusal to give a permit to defendants. . . ." (p. 62)

The right of the government and its agencies to exclude oil or gas operations from specified areas has been upheld in numerous cases, e.g., in *Winkler* v. *Anderson* (Kan. 1919), 177 Pac. 521, the plaintiff-appellant sought enjoinment of a statute making it unlawful to drill or operate oil or gas wells within a certain distance of any steam or electric line of railway. Refusing enjoinment, the court states at page 522:

"The question is a very narrow one. The police power extends, not only to the protection of the public safety, health, and morals, but to the promotion of the common convenience, prosperity, and welfare. [citing Kansas authority]. While oil and gas wells are not nuisances per se, and the business of drilling and operating them is ordinarily legitimate and harmless, it is conceivable that they may become detrimental in a high degree. . . . [U]nless the works, structures, establishments, activities, and products of mining operations be kept at a safe distance from railway tracks, life and property might be endangered, commerce impeded, and the general welfare seriously affected. If the Legislature acted from some such considerations as these, it possessed power to fix a limit within which drilling and operating should not intrude, and the court is unable to say that a free space of 100 feet is unreasonable."

In *Friel v. County of Los Angeles* (1959), 342 P. 2d 374 (Cal. D.C.A.) plaintiffs sought the declaration of the invalidity of certain zoning ordinances in so far as they prohibited the drilling of oil wells on property, zoned residential, abutting however on an industrial zone from which zone oil was being extracted. The court upholding the zoning ordinance states at page 383:

"[1] There is no question that the country has the right to regulate the drilling and operation of oil wells within its limits and to prohibit their drilling and operation within particular districts if reasonably necessary for the protection of the public health, safety and general welfare. [authorities omitted]

"[2] The mere fact that the residential area in this case is adjacent to a district which does permit oil well drilling, does not, in and of itself, constitute the ordinance a denial of equal protection of the laws, or not uniform in operation." [See also the cases annotated in 10 A.L.R.3d 1226 et. seq.].

COMMISSION OF NATURAL RESOURCES

We have to this point discussed the scope of the Supervisor of Well's authority and discretion. As applied to the regulation of oil and gas operations on land neither state owned nor controlled by the Commission of Natural Resources, or state owned but not controlled by the Commission, the limits of the Commission's powers and discretion are subject to the same constraints above discussed.

With regard to lands both state owned and under the control of the Commission, additional discussion may be warranted. The Commission in respect to these lands acts in two and quite dissimilar capacities:

(1) Proprietor leasing such land for oil and gas exploitation, pursuant to Section 2 of Act 17 of the Public Acts of 1921, as amended, being M.C.L.A. § 299.2, M.S.A. § 13.2, and

(2) An agency of the State exercising delegated police powers in regulating the use and occupancy of such land pursuant to Section 2 and 3(a) of Act 17 of the Public Acts of 1921, as amended, being M.C.L.A. § 299.2 and 3(a), M.S.A. § 13.2 and 4, and in regulating oil and gas operations on such lands pursuant to Section 23 of Act 61 of the Public Acts of 1939, as amended, being M.C.L.A. § 319.23, M.S.A. § 13.139(23).

". . . In the first capacity it treats with a purchaser precisely as any other proprietor might, offering, agreeing upon and accepting terms, and entering into stipulations from which it is not at liberty to depart, and to which it cannot add in the smallest particular except with the assent of the person with whom it is dealing. *New Jersey v. Wilson,* 7 Cranch 164; *Piqua Branch Bk. v. Knoof* 16 How. 369. The contract it makes must stand, and the other contracting party is entitled to all suitable remedies upon it. The State as a sovereign cannot deal with it otherwise than as it might with a contract between two private citizens. *But the State as a sovereign may subject the interest acquired by the contract to the taxing power and the police power, precisely as it might the interest acquired under any contract between two individuals, and not otherwise." Robertson* v. *Commissioner of State Land Office* (1880), 44 Mich. 274, 278 (emphasis supplied).

A. CONTRACTUAL POWERS

Section 2 of Act 17 of the Public Acts of 1921, as amended, provides:

". . . The said [Natural Resources] commission is hereby empowered to make contracts with persons, firms, associations and corporations for the taking of coal, oil, gas and other mineral products from any state owned lands, upon a royalty basis or upon such other basis and upon such terms as to said commission shall be deemed just and equitable: . . ." M.C.L.A. § 299.2, M.S.A. § 13.2 [See also Section 12, Act 280, P.A. 1909, as amended, being M.C.L.A. § 322.212, M.S.A. § 13.441].

Pursuant to such authority, the Commission has and continues to lease state owned lands for mineral exploitation.

The Commission presently uses a standard lease form. This standard lease recites inter alia:

> "'G' The Lessor reserves the right to all minerals on, in and under said leased premises not herein expressly granted; the right to use or lease said premises, or any part thereof, at any time, for any purpose other than, but not to the detriment of the rights and privileges herein specifically granted; the right to sell or otherwise dispose of said premises, or any part thereof, subject to the terms and conditions of this lease; all rights and privileges of every and whatsoever kind or nature not herein expressly granted.
>
> "'H' This lease shall be subject to the rules and regulations of the Department of Natural Resources now or hereafter in force relative to such leases, all of which rules and regulations are made a part and condition of this lease; provided, that no rules or regulations made after the approval of this lease shall operate to affect the term of lease, rate of royalty, rental, or acreage, unless agreed to by both parties."[2]

In addition to the standard clauses, one of four special restrictions may have been added, pursuant to the Commission's contractual power to lease oil and gas rights "upon such terms as to said commission shall be deemed just and equitable." These restrictions, standard in format, are:

> "1. All other provisions of this lease notwithstanding, it is understood that no drilling or development work shall be conducted on the land described in this lease and lying within the boundaries of the (name of project) without the express written permission of the Director of the Department of Natural Resources, and then only when commercial production of oil or gas is obtained on directly or diagonally offsetting drilling units. Requirements will be specified in detail to provide for the proper protection of any and all conservation interests and/or surface values.
>
> "2. All other provisions of this lease notwithstanding, it is understood that no drilling or development work shall be conducted on the land described in this lease and lying within the boundaries of the (name of project) without the specific authorization of the Natural Resources Commission and written approval of the Director setting forth any special requirements deemed necessary for the proper protection of any and all conservation interests and/or surface values.
>
> "3. All other provisions of this lease notwithstanding, it is understood that no drilling or development work shall be conducted on the land described in this lease and lying within the boundaries of the (name of project) without the written approval of the Director of the Department of Natural Resources setting forth any special requirements deemed necessary for the proper protection of any and all conservation interests and/or surface values.
>
> "4. All other provisions of this lease notwithstanding, it is understood that no drilling or development work shall be conducted on the land described in this lease and lying within the boundaries of the (name

[2] Lease form in use as of this date.

of project) without the specific authorization of the Natural Resources Commission, and said Commission will not consider granting such authorization unless production on adjacent land creates the probability of drainage of oil or gas from state land. Even though there may be a probability of drainage, the Commission may in its discretion deny authorization to drill. If, however, drilling is authorized, drilling shall be limited to the number of wells necessary to prevent drainage from state land as determined by the Supervisor of Wells. No operations shall be conducted until written instructions for the proper protection of any and all conservation interests and/or surface values are issued by the Director of the Department of Natural Resources."[3]

Under restriction 1, in addition to obtaining a permit to drill from the Supervisor of Wells, as required by statute, the lessee must obtain the express written permission of the Director of Natural Resources prior to commencing drilling or development. Such permission will not be given unless commercial production of oil or gas is obtained on directly or diagonally off-setting drilling units. If such production is obtained, written permission cannot be contractually denied. The written permission given shall include requirements specified in detail to provide for the proper protection of any and all conservation interests and/or surface values; that is, it shall state requirements reasonably calculated to prevent the unnecessary damage to or destruction of the surface, soils, animal, fish or aquatic life or property from or by oil and gas operations and to prevent unreasonable molestation, destruction or spoliation of state owned lands of property.

Under restriction 2, in addition to obtaining a permit to drill from the Supervisor of Wells, as required by statute, the lessee must obtain the specific authorization of the Natural Resources Commission and written approval of the Director setting forth any special requirements deemed necessary for the proper protection of any and all conservation interests and/or surface values; that is, it shall set forth requirements reasonably calculated to prevent the unnecessary damage to or destruction of the surface, soils, animal, fish or aquatic life or property from or by oil and gas operations and to prevent unreasonable molestation, destruction or spoliation of state owned lands or property.

Under restriction 3, the lessee, in addition to obtaining a permit to drill from the Supervisor of Wells, in accordance with statutory requirements, must obtain written permission from the Director of the Department of Natural Resources prior to commencing drilling or development work. The restrictive clause does not contractually vest the Director with the discretion to refuse such permission. The clear intent of the restriction is to empower the Director to set forth any special requirements deemed necessary for the proper protection of any and all conservation interests and/or surface values. The power must be reasonably exercised. In attempting to delineate what conservation interests and/or surface values are to be thus preserved and protected and to what extent, we would advise that the measures or requirements set forth must be reasonably calculated to prevent the unnecessary damage to or destruction of the surface, soils, animal, fish or aquatic life or

[3] Lease restrictions inserted in leases executed on or before December 11, 1970.

property from or by oil and gas operations, and to prevent unreasonable molestation, destruction or spoliation of state owned lands or property.

Under restriction 4, in addition to obtaining a permit to drill from the Supervisor of Wells, as required by law, the lessee must obtain the specific authorization of the Natural Resources Commission prior to commencing drilling or development work. Such authorization will not be considered or given unless production on adjacent land creates the probability of drainage of oil or gas from State land. Even should such probability occur, the Commission is contractually vested with the discretion to deny such authorization. In event of such probability, we believe the Commission's contractual discretion is limited to the refusal of authorization in those instances where oil and gas operations cannot be conducted even under special requirements without unnecessarily damaging or destroying the surface, soils, animal, fish or aquatic life or property. Should authorization be granted, drilling shall be limited to the number of wells necessary to prevent drainage from State land, as determined by the Supervisor of Wells. No operations are to be conducted, however, until written instructions for the proper protection of any and all conservation interests and/or surface values are issued by the Director of the Department of Natural Resources. As we have previously stated, these instructions must be reasonably calculated to prevent the unnecesary damage to or destruction of the surface, soils, animal, fish or aquatic life or property from or by oil and gas operations, and to prevent the unreasonable molestation, destruction or spoliation of state owned lands or property.

B. REGULATORY POWERS

Section 23 of Act 61 of the Public Acts of 1939, *supra,* authorizes the Department of Natural Resources to promulgate or make rules, regulations, requirements or orders germane to oil and gas operations, in addition to its power to consent or withhold consent from rules and regulations made by the Supervisor of Wells, pursuant to Section 6(a) of Act 61 of the Public Acts of 1939, *supra.*

In the exercise of such regulatory authority, the Commission may regulate oil and gas operations on state leased lands under its jurisdiction and prohibit such operations when they result, cause or threaten to result or cause surface waste as defined by Section 2(1)(2) of Act 61 of the Public Acts of 1939, *supra.* It may further prohibit such activities as will cause the molestation, spoliation or destruction of state leased lands under its control, pursuant to powers given to the Commission and duties imposed upon it by Section 2 and 3(a) of Act 17 of the Public Acts of 1921, as amended.

Section 2 of Act 17 of the Public Acts of 1921, as amended, provides in part:

> ". . . Said commission may also make and enforce reasonable rules and regulations concerning the use and occupancy of lands and property under its control; . . ." M.C.L.A. § 299.2, M.S.A. § 13.2

Section 3(a) of Act 17 of the Public Acts of 1921, as amended, provides in part:

> "The commission of conservation shall make such rules and regulations for protection of the lands and property under its control against wrongful use or occupancy as will insure the carrying out of the intent of this act to protect the same from depredations and to preserve such lands and property from molestation, spoliation, destruction or any other improper use or occupancy . . ." M.C.L.A. § 299.3a, M.S.A. § 13.4

Accordingly, the Commission may proscribe oil and gas operations from specified areas under its control, if the applicant cannot effectively conduct operations therefrom without causing or threatening to cause the surface damage prohibited by Act 61 of the Public Acts of 1939, as amended, or without causing unreasonable molestation, spoliation or destruction prohibited by Act 17 of the Public Acts of 1921, as amended.

It should not be inferred, however, that the conduct of oil and gas operations cannot be reconciled with nor be conducted in a manner compatible with the proper use and management of state owned lands useful for recreational or forest purposes. The authority granted the Commission to lease such lands for oil and gas explorations by the Commission, both recreational and commercial oil uses can be encouraged (Section 2, Act 17, P.A. 1921, as amended).

It should be further noted that the damage or destruction proscribed is "unnecessary damage or destruction." This we take to mean as waste committed by the improvident or negligent conduct of oil and gas operations or waste that may be prevented by appropriate precautions taken at the location.

Nor, under present law, can "aesthetic" considerations alone be taken as justifying any proscription [*Wolverine Sign Works v. City of Bloomfield Hills* (1937), 279 Mich. 205]. The legislature, however, may constitutionally enact appropriate laws to accomplish this purpose. As stated in *Berman v. Parker* (1954), 348 U.S. 26, 99 L. ed. 27:

> ". . . The concept of the public welfare is broad and inclusive. See *Day-Brite Lighting, Inc. v. Missouri,* 342 U.S. 421, 424, [96 L. ed. 469, 472, 72 S. Ct. 405, 408]. The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled. . . ." [p. 33]

The question naturally arises whether the Commission's action in proscribing drilling operations in State lands subsequent to granting oil and gas leases for the same area does not constitute an unconstitutional impairment of contract, a denial of equal protection or an arbitrary classification.

Such prohibition is not subject to constitutional attacks if it be reasonable. Where the regulatory action is arbitrary and has no reasonable relationship to a purpose which it is competent for the government to effect, the Commission transcends the limits of its power in interfering with the liberty of contract, but where there is a reasonable relation to the prevention of waste, the exercise of the Commission's discretion is not subject to judicial review. See Cooley's Constitutional Limitations, Vol. 2, pp. 1319-1321; *City of North Muskegon v. Miller, supra.*

CONCLUSION

The Commission of Natural Resources or the Supervisor of Wells, with the consent of the Commission, may promulgate such rules and regulations as are necessary to prevent the unnecessary damage to or destruction of the surface, soils, animal, fish or aquatic life or property within this State. The Commission may further promulgate such rules and regulations as are necessary to prevent the unreasonable molestation, spoliation or destruction of state owned land under the jurisdiction and control of the Commission. To the end that such waste and destruction may be prevented or abated, such rules and regulations may prohibit the drilling for oil and gas from designated areas of state owned land.

The Supervisor must reject any application the contents of which indicate noncompliance with such rules and regulations and may further condition the granting of a permit to drill upon compliance with requirements deemed necessary to prevent such damage or destruction. To the extent, however, that the applicant can effectively drill for and produce oil and gas from state leased land without causing unnecessary damage to or destruction of the surface, soils, animal, fish or aquatic life, or unreasonably molesting, spoiling or destroying state owned land, said applicant cannot be denied a permit to drill thereon.

The Commission of Natural Resources may contractually restrict the conduct of oil and gas operations from state owned land by inclusion of appropriate restrictions in leases of oil and gas rights in and to such lands.

These restrictions may condition the right to commence operations to the occurrence of probable drainage from state owned land or the drilling of directly or diagonally off-setting wells.

These restrictions may require prior approval of either the Commission or the Director of Natural Resources before a lessee commences oil and gas operations. Such approval should not be withheld where, by appropriate measures specified by the Commission or Director, oil and gas operations may be conducted without serious or unnecessary destruction of the surface, soils, animal, fish or aquatic life or unreasonably molesting, spoiling or destroying state owned lands. As proprietor of State land, the State can prevent use of such land for any drilling purposes by declining to lease.

FRANK J. KELLEY,
Attorney General.