

OPINION NO. 78-016

Syllabus:

The Board on Unreclaimed Strip Mined Lands has the authority as a matter of law to fund reclamation projects on private lands pursuant to Chapter 1513 of the Revised Code even though such lands may be subject to clean-up orders issued by

the Director of the Ohio Environmental Protection Agency. This opinion does not address the propriety of such an action from a policy perspective.

To: Arthur R. Bowers, Chairman, Board on Unreclaimed Strip Mined Lands, Columbus, Ohio
By: William J. Brown, Attorney General, April 14, 1978

I have before me your request for my opinion regarding the funding of a reclamation project on private lands pursuant to Chapter 1513 of the Revised Code when such lands may be subject to cleanup orders issued by the Director of the Ohio Environmental Protection Agency.

Section 1513.30 creates the unreclaimed lands fund. The purpose of this fund is to reclaim land:

"public or private, affected by mining . . . for which no cash is held in the strip mining reclamation fund or the surface mining reclamation fund." (Emphasis added.)

In addition to these requirements, Section 1513.30 provides further criteria concerning the feasibility, cost, and the public benefits of reclaiming the areas, but there exists nothing that would preclude your funding this project merely because it is located on private land. Amended Substitute House Bill No. 244 revised Section 1513.30 this past year to specifically authorize your board to fund projects on private lands.

Section 6111.03(H) does provide the director of environmental protection with the authority to issue orders to prevent, control, or abate water pollution. If the private lands project that your board is considering involves the abatement of water pollution it would appear that you will be funding a project on land subject to possible orders from the director of environmental protection. I find nothing in Chapter 6111, however, that would preclude your funding such a project, but Section 3745.011(E) of the Revised Code does provide that:

It is the intent of the general assembly that the environmental protection agency shall operate the state government in ways designed to minimize environmental damage, and assist and cooperate with governmental agencies to restore, protect, and enhance the quality of the environment.

I must further point out that your board is created within the Ohio Department of Natural Resources and Section 1501.02 of the Revised Code provides that:

The director [of Natural Resources] shall co-operate with, and not infringe upon the rights of, other state departments . . . and agencies . . . in the conduct of . . . matters in which the interests of the department of natural resources and such other departments and agencies overlap.

These two sections of the Revised Code suggest a coordinated effort between your board and the Ohio Environmental Protection Agency is warranted whenever there exists the kind of overlap with which you are now faced.

In specific answer to your question, it is my opinion, and you are so advised, that your board has the authority as a matter of law to fund reclamation projects on private lands pursuant to Chapter 1513 of the Revised Code even though such lands may be subject to clean-up orders issued by the Director of the Ohio Environmental Protection Agency. For the reasons stated above, however, this opinion does not address the propriety of such an action from a policy perspective.