

OPINION NO. 78-039**Syllabus:**

The Board on Unreclaimed Strip Mined Lands may expend monies in the unreclaimed lands fund, created by R.C. 1513.30, to rectify damage caused to public or private land as a result of the subsidence of underground mines, provided that the criteria of R.C. 1513.30 are otherwise met.

**To: Robert W. Teater, Director, Ohio Department of Natural Resources,
Columbus, Ohio**
By: William J. Brown, Attorney General, June 14, 1978

I have before me your request for an opinion which concerns 1977 Am. H.B. 244. Specifically, you have raised the following question:

May the Board on Unreclaimed Strip Mines use funds allocated for its use to correct land subsidence precipitated by underground mining.

The Board on Unreclaimed Strip Mined Lands is created by R.C. 1513.29. That section provides, in pertinent part, as follows:

There is hereby created the board on unreclaimed strip mined lands.

. . . .

The board shall gather information, study, and make recommendations concerning the number of acres, location, ownership, condition, environmental damage resulting from the condition, cost of acquiring, reclaiming, and possible future uses and value of eroded lands within the state, including land affected by strip mining for which no cash is held in the strip mining reclamation special account

. . . .

The board shall report its findings and recommendations to the governor and the general assembly. . .

Under this section, the board has essentially a fact finding function. The enforcement powers under R.C. Chapter 1513 rest with the Chief of the Division of Reclamation. The spending powers are held jointly by the Board and the Chief.

R.C. Chapter 1513 establishes at least two special accounts within the state treasury. The first of these accounts, the strip mining administration and reclamation reserve special account, is created by R.C. 1513.181. That account is expressly limited to "reclaiming land affected by strip mining. . .," and therefore could not be used by the Board for projects involving subsidence of underground mines. The second account is created by R.C. 1513.30 which provides:

There is hereby created in the state treasury the unreclaimed lands fund, to be administered by the chief of the division of reclamation and used for the purpose

of reclaiming land, public or private, affected by mining or controlling mine drainage, for which no cash is held in the strip mining reclamation fund or the surface mining reclamation fund.

In order to direct expenditures from the unreclaimed lands fund toward reclamation projects that fulfill priority needs and provide the greatest public benefits, the chief shall periodically submit to the board on unreclaimed strip mined lands project proposals to be financed from the unreclaimed lands fund, together with benefit and cost data, and other pertinent information. For the purpose of selecting project areas and determining the boundaries of project areas, the board shall consider the feasibility, cost, and public benefits of reclaiming the areas, their potential for being mined, the availability of federal or other financial assistance for reclamation, and the geographic distribution of project areas to assure fair distribution among affected areas.

....

Expenditures from the unreclaimed lands fund may be made only for reclamation projects that are within the boundaries of project areas approved by the board, and expenditures for a particular project may not exceed any applicable limits set by the board. Disbursements from the unreclaimed lands fund shall be made by the chief, with the approval of the director of natural resources. (Emphasis added).

Unlike R.C. 1513.181, this section does not impose a restriction that the projects be limited to and affected by strip mining. Rather, this section allows monies in the Unreclaimed Land Fund to be used for any project which involves the restoration of lands adversely affected by mining activity. Further provision for the expenditure of monies in the unreclaimed lands fund is made by R.C. 1513.20, which, in pertinent part, specifies:

The chief of the division of reclamation, with the approval of the director of natural resources, may purchase or acquire by gift, donation, or contribution any eroded land, including land affected by strip mining, for which no cash is held in the strip mining reclamation fund. For this purpose the chief may expend monies deposited in the unreclaimed lands fund. . . .

While this section does not directly relate to the powers of the Board with respect to the unreclaimed lands fund, these provisions indicate that the fund may be used for reclamation projects where the damage did not result from strip mining.

Accordingly, it is my opinion and you are hereby advised that, the Board on Unreclaimed Strip Mined Lands may expend monies in the unreclaimed lands fund, created by R.C. 1513.30, to rectify damage caused to public or private land as a result of the subsidence of underground mines, provided that the criteria of R.C. 1513.30 are otherwise met.