



STATE OF KANSAS

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Attorney General

March 1, 1978

ATTORNEY GENERAL OPINION NO. 78- 97

The Honorable Robert F. Bennett
Governor of the State of Kansas
2nd Floor - State Capitol
Topeka, Kansas 66612

Re: Mines and Mining--Mined-Land and Conservation and
Reclamation--Powers of the Mined Land Conservation and
Reclamation Board

Synopsis: In general, the regulatory authority of the Kansas Mined-Land Conservation and Reclamation Board under K.S.A. 49-405, authorizes the adoption of standards necessary to implement the initial regulatory program of the Surface Mining Control and Reclamation Act of 1977.

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Dear Governor Bennett:

You have advised me that you are considering the implementation of various strip mining and reclamation standards which are enumerated in P.L. 95-87 and 30 C.F.R. 300 *et seq.* You have also indicated that should these standards be adopted, they would be administered by the Kansas Mined-Land Conservation and Reclamation Board. Pursuant to 30 C.F.R. 725.15(c)(4), any state which submits an application for financial reimbursement under P.L. 95-87 must include as part of the application, "an opinion of the state's chief legal officer as to whether and to what extent the state is authorized to enforce and administer *the initial regulatory program*" (emphasis supplied). In this regard, you have requested my opinion as to whether or not sufficient authorization has been granted to the

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Kansas Mined-Land Conservation and Reclamation Board to administer the initial reclamation regulatory program which is found at 30 C.F.R. 710 *et seq.*

30 C.F.R. 710.4(b) mandates that:

(b) The States are responsible for issuing permits and inspection and enforcement on lands on which operations are regulated by a State to insure compliance with the initial performance standards in Parts 715-718 of this chapter. States are required to file copies of inspection reports with the Office. States are also responsible for assuring that permits are not issued which would be in conflict with the restriction on mining found in section 510 of the Act, particularly in regard to alluvial valley floors and prime farm lands, and Section 522(e) of the Act in regard to prohibitions of mining on certain lands.

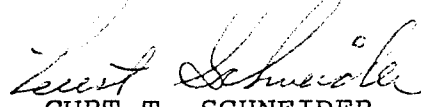
The Kansas Mined-Land Conservation and Reclamation Board is now vested with the authority to issue permits to engage in surface mining pursuant to K.S.A. 49-406 and additional procedures pertaining to applications for permits are found at K.A.R. 47-3-1. Authority to conduct inspections necessary to insure compliance is found at K.S.A. 49-405(b) and (d). Enforcement procedures are enumerated at K.S.A. 49-405(e), (f), (g), (h), (i), and (j). On their face, the above-cited statutes and regulations appear to satisfy the requirements of 30 C.F.R. 710.4(b), but before reaching that ultimate conclusion, one must also inquire whether the Kansas procedures are equivalent to their federal counterparts. 30 C.F.R. 715, 716, and 717 (incorporated by reference in 30 C.F.R. 710.4(b)) set forth with great detail various procedures which must be complied with by anyone who engages in surface coal mining and reclamation. While the provisions of K.S.A. 49-401 *et seq.*, and K.A.R. 47-1-1 *et seq.*, encompass the same philosophy in spirit, it is obvious that they are not as detailed as the federal standards.

It is also apparent that K.S.A. 49-405, which sets forth the powers of the Mined-Land Reclamation Board allows the Board to "adopt and promulgate rules and regulations respecting the administration of the act. . . ." I would, therefore, suggest that to insure that Kansas complies with all standards set forth in the federal act, it would be wise

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to adopt the aforementioned federal regulations on an interim basis by incorporating them by reference as emergency regulations for use until such time as a permanent federal program has been adopted.

Very truly yours,


CURT T. SCHNEIDER
Attorney General

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