

OPINION NO. 78-056

Syllabus:

1. Neither the original mine operators, nor their heirs or assigns have any statutory reclamation responsibility for certain abandoned mines located near Youngstown, Ohio.
2. The State of Ohio has no reclamation responsibility for certain abandoned mines located near Youngstown, Ohio, since no bonds were ever supplied the State by the operators of such abandoned mines.

To: Robert Teater, Director, Ohio Dept. of Natural Resources, Columbus, Ohio
By: William J. Brown, Attorney General, October 2, 1978

I have before me your request for my opinion concerning first, the "continuing reclamation responsibility" of the original operators of certain abandoned mines located near Youngstown, Ohio, and second, the reclamation responsibility of the State of Ohio for the abandoned mines as a result of the forfeiture of any bond supplied the State by the operators of the mines in question.

The facts you have supplied me with are as follows. In the late 1800's and early 1900's mine operators obtained the mineral (coal) rights from certain landowners near Youngstown, Ohio. The coal was removed to the point where the value of the mineral rights was exhausted and the mining companies abandoned the operations. Recently, certain shafts from these abandoned mines have opened up or otherwise unsealed, causing gaping holes to open on the surface of the land.

Your first question centers around the continuing responsibility of the operators of these mines, or their agents or assigns, to correct this problem. Sections 4153.39 to 4153.99, inclusive, of the Ohio Revised Code regulate the abandonment of mines in Ohio. Revised Code Section 4153.40 governs the closing of the surface openings of mines and specifically requires the closing of abandoned vertical shafts and other mine openings, but the section's provisions only apply to shafts and other openings of mines abandoned after August 26, 1949.

The legislative history of these sections reveal that they were amended in 1883 to read as follows:

And when any mine is exhausted or abandoned, and before the pillars are drawn in any portion of the mine, the owner or agent thereof shall cause to be made a correct map of such mine . . . and file such map . . . at the office of the county recorder in the county where such mine is located. (Section 296).

In 1941, Am. S.B. 326 was enacted to revise, consolidate and codify the mining laws of Ohio. G.C. 898-109 was enacted by that bill to read, in part:

The owner, lessee, or agent shall effectively close or fence all openings to mines abandoned subsequent to passage of this act so that persons or animals cannot inadvertently enter therein.

In 1949, G.C. 898-109 was further amended by Am. S.B. 297 to impose further duties upon the operators of vertical shafts or other underground workings abandoned after August 26, 1949. This statute survives as Section 4153.40 of the Revised Code.

Assuming that the mines involved were abandoned prior to August 26, 1949, mine operators in Ohio are under no statutory obligation to close openings to their mines. Therefore, the State does not have a cause of action against them to repair the surface subsidence which has occurred.

Turning to your second question, there can be no doubt that the state has no reclamation responsibility for mines abandoned in the Youngstown area fifty or more years ago through the forfeiture of some bond or bonds supplied the State by operators of those mines. Neither the current nor former provisions of the Ohio Revised Code dealing with deep mines, R.C. Chapter 4151, required operators of deep mines to provide the state with any kind of performance bond. Accordingly, no proceeds have accrued to the State of Ohio as a result of the forfeiture of bonds supplied the State by deep mine operators in the Youngstown area during the time period under discussion. Since no bonds were even filed, the State clearly has no responsibility to reclaim the areas of surface subsidence in Youngstown.

Thus, it is my opinion and you are so advised that:

1. Neither the original mine operators, nor their heirs or assigns have any statutory reclamation responsibility for certain abandoned mines located near Youngstown, Ohio.
2. The State of Ohio has no reclamation responsibility for certain abandoned mines located near Youngstown, Ohio, since no bonds were ever supplied the State by the operators of such abandoned mines.