

OPINION NO. 82-002**Syllabus:**

2 Ohio Admin. Code 1501:9-1-05 prohibits the drilling of an oil and gas well within the paved area of a shopping center parking lot.

To: Robert W. Teater, Director, Department of Natural Resources, Columbus, Ohio
By: William J. Brown, Attorney General, January 26, 1982

I have before me your request for my opinion as to whether 2 Ohio Admin. Code 1501:9-1-05 entitled "Safety" prohibits the drilling of an oil and gas well within a paved parking lot of a shopping area when such drilling otherwise complies with the state well spacing laws.

2 Ohio Admin. Code 1501:9-1-05 states:

No well shall be drilled nearer than one hundred (100) feet to any inhabited private dwelling house; nearer than one hundred (100) feet from any public building which may be used as a place of resort, assembly, education, entertainment, lodging, trade, manufacture, repair, storage, traffic, or occupancy by the public; nearer than fifty (50) feet to the traveled part of any public street, road, or highway; nearer than fifty (50) feet to a railroad track; nor nearer than one hundred (100) feet to any other well.

1051:9-1-05 does not apply to a building or structure which is incident to agricultural use of the land on which it is located, unless

such building is used as a private dwelling house or in the business of retail trade.

According to the information which your office has supplied, the proposed drilling site is more than one hundred (100) feet from the nearest structure and fifty (50) feet from the closest dedicated highway; yet, still within the paved and improved area designated for parking by patrons of the shopping center. The key issue presented by your question, therefore, becomes whether a parking lot of a shopping center falls within the terms "building" or "street, road, or highway" for the purposes of rule 1501:9-1-05.

The term "building" "depend[s] for its meaning in some degree on the particular subject with respect to which the statute is legislating. . ." City of Cincinnati v. University of Cincinnati, 13 Ohio Dec. 284, 288-89 (1902). Moreover, it is a well-established principle that the language of a regulation must be interpreted to effectuate its purpose. State ex rel. Miller Plumbing Co. v. Industrial Commission, 149 Ohio St. 493, 79 N.E.2d 553 (1948) (an administrative regulation is subject to the usual rules of statutory construction); State ex rel. Joseph R. Peebles Sons Co. v. State Board of Pharmacy, 127 Ohio St. 513, 189 N.E. 447 (1934) (statute should be construed to effectuate its purpose). Rule 1501:9-1-05 was promulgated pursuant to R.C. 1509.23, which empowers the Chief of the Division of Oil and Gas to set rules and regulations specifying "distances, and methods of operation to safeguard against hazards to life, limb and property." Thus, rule 1501:9-1-05 was obviously intended to prevent the harm to persons or property which might result when a hazardous activity, such as oil and gas drilling, is conducted near dwelling houses or in an area designed to attract the general public. Because the grant of statutory power in R.C. 1509.23 and the purpose of rule 1501:9-1-05 are intended to prevent harm to persons and property, a broad definition of "building" is obviously justified.

A parking lot may not, in and of itself, constitute a building. However, for some purposes, it may be considered a part of the building with which it is connected. See Frishkorn v. Flowers, 26 Ohio App. 2d 165, 169, 270 N.E.2d 366, 368 (1971) ("the employer and other tenants. . .having reciprocal rental rights and privileges, were also accorded the common use and access of the parking area. Logically, to that extent, this was tantamount to an essential expansion of their respective premises. . ."). As was previously discussed, the purpose underlying rule 1501:9-1-05 is the protection of those persons gathering in an area normally open to the public from harm caused by an oil or gas well. It would be highly inconsistent to argue that rule 1501:9-1-05 was meant to protect such members of the public from the risk of harm when they were inside the structural confines of the shopping center but would permit that same risk to exist when they stepped outside the shopping center and into the parking lot. This is particularly true since the risk of harm may actually be greater in an area, such as a parking lot, where there are no intervening walls to serve as protection. Thus, using the broad definition of the term "building" mandated by the purpose underlying rule 1501:9-1-05, a parking lot may reasonably be considered to be a part of the shopping center structure. The parking lot would, therefore, constitute a portion of the shopping center building for purposes of rule 1501:9-1-05.

Therefore, it is my opinion, and you are advised that, 2 Ohio Admin. Code 1501:9-1-05 prohibits the drilling of an oil and gas well within the paved area of a shopping center parking lot.