

1975 WL 29581 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 11, 1975

*1 Mr. Murray Wood
Director
Department of Mining and Reclamation
Land Resources Conservation Commission
Post Office Box 11708
Columbia, South Carolina 29211

Dear Mr. Wood:

Thank you for your letter, dated January 8, 1975, requesting an opinion of this Office regarding the implementation of the South Carolina Mining Act. Since our meeting the other day cleared up several points raised in your letter to which you now do not need a written answer, I shall confine this opinion to those remaining questions which require an official response.

I.

Does the South Carolina Mining Act include within its regulations those mines operated by State agencies and county governments?

The South Carolina Mining Act has as its stated purposes (a) that the usefulness, productivity, and scenic values of all lands and waters involved in mining within the State will receive the greatest practical degree of protection and restoration, and (b) that no mining shall be carried on in the State unless plans for such mining include reasonable provisions for protection of the surrounding environment and for reclamation of the area of land affected by mining, § 63-712. The aforementioned act provides for no exceptions to the to the application of its provisions other than those contained in § 63-731, regarding the South Carolina Highway Department projects and mining on federal lands. Therefore, it is my opinion that the South Carolina Mining Act includes within its intended scope of regulation those mines operated by State agencies and county governments.

II.

Is a land entry agreement necessary to authorize official entry by Department agents upon lands covered by the South Carolina Mining Act?

A land entry agreement of the type you contemplate is desirable only as an indication of express consent by the landholder for agents of the Department while performing official duties to enter upon lands covered by the South Carolina Mining Act; however, it is my opinion that such an agreement is not necessary to authorize entry by Department agents in order to carry out their duties of evaluation, inspection, and approval of the premises during regular working hours in compliance with the provisions of the Mining Act and regulations propounded thereunder. By continuing or commencing to operate a mine in this State each operator submits to the regulation of the State as exercised under its general police power to protect the public health, welfare, and natural resources. These duties and responsibilities demand that State agents, and those of the Department in this particular instance, have reasonable access to such areas as are necessary to ensure the protection of the interests of the public. Additionally, it is certain that the Legislature intended such entry by Department officials since a contrary purpose would obviously preclude the effective implementation and enforcement

of the provisions of the Act. Therefore, it is my opinion that a land entry agreement, although perhaps desirable in order to mitigate possible friction, is not necessary to authorize entry by agents of the Department upon lands governed by the South Carolina Mining Act.

Very truly yours,

*2 Richard P. Wilson
Staff Attorney

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