

OPINION NO. 66-032**Syllabus:**

1. An operator who has strip mined without the license provided for in Section 1513.07, Revised Code, even though convicted of a violation of Section 1513.17, Revised Code, is not subject to the statutory duty to reclaim the strip mined land imposed by Section 1513.16, Revised Code.

2. The Chief of the Division of Forestry and Reclamation shall refuse to issue a strip mining license to an applicant who has failed and continues to fail to comply with Sections 1513.01 to 1513.19, inclusive, of the Revised Code.

3. The Chief of the Division of Forestry and Reclamation may not refuse to issue a strip mining license to an applicant who has failed but who does not continue to fail to comply with Sections 1513.01 to 1513.19, inclusive, of the Revised Code.

4. The Chief of the Division of Forestry and Reclamation may not refuse to issue a strip mining license to an applicant who has been previously convicted of a violation of Section 1513.17, Revised Code, and has not reclaimed the land so strip mined.

To: Fred E. Morr, Director, Department of Natural Resources, Columbus, Ohio

By: William B. Saxbe, Attorney General, February 15, 1966

Your request for my opinion reads as follows:

"Section 1513.17 of the Revised Code states, in part: 'No person shall mine coal, or cause coal to be mined, by strip mining without having a license to do so as required by section 1513.07 of the Revised Code.'

"When a person has been convicted of violation of section 1513.17, the problem of reclaiming the illegally strip-mined lands remains. We therefore respectfully request your opinion on the following:

"1. Can one who has strip-mined without a license be required to reclaim the illegally strip-mined lands under the requirements of section 1513.16 of the Revised Code?

"2. May the Chief of the Division of Forestry and Reclamation refuse to issue a license to an applicant who has been convicted of violation of section 1513.17, where the applicant has not reclaimed the lands illegally strip-mined?

"3. May the Chief of the Division of Forestry and Reclamation issue a license to an applicant who has been convicted of violation of section 1513.17, where the application covers the lands illegally strip-mined?

"4. May the Chief of the Division of Forestry and Reclamation refuse to issue a license to an applicant who has been convicted of violation of section 1513.17, where the application is for lands other than those strip-mined illegally, and the applicant has not obtained a license to strip mine the lands for which the conviction was had?"

Section 1513.01 of the Revised Code provides in part:

"As used in sections 1513.01 to 1513.18, inclusive, and sections 1513.20 to 1513.27, inclusive, of the Revised Code:

"(A) 'Strip mining' means all or any part of the process followed in the production of coal from a natural coal deposit whereby the coal may be extracted after removing the overburden therefrom or the removing of overburden for the purpose of determining the location, quality, or quantity of a natural coal deposit.

* * * * *

"(F) 'Operator' means any person, partnership, or corporation engaged in strip mining who removes or intends to remove more than two hundred fifty tons of coal from the earth by strip mining within twelve successive calendar months from any one operation or who removes overburden for the purpose of determining the location, quality, or quantity of a natural coal deposit.

* * * * *

Section 1513.07, Revised Code, provides in pertinent part:

"(A) No operator shall engage in strip mining without having a license to do so issued by the chief of the division of forestry and reclamation as provided in this section. Said chief shall issue such license upon the filing with and approval by him of an application therefor and the payment to him of a license fee in an amount equal to the sum of seventy-five dollars plus an amount equal to the amount of fifteen dollars multiplied by that number which is stated in the application as the estimate of the number of acres which will comprise the area of land affected within the license year

by the strip mining operation for which the license is requested, and the deposit with him of a surety bond or other security as prescribed by division (A) of section 1513.08 of the Revised Code; provided, that the chief shall refuse to issue such license if he finds that the applicant has failed, and continues to fail, to comply with sections 1513.01 to 1513.19, inclusive, of the Revised Code."

Section 1513.17, Revised Code, provides in pertinent part:

"No person shall mine coal, or cause coal to be mined, by strip mining without having a license to do so as required by section 1513.07 of the Revised Code. * * *"

In regard to your first question, Section 1513.16, Revised Code, to which you refer in your request provides in pertinent part:

"Prior to the expiration of two years after filing with the chief of the division of forestry and reclamation a report as required by section 1513.09 of the Revised Code, showing the area of land affected by the operation covered by such report, the operator filing such report shall reclaim such area of land. This duty to reclaim shall require the operator to:

* * * * *

The report therein mentioned is required by Section 1513.09, Revised Code, which states in part:

"Within sixty days after the end of a year during which an operator was licensed to engage as the operator of a strip mining operation, or prior to that time if the operation for which a license was issued has been completed or abandoned before the end of such license year, the operator shall file with the chief of the division of forestry and reclamation a report of the operation so licensed, on a form to be prescribed and furnished by said chief, which report shall:

* * * * *

In answer to your first question, it is manifest from the plain language of the statutes above cited that the statutory duty of reclamation is predicated upon the filing of the report by the licensed operator within sixty days of the end of the license year and that the statutory reclamation is to be performed by the operator filing said report prior to the expiration of two years after the filing of the said report. Therefore, if the operator was not licensed to strip mine, the statutory duty of reclamation does not arise under Section 1513.16, supra.

In regard to your remaining questions, it is again noted that Section 1513.07, supra, provides in part:

"(A) No operator shall engage in strip mining

without having a license to do so issued by the chief of the division of forestry and reclamation as provided in this section. Said chief shall issue such license upon the filing with and approval by him of an application therefor and the payment to him of a license fee * * * provided, that the chief shall refuse to issue such license if he finds that the applicant has failed, and continues to fail, to comply with sections 1513.01 to 1513.19, inclusive, of the Revised Code."

Giving effect to the language "* * * and continues to fail * * *" of Section 1513.07, supra, the finding by the chief of a past failure to comply is not sufficient grounds for a refusal to issue the license; there must also be a finding that the failure to comply with the law continues at the time when the license is to be issued or refused.

Your letter of request indicates two failures, to wit: a failure to obtain a strip mining license and a failure to reclaim land which has been strip mined. However, as I have concluded above, a nonlicensed operator is not under the duty to reclaim imposed by Section 1513.16, supra. Consequently, on the facts as you have stated, the only failure to comply with the law is the failure to have the proper license while the applicant is strip mining. Conversely, if the applicant is not strip mining, said applicant is not required to have a strip mining license and even though said applicant may have failed to comply with the law, said applicant does not continue to fail to comply with the law.

In answer to your remaining questions, the Chief of the Division of Forestry and Reclamation may not refuse to issue a strip mining license to an applicant therefor who is not strip mining even though said applicant had failed to comply with the law in the past by strip mining without a license.

Therefore, it is my opinion and you are hereby advised that:

1. An operator who has strip mined without the license provided for in Section 1513.07, Revised Code, even though convicted of a violation of Section 1513.17, Revised Code, is not subject to the statutory duty to reclaim the strip mined land imposed by Section 1513.16, Revised Code.
2. The Chief of the Division of Forestry and Reclamation shall refuse to issue a strip mining license to an applicant who has failed and continues to fail to comply with Sections 1513.01 to 1513.19, inclusive, of the Revised Code.
3. The Chief of the Division of Forestry and Reclamation may not refuse to issue a strip mining license to an applicant who has failed but who does not continue to fail to comply with Sections 1513.01 to 1513.19, inclusive, of the Revised Code.
4. The Chief of the Division of Forestry and Reclamation may not refuse to issue a strip mining license to an applicant who has been previously convicted of a violation of Section 1513.17, Revised Code, and has not reclaimed the land so strip mined.