

OPINION NO. 95-039

Syllabus:

1. If a tract of land which is the site of a bowling alley that has been closed because of the presence of methane gas from abandoned mines constitutes eroded land and land affected by mining, moneys in the unreclaimed lands fund may be used to purchase and reclaim that tract of land.
2. It is within the discretion of the Board on Unreclaimed Strip Mined Lands to select the method of valuing a tract of land that is to be purchased and reclaimed pursuant to R.C. 1513.20 and R.C. 1513.30.

To: Jack Cera, Chairman, Board on Unreclaimed Strip Mined Lands, Columbus, Ohio
By: Betty D. Montgomery, Attorney General, December 12, 1995

You have requested an opinion concerning whether the moneys in the unreclaimed lands fund may be used to purchase and reclaim a four acre tract of land that is the site of a bowling alley that has been closed because of the presence of methane gas from abandoned mines. In addition, you wish to know whether the Board on Unreclaimed Strip Mined Lands may determine the value of the tract of land for the purpose of establishing a purchase price.

I note initially that funding for reclamation projects is available from a myriad of state and federal programs. *See, e.g.*, R.C. 1513.18; R.C. 1513.27; R.C. 1513.28; R.C. 1513.30; R.C. 1513.37; R.C. 1514.06; 30 U.S.C. §§ 1231-1243 (1988 & Supp. V 1993). Information provided indicates, however, that the Board on Unreclaimed Strip Mined Lands and the Division of Mines and Reclamation wish to purchase and reclaim the land in question with moneys from the unreclaimed lands fund. As such, the proposal at issue envisions the use of state moneys in the unreclaimed lands fund only. This opinion thus does not consider whether the land in question may be purchased and reclaimed with any other state or federal funds. Rather, the opinion addresses only the propriety of using moneys in the unreclaimed lands fund to purchase and reclaim the land in question.

R.C. 1513.30, which creates the unreclaimed lands fund, states that moneys in the unreclaimed lands fund may be used to reclaim land, public or private, affected by mining or to control mine drainage, for which no cash is held in the strip mining reclamation fund created in R.C. 1513.18 or the surface mining reclamation fund created in R.C. 1514.06. However, R.C. 1513.30 provides that the moneys must only be expended for reclamation projects that are within the boundaries of project areas approved by the Board. In addition, R.C. 1513.20 authorizes the expenditure of moneys in the fund to purchase any eroded land, including land affected by strip mining, for which no cash is held in the strip mining reclamation fund created by R.C. 1513.18. Thus, R.C. 1513.20 and R.C. 1513.30 authorize the use of moneys in the unreclaimed lands fund to purchase eroded land and to reclaim land affected by mining. *See* 1978 Op. Att'y Gen. No. 78-039 at 2-93 (R.C. 1513.30 "allows monies in the Unreclaimed Land[s] Fund to be used for any project which involves the restoration of lands adversely affected by mining activity").

Whether the tract of land in question constitutes eroded land and land affected by mining requires the resolution of factual questions that can only be answered on a case-by-case basis. Because the Attorney General is not authorized to decide questions of fact by means of a formal opinion, *see* 1987 Op. Att'y Gen. No. 87-082 (syllabus, paragraph three), I am unable to determine whether the tract of land in question constitutes eroded land and land affected by mining. Accordingly, if the tract of land in question constitutes eroded land and land affected by mining, moneys in the unreclaimed lands fund may be used to purchase and reclaim that tract of land.¹

¹ Any reclamation project on a tract of land acquired pursuant to R.C. 1513.20 must be carried out by the Division of Mines and Reclamation in conformity with the provisions set out in R.C. 1513.21-25. Further, any expenditure for a reclamation project from the unreclaimed lands fund must be made by the Chief of the Division of Mines and Reclamation, with the approval of the Director of Natural Resources. R.C. 1513.30. Accordingly, the Division of Mines and Reclamation is authorized to exercise its discretion in prioritizing and carrying out reclamation projects that the Board on Unreclaimed Strip Mined Lands determines are to be financed with moneys from the unreclaimed lands fund.

You have also asked about the authority of the Board on Unreclaimed Strip Mined Lands to determine the value of the four acre tract of land. Specifically, you wish to know whether the Board must use the current appraised value when determining the value of the property.

No provision within R.C. Chapter 1513 addresses the authority of the Board to determine the value of property that is to be purchased and reclaimed by the Board. It is, however, axiomatic that when the General Assembly confers the authority or duty to perform a task, but does not specify the manner of performance, the responsible public official has the "implied authority to determine, in the exercise of a fair and impartial official discretion, the manner and method of doing the thing commanded." *State ex rel. Hunt v. Hildebrant*, 93 Ohio St. 1, 12, 112 N.E. 138, 141 (1915), *aff'd sub. nom. State ex rel. Davis v. Hildebrant*, 241 U.S. 565 (1916). Thus, since the Board is authorized to purchase and reclaim private property, *see* R.C. 1513.20; R.C. 1513.30, it may be concluded that the Board is vested with the authority to accomplish acts necessary and essential to the purchase and reclamation of private property. Any decision by the Board to purchase and reclaim property requires at a minimum the authority to determine the value of the property to be purchased and reclaimed. *See* R.C. 1513.30 (the Chief of the Division of Mines and Reclamation is required to include cost data and other pertinent information whenever he submits to the Board a proposed reclamation project). The precise method of determining the value of the property also is a matter within the Board's sound discretion.

Because "I am not authorized to exercise on behalf of another officer or entity of the government discretion that has been bestowed by statute on that officer or entity," 1986 Op. Att'y Gen. No. 86-076 at 2-422, I am unable, in this opinion, to make the determination as to whether the Board must use the current appraised value when determining the value of a tract of land that is to be purchased and reclaimed pursuant to R.C. 1513.20 and R.C. 1513.30. The exercise of any discretion in this regard remains with the Board.² Accordingly, it is within the sound discretion of the Board to select the method of valuing a tract of land that the Board intends to purchase and reclaim pursuant to R.C. 1513.20 and R.C. 1513.30.

Based on the foregoing, it is my opinion and you are hereby advised as follows:

1. If a tract of land which is the site of a bowling alley that has been closed because of the presence of methane gas from abandoned mines constitutes eroded land and land affected by mining, moneys in the unreclaimed lands fund may be used to purchase and reclaim that tract of land.
2. It is within the discretion of the Board on Unreclaimed Strip Mined Lands to select the method of valuing a tract of land that is to be purchased and reclaimed pursuant to R.C. 1513.20 and R.C. 1513.30.

² As a general matter, any exercise of discretion by the Board must be reasonable. *See generally State ex rel. Kahle v. Rupert*, 99 Ohio St. 17, 19, 122 N.E. 39, 40 (1918). Thus, it may be prudent for the Board to consult with legal counsel and real estate appraisers when determining the value of a tract of land.