STATE OF KANSAS

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July 11, 1978

ATTORNEY GENERAL OPINION NO. 78- 220

Mr. G. T. Van Bebber, Chairman
Kansas Mined-Land Board
4th Floor, State Office Building
Topeka, Kansas 66612

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

Synopsis: The Mined-Land Conservation and Reclamation Act, K.S.A. 49-401 et seq. as amended by Chapter 208 of the 1978 Session Laws authorizes Kansas to substantially comply with the enforcement procedures mandated by the federal Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 et seq.

Should the State of Kansas receive money from the federal government pursuant to the Surfacing Mining Control and Reclamation Act of 1977 for use in the reclamation of abandoned surface mines, and then deposit said money in the State Treasury, and later make withdrawals to fund reclamation projects, the State of Kansas would be a party to an internal improvement, in violation of Article 11, Section 9 of the Constitution of the State of Kansas.

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Dear Chairman Van Bebber:

As Chairman of the Kansas Mined-Land Board, you have requested my opinion on two issues regarding the interaction between the Kansas Mined-Land Conservation and Reclamation Act, K.S.A. 49-401 et seq. and the federal Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 et seq. First, you ask whether and to what extent K.S.A. 49-401 et seq., will allow the Mined-Land Board to enforce and administer certain provisions of 30 U.S.C. 1201, et seq.

Pursuant to 30 U.S.C. 1231 the federal government is to maintain a trust fund, the proceeds of which shall be disbursed to any state which desires to reclaim lands damaged by surface mining. Before receiving federal funds, a state must submit to the Secretary of the Department of the Interior a "state program" which demonstrates that the state is capable of carrying out certain provisions of the federal act which are set forth at 30 U.S.C. 1253.

After reviewing 30 U.S.C. 1253 and K.S.A. 49-401, I find that the only federal provision which is not provided for in our law is 30 U.S.C. 1253(a)(2), which authorizes criminal sanctions for violations of state laws and regulations. This being the only disparity, I therefore find that our Mined-Land Conservation and Reclamation Act provides mechanisms for enforcement and regulation which will allow substantial compliance with the provisions set forth in 30 U.S.C. 1253.

Your second inquiry as to whether Kansas may participate in federally funded reclamation projects and not violate Article 11, Section 9 of the Kansas Constitution which provides in part that:

> "The state shall never be a party in carrying on any work of internal improvement except that: (1) It may adopt, construct, reconstruct and maintain a state system of highways, but no general property tax shall ever be laid nor general obligation bonds issued by the state for such highways; (2) it may be a party to flood control works and works for the conservation and development of water resources."

Considering the nature of the reclamation projects envisioned by the state and federal acts, there can be little doubt that they would fall within the ambit of an internal improvement. See for example, State ex rel. Boynton v. Atherton, 139 K. 197, 30 P. 2d 291 (1934) wherein the court found that internal improvements encompassed projects such as dredging sand flats from a river, deepening and staightening a river, and the construction of wharves, levees, and drains.

Having reached the conclusion that reclamation projects constitute internal improvements, I therefore add that should the federal funds for this program be transferred directly to the state treasury for later disbursement, Article 11, Section 9 will be violated.

Very truly yours,

Curt T. Schneider

CURT T. SCHNEIDER
Attorney General

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