

1977 S.C. Op. Atty. Gen. 117 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-143, 1977 WL 24485

Office of the Attorney General

State of South Carolina

Opinion No. 77-143

May 6, 1977

*1 The responsibility of the Mining Council under the South Carolina Mining Act does not extend to approval of minimum reclamation standards established by the Department.

TO: Murray Wood
Director
Department of Mining and Reclamation
Land Resources Conservation Commission

QUESTION PRESENTED:

What is the responsibility of the Mining Council toward approval of minimum reclamation standards established by the Department of Mining and Reclamation under the South Carolina Mining Act?

STATUTES INVOLVED:

Section 63–701, et seq., of the 1962 Code of Laws of South Carolina, as amended, known as the Interstate Mining Compact.

Section 63–711, et seq., of the 1962 Code of Laws of South Carolina, as amended, known as the South Carolina Mining Act.

DISCUSSION:

Section 63–711(b) of the South Carolina Mining Act (Section 63–711, et seq., supra) defines the Mining Council (hereafter referred to as the Council) as being that body created by Act 1109 of 1972, as amended by Act 1128 of 1974 [Sections 63–701, 63–702 (the Interstate Mining Compact)].

Article V(a) of Section 1 (Section 63–701) of Act 1109 of 1972 provides in pertinent part that ‘[p]ursuant to the laws of his party state, each Governor shall have the assistance of an advisory body (including membership from mining industries, conservation interests, and such other public and private interests as may be appropriate) in considering problems relating to mining and in discharging his responsibilities as the commissioner of his state on the commission.’ Section 2 (Section 63–702) establishes in the office of the Governor the advisory body, referenced above, to be known as the Mining Council and further provides for the appointment and terms of that body's members.

The Council, in accordance with its declared purpose in the aforementioned statute, functions on an advisory level and remains apart from the daily decisions of the specialists and experts employed by the Land Resources Conservation Commission, Department of Mining and Reclamation (hereafter referred to as the Department) to implement specific application of the South Carolina Mining Act. Such a scheme is not uncommon in the field of agency law and clearly is contemplated by the plain terms of the Act, as evidenced therein by the many highly-technical duties expressly assigned to the Department, which duties necessarily require broad discretion in their performance.

Nonetheless, Section 63–725 provides that the Council may also serve as an appellate body for an individual operator who believes he has been aggrieved by a particular decision of the Department. At that time both the operator and the Department would present their positions to the Council, which, after a full and complete hearing, may affirm, affirm with modifications, or overrule the Department's decision. Any action taken by the Council prior to that time, of course, would be both inappropriate and ineffective under the terms of the Act.

*2 Furthermore, the Act establishes the Council's responsibility for promulgating rules and regulations respecting the administration of the Act which concern the duties of operators in applying for permits and also those of the Department director and his subordinates or designees. Section 63–727. That responsibility, however, only extends generally to additional duties in administering the Act which the Council, after notice and public hearing, may determine are owed by those respective persons. It clearly does not extend to approval of discretionary matters, such as the minimum standards of Section 63–717, which are conferred upon the Department in the proper exercise of its expertise. See 3 Sutherland on Statutory Construction (4th Ed.), Section 65.01, page 148.

CONCLUSION:

Therefore, it is the opinion of this Office that the responsibility of the Mining Council under the South Carolina Mining Act does not extend to approval of minimum reclamation standards established by the Department.

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