

1975 WL 29784 (S.C.A.G.)
Office of the Attorney General
State of South Carolina
May 5, 1975

***1 Re: South Carolina Mining Act**

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

Dear Mr. Wood:

You have requested an opinion of this Office as to whether state agencies and county governments which operate mines in this state must provide a performance bond as required by Section 63-718 of the South Carolina Mining Act. It is my opinion that they do not.

As stated in my letter of March 11, 1975, it is clear that all mining operations in this state are within the intended scope of the Act. Under the terms of the Act each operator as of January 1, 1975, is required to deposit an acceptable performance bond with the Department before being issued an operating permit to engage in mining. However, some question exists as to whether state agencies and county governments are included in the definition of 'operator' as used in the Act. Nevertheless, it is certain that the legislature intended to require all mining operations in the state to make reasonable provisions for the protection of the surrounding environment and for the reclamation of the affected area following the cessation of mining activity.

The requirement of a performance bond, however, is apparently designed to protect the public's interest in having the area effectively reclaimed for future use should the operator become irresponsible or insolvent. State agencies and county governments, on the other hand, are subdivisions of the State and, therefore, are generally deemed to be solvent for bonding purposes. The public interest is therefore protected for purposes of the Mining Act because such entities would be susceptible at any time to suit for the reimbursement of monies spent by the Department in reclaiming the subject lands should their respective reclamation obligations not be fulfilled.

Therefore, it is my opinion that state agencies and county governments operating mines do not have to provide a performance bond to secure the implementation of their respective reclamation plans.

Very truly yours,

Richard P. Wilson
Assistant Attorney General

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