

VOLUME NO. 35**Opinion No. 20**

MINES AND MINING — Strip mining, what activities constitute. Montana Strip Mining and Reclamation Act, Chapter 325, Session Laws of 1973.

HELD: Certain activities by a strip mining operator, prior to removal of overburden or mineral, do not constitute strip mining under the Montana Strip Mining and Reclamation Act.

August 8, 1973

Mr. Ted Schwinden, Commissioner
Department of State Lands
Capitol Station
Helena, Montana 59601

Dear Mr. Schwinden:

You have asked my opinion concerning the following question:

Whether certain "activities" by a strip-mining operator prior to the actual physical removal of overburden or mineral such as construction of railroad spurs, fabrication of draglines and loading shovels, construction of a crushing, storage and unit train load-out facility, and construction of other mine buildings constitute "strip mining" within the meaning of the Montana Strip Mining and Reclamation Act.

In the interpretation of statutes, the legislative will is the all-important or controlling factor. See: **U.S. v. Rosenblum Truck Lines**, 315 U.S. 50; **U.S. v. Stone & D. Co.**, 274 U.S. 225; **State v. Livingston Concrete Building & Manufacturing Co.**, 34 Mont. 570, 87 P. 980. The primary rule of construction of statutes is to ascertain and declare the intention of the legislature. In the case of **In Re Wilson**, 102 Mont. 178, 56 P.2d 733, the Montana Supreme Court at page 193 declared:

In the construction of a statute the primary duty of the court is to give effect to the intention of the legislature in enacting it ... and every word, clause, phrase and sentence must be given effect, if possible. ...

To answer your question, therefore, it is necessary to attempt to ascertain what the Montana legislature intended by its definition of strip mining in the Montana Strip Mining and Reclamation Act, chapter 325, Session Laws of 1973. The act, effective March 16, 1973, defines strip mining in section 3 thereof as follows:

Unless the context requires otherwise in this act:

(3) "strip mining" means **any part of the process followed in the production of mineral by the open cut method** including mining by the auger method or any similar method which penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine which enters the deposit from a surface excavation, or any other mining method or process **in which the strata or overburden is removed or displaced in order to recover the mineral; ...** (Emphasis supplied)

According to this legislative definition, activities only constitute strip mining if such activities are part of the "process followed in the production of mineral" by actual physical removal from the earth. The language of the statute clearly limits strip mining to those activities directly involved "in the production of mineral by the open cut method ... in which the strata or overburden is removed ... in order to recover the mineral ...". Thus, an operator does not engage in strip mining until he actually removes the strata or overburden.

Your request also refers to section 6 of the Montana Strip Mining and Reclamation Act, *supra*, which states in pertinent part:

(1) An operator may not engage in **strip mining** without having first obtained from the department a permit designating the area of land affected by the operation. ... (Emphasis supplied)

By section 6, *supra*, the legislature apparently intended to prohibit an operator from engaging in strip mining without his first obtaining a permit from the department of state lands.

The activities mentioned in your request, such as construction of railroad spurs, fabrication of draglines and loading shovels, etc., are performed prior to actual physical removal of overburden or mineral, and so do not constitute strip mining, since these activities are not "... part of the process followed in the production of mineral by the open cut method ... in which the strata ... is removed ... in order to recover the mineral".

While it is clear from the act in its entirety that the legislature intended to require a permit in the early stages of a strip mining operation, section 6, *supra*, plainly states that a permit is only required prior to strip mining as defined by the legislature in section 3 (3), *supra*.

THEREFORE, IT IS MY OPINION:

Certain "activities" by a strip mining operator prior to the actual physical removal of overburden or material such as construction of railroad spurs, fabrication of draglines and loading shovels, construction of a crushing, storage and unit train load-out facility, and construction of other mine buildings, do not constitute "strip mining" within the meaning of the Montana Strip Mining and Reclamation Act.

Very truly yours,

ROBERT L. WOODAHL
Attorney General