[J-108-2006]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

COOLSPRING STONE SUPPLY, INC.,	:	No. 55 WAP 2005
	:	
Appellant	:	Appeal from the Order of the
	:	Commonwealth Court, entered May 25,
	:	2005, at No.128 CD 2005, affirming the
v.	:	Order of the Court of Common Pleas of
	:	Fayette County, entered January 5, 2005,
	:	at No. 141 of 2004GD.
COUNTY OF FAYETTE, NORTH UNION	:	
TOWNSHIP AND LAUREL HIGHLANDS	:	879 A.2d 323 (Pa. Cmwlth. 2005)
SCHOOL DISTRICT,	:	
	:	ARGUED: September 11, 2006
Appellees	:	
	:	
	:	

DISSENTING OPINION

MR. CHIEF JUSTICE CAPPY **DECIDED: AUGUST 20, 2007**

I respectfully dissent. When faced with a question of statutory interpretation, this Court must adhere to the rules promulgated by the Statutory Construction Act in order to ascertain and effect the intent of the Legislature as conveyed by the statutory language. 1 Pa.C.S. §1921(a). In this case, we are asked to construe the words promulgated by Section 201 of the General County Assessment Law, specifically the word "lands" in the context of the imposition of taxation. 72 P.S. §5020-201(a). Respectfully, this Court has done this once before. In IOGA, 814 A.2d 180, 184 (Pa. 2002), this Court held that when the Legislature used the word "lands" in Section 201, it meant "surface rights." We then applied this construction to the facts of that case, to determine that oil and gas did not fit under the category of "lands" as surface rights. Id. Accordingly, the task in this case is

already partially complete, as this Court previously construed the meaning of the word "lands" in Section 201. What remains is only to apply that construction to the issue at bar, which is whether or not subsurface limestone fits under the category of "lands," i.e., "surface rights."

As our inquiry here is focused on **subsurface** limestone, or limestone which is "below the surface," it would seem unequivocal that a statute that only authorizes the taxation of "surface rights," or that which is the "outermost or uppermost layer," could not be read to extend the power to impose a tax on minerals which lie below the surface of the land. THE RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE (2nd ed. 1987). I would thus hold that Section 201 does not authorize the taxation of subsurface limestone based on this Court's construction of the word "lands" in IOGA.

Notably, despite an attempt to distinguish IOGA, the majority does concede that land is defined as a part of the earth's surface. But it observes that limestone exists both on the surface of the earth as well as below the surface. Therefore, the majority claims that it would be incongruous not to expand the definition of lands to include not merely the surface of the land, but also that which is below. The majority has chosen to expand our previous construction of the statute rather than to construe the statute in its narrowest sense, as our Court did in IOGA. I believe that this is inappropriate because when we construe provisions that impose taxes, our construction must be strict. 1 Pa.C.S. §1928(b)(3). In Breitinger v. City of Philadelphia, 70 A.2d 640 (Pa. 1950), this Court reiterated the long-established rule that there are two considerations involved in the construction of a tax provision. The first consideration measures the government's power to tax, and the second mandates strict construction. Id. at 642. (Internal citations omitted). "It is a principle universally declared and admitted that municipal corporations can levy no taxes, general or special, upon inhabitants, or their property, unless the power be plainly and unmistakably conferred." Id. Further, the grant of such rights is to be strictly

construed, and not extended by implication. Id. This principle is so important that when there is doubt, the construction should be against the government. Id. Therefore, our rules of statutory construction and precedent compel us not to expand the definition of "lands" to include subsurface limestone by implication, but rather to resolve all doubt in favor of the taxpayer. The Legislature, meanwhile, remains free to explicitly invoke the authority to tax subsurface limestone, as it has with coal.[1]

Our precedent concerning the construction of tax provisions further makes clear that this case is not analogous to our decision in Lillibridge, 22 A. 1035, 1036 (Pa. 1891), in which we held that subsurface minerals can be conveyed as land, because in Lillibridge we construed a contract between two private parties, which did not require the strict level of construction that we must employ when we construe a statute that imposes a tax.

Therefore, I would hold that subsurface limestone does not fall within the meaning of "lands" as used by the Legislature in Section 201, and thus, the Legislature has yet to plainly and unmistakably confer the power to tax subsurface limestone. Accordingly, I would reverse the order of the Commonwealth Court.

Mr. Justice Eakin joins this dissenting opinion.

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[1] In IOGA, this Court found support for the proposition that the use of the word "lands" in Section 201 did not include oil and gas by noting the separate statutory provisions had been created for the taxation of coal at 72 P.S. §§5020-415, 5453.612 and 5453.616. IOGA, 814 A.2d at 184. This suggests that the Legislature believed that it was necessary to promulgate specific authority imposing the taxation of coal, because Section 201 did not contain that authority. If Section 201 does not grant the authority to tax coal, a subsurface mineral, than it follows that the same section does not grant the authority to tax subsurface limestone.