

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
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April 9, 2008

Opinion No. 08-92

Reclamation Requirements Affecting Mineral Surface Mining Operations

QUESTION

What is the current law (common, case, constitutional, regulatory and/or statutory) as it pertains to the reclamation duties, obligations, or requirements for real property by a party who owns mineral rights only and mines for rock or other minerals?

OPINION

It is the opinion of this Office that the Tennessee Mineral Surface Mining Law of 1972, Tenn. Code Ann. §§ 59-8-201 to 59-8-228, which provides a comprehensive regulatory scheme for mineral surface mining operations, does not currently regulate limestone or dimension stone, and, therefore, these types of “rock” are not subject to reclamation, absent express provisions in a specific mineral reservation or deed. Any other substance captured under the definition of a “mineral” in Tenn. Code Ann. § 59-8-202(7) will, of course, be subject to the statutory reclamation requirements in the Act.

ANALYSIS

The laws governing mineral surface mining operations are currently found in the Tennessee Mineral Surface Mining Law of 1972, codified at Tenn. Code Ann. §§ 59-8-201 to 59-8-228. This was the first comprehensive regulation of surface mining passed in Tennessee and, as originally enacted, the legislation provided for the uniform regulation of surface mining of certain types of minerals throughout the state.

You have inquired what the current state of the law is regarding the obligations of surface mining operators to conduct reclamation of the areas disturbed by their activities. We note that your request focuses specifically on persons mining “for rock or other mineral.” We also understand that your inquiry is generated, in part, by concerns regarding what is loosely known as the “rock or stone harvesting” industry in Tennessee. The current Mineral Surface Mining Law defines “mineral” to mean:

In any county having a population of six hundred thousand (600,000) or less according to the 1970 federal census or any subsequent federal census, clay, stone, phosphate rock, metallic ore, and any other solid

material or substance of commercial value found in natural deposits on or in the earth, *but does not include limestone, coal, marble, chert, gravel, sand or dimension stone.*

Tenn. Code Ann. § 59-8-202(7) (emphasis supplied).^{*} Although the term “rock” is not defined under this statute, it is generally understood to include, broadly, “1. a large mass of stone forming a cliff, promontory, or peak. 2. a concreted mass of stony material.” Webster’s Collegiate Dictionary, 10th Ed. (1994). Limestone and dimension stone, which are currently exempted from the ambit of the Mineral Surface Mining Law and which purportedly form a large portion of the commercial stone harvesting market, would seem to come within the dictionary definition of a rock.

The Mineral Surface Mining Law does include extensive provisions for reclamation. For example, the Tennessee Department of Environment and Conservation is authorized to establish standards for “acceptable mining and reclamation of affected areas.” Tenn. Code Ann. § 59-8-204(7). Surface mining operators must prepare and submit reclamation plans, Tenn. Code Ann. § 59-8-208, and revegetation plans, Tenn. Code Ann. § 59-8-209, for the areas affected by their activities. Operators must also file a performance bond with the Commissioner, and liability under the bond is continuous until the reclamation provisions have been fulfilled. Tenn. Code Ann. § 59-8-207.

We are not aware of any case law in Tennessee addressing reclamation for mineral surface mining operations generally, beyond decisions interpreting the bond and forfeiture provisions under federal surface mining laws. Most mineral rights are reserved through a deed, and the scope of such rights and any obligations of the mineral owner will be determined in large part by the language in those instruments. In Tennessee, deeds of conveyance, like other contracts, are to be enforced according to the expressed intentions of the parties thereto. *Waddle v. Lucky Strike Oil Co.*, 551 S.W.2d 323, 326-327 (Tenn. 1977); *P.M. Drilling, Inc. v. Groce*, 792 S.W.2d 717, 719 (Tenn. Ct. App.), *appeal denied*, (1990). In the event of any ambiguity in a conveyance, the courts have held that the intention of the instrument can be arrived at “from the language of the instrument read in the light of surrounding circumstances.” *Manhattan Savings Bank and Trust Co. v. Bedford*, 161 Tenn. 187, 30 S.W.2d 227, 229 (1930) (citing *Dalton v. Eller*, 153 Tenn. 418, 284 S.W. 68, 70 (1926)); *cf. Belcher v. Elliot*, 312 F.2d 245, 248 (6th Cir. 1962) (holding that conduct of parties after execution of a deed may be considered as an aid to its interpretation).

Since the provisions of Tennessee’s Mineral Surface Mining Law do not currently encompass limestone or dimension stone, it is the opinion of this Office that these types of “rock” are not subject to reclamation, absent express provisions in a mineral reservation or deed. Any other substance captured under the definition of a “mineral” in Tenn. Code Ann. § 59-8-202(7) will, of course, be subject to the statutory reclamation requirements in the Act.

^{*}This Office has previously opined that, absent a rational basis, the county population bracket exemption in Tenn. Code Ann. § 59-8-202(7) would violate both Article XI, Section 8, and Article I, Section 8, of the Tennessee Constitution. Op. Tenn. Att’y. Gen. 97-046 (April 14, 1997).

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