

A black chess king piece stands on a chessboard. The piece is a classic design with a cross on top. The chessboard is visible in the foreground, and the background is a blurred, dark blue-grey gradient. A solid green rectangle is in the top right corner.

The King's X?

THE RELATIONSHIP BETWEEN STATE POLICE POWERS
AND PRIVATE CONTRACTS

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Outline of Discussion

- ▶ State Police Powers Defined
- ▶ Oklahoma Examples
- ▶ Concept of Police Powers Applied to Private Contracts
- ▶ Challenges to the State Police Powers

State Police Powers

- ▶ Attribute of Sovereignty; Inherent in all Government
- ▶ Control & Regulate Private Interest for Public Good
- ▶ Power to Make and Enforce All Wholesome and Reasonable Laws

We the People
insure domestic Tranquility, provide for the common
and our Posterity, do ordain and establish this Constitution.

Article I
Section 1 All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a
of Representatives.
Section 2 The House of Representatives shall be composed of Members chosen every second Year by the People of the several
each State shall have ^{at least} one Representative, and the electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.
Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to
number, whole or partial Enumeration, or direct Taxation, in the Year one thousand seven hundred and ninety, and in every subsequent Year that shall be made in such Manner as they shall by Law direct: The Number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative; and until such Enumeration shall be made, the State of New York shall have one Representative, and Georgia three.
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number, whole or partial Enumeration, or direct Taxation, in the Year one thousand seven hundred and ninety, and in every subsequent Year that shall be made in such Manner as they shall by Law direct: The Number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative; and until such Enumeration shall be made, the State of New York shall have one Representative, and Georgia three.

- ▶ 52 O.S. § 87.1
- ▶ 17 O.S. § 52
- ▶ Okla. Const. Art. 9, § 20
- ▶ Prevent Waste and Protect Correlative Rights

Oklahoma Conservation Statutes

Oklahoma Precedent Establishing OCC Authority

- ▶ *Patterson v. Stanolind Oil & Gas Co.*, 1938 OK 138, 77 P.2d 83
 - ▶ “Police power of the state extends to protecting ... correlative rights.”
- ▶ *Helmerich & Payne, Inc. v. Corp. Comm’n*, 1975 OK 419, 532 P.2d 419
 - ▶ “Power to regulate the production of gas and oil is derived from the police power.”
- ▶ *Okla. Nat. Gas Co. v. Choctaw Gas Co.*, 1951 OK 224, 236 P.2d 970
 - ▶ “Authority ... may be properly delegated to Corporation Commission.”

Impact of Existing Law on Private Contracts

- ▶ “It is well settled that the existing applicable law is a part of every contract, the same as if expressly referred to or incorporated in its terms.”
 - ▶ *East Central Elec. Co-op., Inc. v. Public Serv. Co.*, 1970 OK 80
- ▶ “One whose rights, such as they are, are subject to state restriction, cannot remove them from the power of the state by making a contract about them. The contract will carry with it the infirmity of the subject matter.”
 - ▶ *Hudson Cty. Water Co. v. McCarter*, 209 U.S. 349 (1908).



Police Power Impact on Private Contracts

- ▶ “It may be said that all property rights, including contracts are subject to the proper exercise of the police power.”
 - ▶ *State ex rel. Roth v. Waterfield*, 1933 OK 546
- ▶ “Changes in the obligations of contracts may be made when made as a proper exercise of the police power ... and as such enters into the terms and provisions of the contract.”
 - ▶ *State ex rel. Roth v. Waterfield*, 1933 OK 546
- ▶ “[The Police Power] may be treated as an implied condition of every contract and, as such, as much of the contract as though it were written into it.”
 - ▶ *East N.Y. Sav. Bank v. Hahn*, 326 U.S. 230 (1945)

Early Challenges to State Police Powers

- ▶ The Contracts Clause – Art. 1 Section 10, U.S. Const.
 - ▶ No State shall ... pass any ... Law impairing the Obligation of Contracts
- ▶ *State ex rel. Roth v. Waterfield*, 1933 OK 546, 29 P.2d 24
- ▶ *Patterson v. Stanolind Oil & Gas Co.*, 1938 OK 138, 77 P.2d 83



Recent Challenges to State Police Powers & Defining OCC Authority

- ▶ *Cory v. Cimarex*, 2021 WL 1108596 (W.D. Okla. 2021)
 - ▶ “OCC’s regulatory authority ... is incorporated into private oil and gas leases by operation of law.”
- ▶ *FourPoint Energy, LLC v. BCE-Mach II LLC*, 2021 OK CIV APP 46, 503 P.3d 435
 - ▶ “[P]arties ... may not ... redelegate by private agreement the Commission-conferred power to designate a unit operator, nor seek relief in the district courts over certain matters of public interest, including the prohibition and control of waste and the protection of correlative rights.”
- ▶ *Toklan Oil and Gas Corp. v. Citizen Energy III, LLC*, 2022 OK CIV APP 37, 520 P.3d 848
 - ▶ “Commission does not have jurisdiction to alter the ownership of royalty or to shift royalty away from the party taking the working interest pursuant to a pooling order.”



Key Takeaways

A close-up photograph of a royal crown and a sword resting on a red velvet cushion. The crown is ornate, with gold and red velvet details. The sword has a gold hilt and a silver blade. The background is dark and out of focus.

- ▶ Definition of State Police Powers
- ▶ Police Powers may be delegated to State agency
- ▶ Police Powers will not be limited by private contract
- ▶ Agency utilization of Police Powers will be limited by scope of delegated power



Thank you

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