



WILLIAM J. SCOTT

ATTORNEY GENERAL

STATE OF ILLINOIS

500 SOUTH SECOND STREET

SPRINGFIELD

62706

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FILE NO. S-914

MINES AND MINING:
Authority of Department
to Issue Permit For Surface
Mining Land Not Zoned For Mining

Russell T. Dawe, Director
Department of Mines and Minerals
State of Illinois
704 State Office Building
Springfield, Illinois 62706

Dear Director Dawe:

This responds to your request for an opinion as to whether the Department of Mines and Minerals may issue a permit to a coal mining company as provided by the Surface-Mined Land Conservation and Reclamation Act (Ill. Rev. Stat. 1973, ch. 93, pars. 201 et seq.), when a village zoning ordinance does not permit surface mining on the land covered by the application.

The Surface-Mined Land Conservation and Reclamation Act, supra, is concerned only with the reclamation of lands affected by surface mining operations. The public policy of

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the State is set forth in section 2 (Ill. Rev. Stat. 1973, ch. 93, par. 202) which provides in part as follows:

"It is declared to be the policy of this State to provide for conservation and reclamation of lands affected by surface mining in order to restore them to optimum future productive use and to provide for their return to productive use * * * and to assure that conservation and reclamation plans for all surface mining activity are available for the prior consideration of county governments within whose jurisdiction such lands will be affected by surface mining."

By section 4 of the Act (Ill. Rev. Stat. 1973, ch. 93, par. 204) no surface mining operation within the purview of the Act may be undertaken without a permit from the Department of Mines and Minerals. The Department cannot issue a permit until it has approved a conservation and reclamation plan for the surface-mined area and the mine operator has provided the necessary bond or security and paid all required fees.

The application requirements of the Reclamation Act as set forth in section 5(a) (Ill. Rev. Stat. 1973, ch. 93, par. 205(a)) do not require the submission of proof or information regarding the existence of a local zoning ordinance affecting the land in question. The only reference to units of local government is in sections 5(f) and (g) of the Act (Ill. Rev. Stat. 1973, ch. 93, pars. 205(f) and 205(g)), which provide that a county board of a county containing lands to be affected may propose the use for which the lands within its

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county are to be reclaimed and such proposal shall be considered by the Department. Section 5(g), supra, provides that the Department shall approve a plan which complies with the Act and does not require any consideration of zoning ordinances.

I, therefore, am of the opinion that the Department may issue a permit without regard to local zoning ordinances. This conclusion will not, however, necessarily enable the holder of a permit to engage in surface mining operations in disregard of a valid local zoning ordinance. Under section 11-13-1 of the Illinois Municipal Code (Ill. Rev. Stat. 1973, ch. 24, par. 11-13-1) villages as well as other municipalities have the authority to zone the use and development of land within the corporate limits of the municipality and also land within one and one-half miles of the corporate limits when the county in which it is located has not adopted a zoning ordinance.

In Village of Spillertown v. Prewitt, 21 Ill. 2d 228, at pages 230-231, the Illinois Supreme Court found authority in the Cities and Villages Act, predecessor to the Illinois Municipal Code, to justify a village in adopting an ordinance prohibiting strip mining operations within its corporate limits, and stated:

* * * * It is urged that strip mining is harmless, does not interfere with the public health or safety

and cannot be classified as a nuisance per se. The mining of coal by the strip mining process is a legitimate business and in some areas harmless, but the close and confined areas of a city or village, where citizens and their families necessarily live in close proximity, is not such an area. The deep cuts, steep slopes and water-filled holes abutting on public streets, all necessary adjuncts to strip mining, present a real and imminent danger to the safety and health of the public. While there is no specific authority to prohibit strip mining in a city or village we think there is ample authority for its prohibition. Section 23-81 of the Cities and Villages Act (Ill. Rev. Stat. 1959, chap. 24, par. 23-81) grants power 'To do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of diseases.' Section 23-105 of the same act grants the power to enforce all necessary police ordinances. It has often been said that the most important of the police powers is the preservation of the health and safety of the citizens of a community. (City of Chicago v. Kluever, 257 Ill. 317; Biffer v. City of Chicago, 278 Ill. 562.) Here, the village board in its discretion found the occupation of strip mining within its borders dangerous and hazardous to its citizenry and adopted the ordinance for the preservation of the public health and safety."

It is clear from the zoning authority in the Illinois Municipal Code, supra, and the holding in the Village of Spillertown, supra, that a municipality with authority to zone a parcel of land may restrict the use of the land to prohibit strip mining.

In my previous opinion No. NP-437, issued March 10, 1972, I advised that the provisions of the Surface-Mined Land Conservation and Reclamation Act did not repeal county zoning

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powers as expressed in "AN ACT in relation to county zoning" (Ill. Rev. Stat. 1971, ch. 34, par. 3151), either expressly or by implication. In reaching that conclusion I stated: "The permit as required in section 4 of the Surface-Mined Land Conservation and Reclamation Act, supra, is to assure the restoration and reclamation of property after mining and does not authorize the holder of a permit to disregard a zoning ordinance". It is my opinion that the reasoning set forth in that opinion is equally compelling in relation to municipal zoning ordinances and that, therefore, while the Department may issue a permit in the present situation, such a permit does not authorize the holder to violate a properly enacted zoning ordinance of a municipality.

This interpretation of the involved statutes is the only reasonable one to be made. It would be wholly unreasonable to assume that the General Assembly, realizing the adverse affects of strip mining and wishing to control them, would intentionally pass an act allowing one who merely meets the requirements for adequate reclamation to surface mine along the main streets of a thriving municipality. Surely, a result this absurd could not be the intent of the legislature and acts should

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not be construed to produce absurd results. People v. Hudson, 46 Ill. 2d 177.

Furthermore, section 15 of the Reclamation Act (Ill. Rev. Stat. 1973, ch. 93, par. 215) in referring to the Environmental Protective Agency clearly shows that a permit from the Department is not sufficient to allow a holder to engage in surface mining.

Finally, a recent case, American Smelting and Refining Co. v. The County of Knox, 60 Ill. 2d 133, has been drawn to my attention. This case, however, dealt only with reclamation standards and did not go to the question of whether the Reclamation Act, supra, preempts the authority of a county, municipality or any other unit of local government to enact a zoning ordinance to control the use of land. The Supreme Court concluded that the Reclamation Act preempted any authority which a county might have had to promulgate zoning requirements dealing with reclamation standards. The opinion shows clearly that the Reclamation Act is concerned only with reclamation. The court stated at page 139:

"* * * [T]his statute and the regulations adopted thereunder present a detailed and concise effort to supervise the reclamation of strip-mined areas. This would imply that the counties have no authority to regulate reclamation procedures. Chicago School Transit, Inc. v. City of Chicago, 35 Ill. 2d 82, 86."

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and at page 140:

"When these factors are fully considered, the inescapable conclusion is that the County Zoning Act is not applicable to the determination of strip-mining reclamation standards. There is simply no demonstrable basis upon which concurrent State and county regulation of reclamation standards may be permitted. These matters are to be exclusively determined by the appropriate State agency after consideration is given to any county suggestions as provided by the pertinent provisions of the Reclamation Act. * * * "

This opinion should not be construed as expressing an opinion as to the validity of a particular zoning ordinance or as to the effect of the Environmental Protection Act. Ill. Rev. Stat. 1973, ch. 111 1/2, pars. 1001 et seq.

Very truly yours,

A T T O R N E Y G E N E R A L