

OPINION NO. 79-017

Syllabus:

R.C. 1509.071 authorizes the expenditure of funds from the oil and gas well plugging fund for the purpose of determining whether an abandoned well, which may need to be plugged, actually exists at a particular site.

To: Robert W. Teater, Director, Ohio Dept. of Natural Resources, Columbus, Ohio

By: William J. Brown, Attorney General, May 24, 1979

I have before me your request for my opinion, which reads as follows:

Section 1509.071 of the Ohio Revised Code authorizes the expenditure of funds for the plugging of abandoned oil and gas wells. However, prior to beginning the plugging process, it is often difficult to determine whether in fact there is an oil or gas well. To make such determination may require bringing a backhoe onto the property with the investigation process costing from \$1000 to \$1500. Is this expenditure, the cost of checking to see whether there is actually a well, authorized under Section 1509.071 or any other section of the Code?

Public funds may not be expended except pursuant to a statutory grant of power. Such authority may be either express or necessarily implied. Moreover, grants of authority to expend public funds must be strictly construed, and any ambiguities must be resolved against such authority. State ex rel. A. Bentley & Sons Co. v. Pierce, 96 Ohio St. 44, 47 (1917); 1973 Op. Att'y Gen. No. 73-088; 1973 Op. Att'y Gen. No. 73-073. Accordingly, it is necessary to analyze R.C. 1509.071 in order to determine whether the expenditure envisioned in your question is authorized by that section.

R.C. 1509.071 provides for the forfeiture of surety bonds posted by oil or gas well owners who have failed to comply with the restoration requirements of R.C. 1509.072, the plugging requirements of R.C. 1509.12, the permit provisions of R.C. 1509.13, or related rules and orders. In addition, the section requires that all money collected as a result of such forfeitures is to be held by the state treasurer in an "oil and gas well plugging special account." It further provides that:

Such account shall be expended by the chief to plug wells or to properly restore the land surface as required in section 1509.072 of the Revised Code for which such bonds have been forfeited, for abandoned wells for which no funds are available to plug such wells in accordance with Chapter 1509 of the Revised Code, or, upon authorization by the controlling board, to use abandoned wells for the injection of oil or gas production wastes.

Expenditures from the oil and gas well plugging account shall be made only for lawful purposes, pursuant to contracts entered into by the chief with persons who agree to furnish all of the materials, equipment, work, and labor as specified and provided in such contract.

While R.C. 1509.071 does not expressly authorize the expenditure of monies from the oil and gas well plugging fund to pay for expenses incurred while searching for unplugged wells, the authority for such expenditure is necessarily implied therefrom. In Emens and Lowe, Ohio Oil and Gas Conservation Law -- The First Ten Years (1965-1975), 37 Ohio

St. L. J. 31, 48 (1976), the following discussion is found:

Wells which have been abandoned without being properly plugged are termed "orphan" wells Such wells represent a danger, albeit relatively minimal, to the safety of persons who may walk or play around them, to the purity of underground water supplies and to the pressure of nearby oil and gas producing reservoirs.

The authors go on to note that the General Assembly apparently sought to avert these problems by enacting R.C. 1509.071, thereby providing funds for the plugging of abandoned wells.

There can be no doubt that a well must be found before it can be plugged. Moreover, the mere fact that an abandoned oil or gas well is not readily visible does not mean that such well does not present the type of danger that the General Assembly sought to remedy by enacting R.C. 1509.071. Because a search is necessary before such wells can be plugged, the authority to expend funds from the oil and gas well plugging funds for that purpose is necessarily implied from R.C. 1509.071.

Therefore, it is my opinion, and you are so advised, that R.C. 1509.071 authorizes the expenditure of funds from the oil and gas well plugging fund for the purpose of determining whether an abandoned well, which may need to be plugged, actually exists at a particular site.