

VOLUME NO. 36

Opinion No. 31

MINES AND MINING — Open cut mines — Bonds and fees, state exempt from; STATUTES — Retroactive operation, when given; Sections 50-1501 through 50-1516.1, R.C.M. 1947, Section 12-201, R.C.M. 1947.

HELD: After July 1, 1975 the state of Montana and its subdivisions need not comply with any fee or bonding requirements of the Open Cut Mining Act.

October 9, 1975

Mr. William A. Douglas
Lincoln County Attorney
417 Mineral Avenue
Libby, Montana 59923

Dear Mr. Douglas:

You have requested my opinion on the following question:

Does Chapter 81 of the Montana Session Laws of 1975 operate retroactively?

Senate Bill No. 345, now Chapter 81, Montana Session Laws of 1975, provides:

AN ACT TO AMEND THE OPEN CUT MINING ACT TO PROVIDE AN EXEMPTION OF THE FEES AND BONDS FOR THE STATE OF MONTANA AND ITS SUBDIVISIONS. BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. There is a new R.C.M. section numbered 50-1516.1 that reads as follows:

50-1516.1. The provisions of this chapter relating to fees or bonds shall not apply to the state of Montana, counties, cities or towns.

The Open Cut Mining Act is codified in sections 50-1501 et. seq., and its essential purpose is "to provide for the reclamation and conservation of land subjected to open cut bentonite, clay, scoria, phosphate rock, sand or gravel mining." Section 50-1502. To ensure achievement of these objectives, specific fee and bonding requirements are imposed. Sections 50-1508 through 50-1510. By its terms, Chapter 81 exempts the state and its political subdivisions from such requirements. Your present concern is whether Chapter 81 covers reclamation bonds on open cut mining operations in existence prior to July 1, 1975, its effective date, as well as bonds on operations started thereafter.

The 1972 Montana Constitution does not prohibit enactment of "retroactive" (retrospective) laws as such. However, section 12-201 raises a strong presumption against them:

No law contained in any of the codes or other statutes of Montana is retroactive unless expressly so declared.

Application of this section is the only conceivable theory which could support a holding that the state must maintain its reclamation bonds on open cut mining operations ante-dating Chapter 81.

But in my view section 12-201 is inapplicable to the instant case because Chapter 81 is not "retroactive" in the legal or prohibited sense. A law is not

retroactive merely because it relates to prior facts or transactions without changing their legal effect, or because some of the requisites for its action are drawn from a time antecedent to its passage. **State ex rel. Sweezer v. Green**, 232 S.W.2d 897, 900 (Mo. 1950). A law is retroactive if it takes away or impairs vested rights acquired under existing law or creates a new obligation, imposes a new duty or attaches a new disability in respect of transactions or considerations already past. **Continental Oil Co. v. Montana Concrete Co.**, 63 Mont. 223, 231, 207 P. 116 (1922); **City of Harlem v. State Highway Commission**, 149 Mont. 281, 284, 425 P.2d 718 (1967). Since here the state has been relieved of, rather than burdened with, the obligation to pay certain fees and secure reclamation bonds, Chapter 81 cannot possibly be objected to on the ground it is "retroactive". See **Leuthold v. Brandjord**, 100 Mont. 96, 108, 47 P.2d 41 (1935), and **State ex rel. Hughes v. State Board of Land Commissioners**, 137 Mont. 510, 518, 353 P.2d 331 (1960).

THEREFORE, IT IS MY OPINION:

After July 1, 1975 the state of Montana and its subdivisions need not comply with any fee or bonding requirements of the Open Cut Mining Act.

Very truly yours,
ROBERT L. WOODAHL
Attorney General