

OPINION NO. 66-078

Syllabus:

1. Reclamation requirements under Section 1513.16, Revised Code, as amended effective November 19, 1965, do not apply to areas licensed under former Section 1513.16, Revised Code, during the year in which they are licensed.

2. Amendments to applications for strip mining licenses filed after November 19, 1965, must conform with the filing requirements, reclamation requirements, acreage fees and bond requirements under Sections 1513.07 and 1513.08 of the Revised Code, as amended effective November 19, 1965, by the 106th Ohio General Assembly, Amended Substitute Senate Bill No. 1, 131 Ohio Laws, S.B. 1.

To: Fred E. Morr, Director, Department of Natural Resources, Columbus, Ohio
By: William B. Saxbe, Attorney General, April 22, 1966

Your request for my opinion reads as follows:

"A number of the statutory sections relating to strip mine reclamation were amended by the 106th General Assembly in Am. Sub. S.B. 1 effective November 19, 1965. The changes included increased filing requirements for application for a strip mining license, changes in reclamation requirements, and an increase in acreage fee and bond amount.

"Applications for amendment of license have been filed subsequent to November 19, 1965, under provision of section 1513.07 (B), for licenses which were issued prior to November 19, 1965.

"Your opinion is respectfully requested as to whether (1) the changes in reclamation requirements under the new law apply to areas licensed under the old law and (2) the changes in filing requirements, reclamation requirements, fees, and bond under the new law apply to amendments of licenses where the license was obtained under the old law and the application for amendment is filed after November 19, 1965."

Immediately prior to the most recent amendments to the strip mine law in 131 Ohio Laws, S.B. 1, effective November 19, 1965, Section 1513.07, Revised Code, provided 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. * * *

* * * * * * * *

"Such license shall authorize the licensee to engage as the operator of a strip mining operation upon the land described in said application during the license year for which the license is issued."

The following observations about the nature of licenses is found in 34 O. Jur. 2d, Licenses and Permits, 354, section 2:

"Licenses from governmental bodies or agencies are commonly described as personal, revocable, and unassignable privileges. A license is a permission granted by some competent authority to do some act which, without such permission, would be illegal. That is to say, to license means to confer on a person the right to do something which he would not otherwise have the right to do. A license is in the nature of a special privilege, and not a right common to all, and is often required as a condition precedent to the right to carry on business or to hold certain classes of property.

"* * * A license or permit is not a contract between the sovereignty issuing it and the licensee. Nor does a license constitute property in any constitutional sense. A license does not confer a vested, permanent, or absolute right, but only a personal privilege to be exercised under existing restrictions and such as may thereafter be reasonably imposed. Free latitude is reserved by the governmental authorities to impose new or additional burdens on the licensee, or to revoke the license."

Judge Florence Allen of the Ohio Supreme Court made the following observation about a license issued by a governmental agency on page 197 of her opinion in the case of Sylvania Busses, Inc., v. City of Toledo, 118 Ohio St., 187:

"* * * Since the license was not a contract between the state and the licensee, its revocation or limitation by the enactment of the amendment of 1925 affected no property rights whatever. 17 Ruling Case Law, 476. This authority states that, inasmuch as a license is not a contract, 'free latitude is reserved by the Legislature to impose new or additional burdens on the licensee, or to alter the license, or to revoke or annul it. And this is the general rule, notwithstanding the expenditure of money by the licensee in reliance thereon, and regardless of whether the term for which the license was given has expired.' * * *"

Although it is well recognized that the legislature may impose additional burdens upon a licensee during the term of the license, 33 Am. Jur., 343, Licenses, section 21, I am of the opinion that the 106th Ohio General Assembly, by enacting Amended Substitute Senate Bill No. 1, 131 Ohio Laws, S.B. 1, has not done so in regard to strip mining licenses issued prior to the effective date of the law, November 19, 1965.

This conclusion is supported by the following points. First, the legislature did not by statute expressly void or invalidate the licenses already issued. Secondly, the legislature did not impliedly void or invalidate the licenses already issued because it made no provision for an immediate re-registration of all operators of strip mine operations irrespective of the normal expiration date of the previously issued licenses. Thirdly, I am unable to imply, from the language used in the amendment, that the new and more stringent reclamation requirements were intended to apply to previously licensed strip mining operations.

Therefore, in answer to your first question, in my opinion the reclamation requirements under Section 1513.16, Revised Code, as amended effective November 19, 1965, do not apply to areas licensed under former Section 1513.16, Revised Code, during the year in which they are licensed.

In answer to your second question, Section 1513.07, Revised Code, as amended, reads in pertinent part:

"(B) If, at any time within a year during which an operator is licensed to engage in a strip mining operation upon land described in his application for such license, such operator desires to engage in a strip mining operation on land not described in his said application, he may file with the chief an amendment of his said application, which shall describe such land and contain the other information required in division (A) of this section. Upon the filing by such operator of such amendment of his application and its approval by the chief the land upon which such operator shall be authorized to engage in strip mining during the license year for which such license was issued, shall be the land described in his said application for such license plus the land described in such amendment of said application.

"(C) If at any time within a license year the number of acres of land in the area of land affected by the operation for which a license is issued, exceeds by more than ten per cent the number of acres stated in the application for such license or in any amendment of such application, as the applicant's estimate of the number of acres of land which will comprise the area of land affected by such operation within such license year, the operator of such operation shall file with the chief an amendment of said application stating a revised estimate of the number of acres of land which will comprise the area of land affected by such operation within such license year. At the time of filing such an amendment the operator shall pay to said chief a license fee in such amount as is equal to the amount of fifteen dollars multiplied by that number which is equal to the difference between the number of acres of land which will comprise the area of land affected by such operation within such license year, as stated in such revised estimate, and the number of acres of land on account of which a license fee has theretofore been paid to such chief by such operator for the license for such operation for such license year, and such operator shall also deposit with said chief a surety bond or other security as prescribed by division (B) of section 1513.08 of the Revised Code."

(Emphasis added)

The express and unambiguous language of subsection (B) of Section 1513.07, supra, requires that an amendment of an application for a strip mining license shall "* * * contain the other information required in division (A) of this section." Irrespective of when an amendment of an application is filed, so long as it is filed after the effective date of the amendment of Section 1513.07, supra, the amendment to the application must conform to the law then in effect. 34 O. Jur. 2d, supra, page 364, section 6. This observation applies equally to the new reclamation requirements, the new fees for the additional acres of land to be affected and to the increased bonding requirements.

Therefore, in regard to your second question, amendments to applications for strip mining licenses filed after November 19, 1965, must conform with the filing requirements, reclamation requirements, acreage fees and bond requirements under Sections 1513.07 and 1513.08 of the Revised Code, as amended effective November 19, 1965, by the 106th Ohio General Assembly, Amended Substitute Senate Bill No. 1, 131 Ohio Laws, S.B. 1.