

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

June 27, 2018

Opinion No. 18-26

Interpretation of the Primacy and Reclamation Act of Tennessee

Question 1

Section 44 of the Primacy and Reclamation Act of Tennessee, 2018 Tenn. Pub. Acts, ch. 839, requires the Governor to apply to obtain exclusive jurisdiction over surface mining and reclamation in the State and to request as much federal funding as possible. Are actions taken by the Governor in furtherance of that duty contingent on the availability of federal funds?

Opinion 1

No.

Question 2

Are expenditures from the coal mining protection fund established in the Primacy and Reclamation Act, Tenn. Code Ann. § 59-8-132, limited by the amount of federal funds available?

Opinion 2

Yes.

ANALYSIS

Under the Surface Mining Control and Reclamation Act of 1977 (“SMCRA”), a State may “assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations” within its territory if it submits, and the Secretary of the Interior approves, a state program that complies with several requirements enumerated in the SMCRA. 30 U.S.C. § 1253(a); *see* Tenn. Att’y Gen. Op. 08-51 (Mar. 11, 2008). Although Tennessee formerly assumed exclusive jurisdiction pursuant to an approved state program, it yielded that authority back to the federal government in 1984. *See* Tenn. Att’y Gen. Op. 85-95 (Apr. 1, 1985); *Tennessee Regulatory Program; Withdrawal of Proposed Rulemaking Actions*, 49 Fed. Reg. 27,325 (July 3, 1984).

The General Assembly recently enacted the Primacy and Reclamation Act of Tennessee, 2018 Tenn. Pub. Acts, ch. 839, which seeks to restore the State’s exclusive regulatory jurisdiction—i.e., the State’s primacy—over surface coal mining and reclamation operations within Tennessee. The Primacy and Reclamation Act adds a new part to chapter 8, title 59, of the Tennessee Code—to be codified at Tenn. Code Ann. §§ 59-8-101 to -133—which establishes a state program to satisfy the federal requirements for state primacy. 2018 Tenn. Pub. Acts, ch. 839,

§ 1; *see also* 30 U.S.C. § 1253(a)(1)-(7); 30 C.F.R. § 732.15 (establishing the necessary criteria for approval of a state program). The Act also directs the Governor to “take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes.” 2018 Tenn. Pub. Acts, ch. 839, § 44.

1. The Primacy and Reclamation Act conditions the implementation of some of its provisions on the availability of federal funds. As added by the Act, Tenn. Code Ann. § 59-8-133(a) provides that “[i]mplementation of this part is subject to the availability of federal funds for such purpose.” The “part” to which the statutory language refers is the “new part” of the Tennessee Code added by the Act. *See* 2018 Tenn. Pub. Acts ch. 839, § 1 (“Tennessee Code Annotated, Title 59, Chapter 8, is amended by adding the following language as a new part.”). Such language is a common statutory cross-reference referring to the specific “part” of the Code in which the section is located. *See, e.g.*, Tenn. Code Ann. § 47-18-1311 (“Implementation and administration of this part shall be subject to an annual appropriation[.]”); *id.* § 49-50-906(a) (authorizing the state board of education to take action it deems “necessary to implement and to oversee implementation of this part”); *id.* § 68-14-503(1) (granting the commissioner of health the authority to “[c]arry out or cause to be carried out all provisions of this part”).

The requirement in section 44 of the Primacy and Reclamation Act that the Governor take all action necessary to submit requests for federal funding and applications to obtain exclusive jurisdiction over surface mining and reclamation operations is not included in the statutory “part” to which § 59-8-133(a) refers. Section 44 is part of the same Act, but that requirement is not included in part 1 of chapter 8, title 59, of the Tennessee Code. Accordingly, the Governor’s efforts to submit requests for federal funding and applications to obtain state primacy do not constitute “implementation” of the part and are not subject to the availability of federal funds under § 59-8-133(a).

2. Section 59-8-133, as added by the Primacy and Reclamation Act, also establishes a requirement governing the source of funds used to administer and enforce the Act. Under § 59-8-133(b), the “cost of administering and enforcement of this part shall be paid in equal proportions by federal funds made available for such purpose and funds in the coal mining protection fund, created in § 59-8-132.”

The Primacy and Reclamation Act creates a segregated fund within the state treasury known as the “coal mining protection fund,” and directs that the various fees and other money collected pursuant to the Act be deposited in that fund. *See* Tenn. Code Ann. § 59-8-132(a). The money in that fund “shall be used for the administration and enforcement of the requirements of this part.” *Id.* § 59-8-132(b).

Section 59-8-133, however, conditions the implementation of the Act on the “availability of federal funds” and mandates that the cost of administering and enforcing the act be paid “in equal proportions by federal funds . . . and funds in the coal mining protecting fund.”

Accordingly, the cost of implementation and enforcement must be paid by equal amounts of federal funds and money in the coal mining protection fund. If no federal funds are available,

then no money from the coal mining protection fund may be spent because such an expenditure would not be in “equal proportion[.]” to the amount of federal funds spent.

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