

BOARD OF LAND COMMISSIONERS - Authority under Opencut Mining Act;
MINES - Authority of Board of Land Commissioners under Opencut Mining Act;
STATUTES - Construction and application of policy or purpose provision in Opencut Mining Act;
MONTANA CODE ANNOTATED - Sections 2-4-704, 82-4-401 to 82-4-441;
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 164 (1978).

HELD: Section 82-4-434(2), MCA, contains those matters which must be addressed in any reclamation contract entered into by the State Board of Land Commissioners under the Opencut Mining Act. The Board has the discretion to include other requirements in the reclamation contract which reasonably relate to the general purpose of the Act as set forth in section 82-4-402, MCA.

18 April 1984

Dennis Hemmer, Commissioner
Department of State Lands
1625 Eleventh Avenue
Helena MT 59620

Dear Mr. Hemmer:

You have requested my opinion concerning a question which I have phrased as follows:

To what extent must the State Board of Land Commissioners consider the purposes of the Opencut Mining Act stated in section 82-4-402, MCA, in determining whether to enter into a reclamation contract under section 82-4-423, MCA?

Your question must be answered with reference to the provisions of the Opencut Mining Act (Act), §§ 82-4-401 to 441, MCA, general rules of statutory construction and accepted principles of administrative law.

Section 82-4-402, MCA, of the Act provides for the comprehensive "reclamation and conservation of land subjected to opencut bentonite, clay, scoria, phosphate rock, sand, or gravel mining" and sets forth as its general purpose

to preserve natural resources, to aid in the protection of wildlife and aquatic resources, to safeguard and reclaim through effective means and methods all agricultural, recreational, home, and industrial sites subjected to or which may be affected by opencut bentonite, clay, scoria, phosphate rock, sand, or gravel mining to protect and perpetuate the taxable value of property, to protect scenic, scientific, historic, or other unique areas, and to promote the health, safety, and general welfare of the people of this state.

See generally 37 Op. Att'y Gen. No. 164 (1978). To achieve this purpose, the Act prohibits opencut mining operations which will result in the removal of 10,000 cubic yards or more of products or overburden, unless the operator has entered into a contract for reclamation with the State Board of Land Commissioners. § 82-4-431, MCA. The Board has extensive authority with respect to the terms of such contracts, for monitoring contractual compliance by opencut mining operators, and for reclaiming land when an operator has forfeited upon the performance bond required to be posted as part of any application for a reclamation contract. §§ 82-4-422 to 423, MCA.

Section 82-4-422(1), MCA, is significant presently and provides that the Board may "enter into contracts where it is found on the basis of the information set forth in the application and an evaluation of the operation by the board that the requirements of the part or rules will be observed and that the operation and the reclamation of the affected area can be carried out consistently with the purpose of the part." (Emphasis added.) Section 82-4-434(2), MCA, however, does outline certain provisions mandatorily included in any reclamation contract, all of which emphasize the Act's objective of ensuring land use conservation both through controls during the actual opencut mining operations and through remedial measures after the operations have

concluded. Finally, the Montana Administrative Procedure Act, §§ 2-4-101 to 711, MCA, applies to hearings before the Board and to judicial review of its decisions. § 82-4-427(2), MCA.

"In place of a preamble it has become common ... to include a policy section which states the general objectives of the act in order that administrators and courts may know its purposes...." 1A Sutherland Statutory Construction § 20.12 (4th ed. 1972). A policy section is, moreover, not only relevant to the question of legislative intent concerning a statute's overall purpose but also to the scope of administrative agency authority under the Act. "[T]he grant of authority to an agency carries with it the power to do what is reasonably necessary to perform the powers and duties specifically conferred.... In determining the scope of the grant of authority, the purpose of the legislation must be considered...." Eastman Kodak Co. v. Fair Employment Practices Commission, 83 Ill. App. 3d 215, 38 Ill. Dec. 620, 403 N.E.2d 1224, 1227 (1980) (citations omitted). See also Lehigh & New England Railway Co. v. ICC, 540 F.2d 71, 79 (3d Cir. 1976), cert. denied, 429 U.S. 1061 (1977); Atlantis I Condominium Association v. Bryson, 403 A.2d 711, 713 (Del. 1979). The policy or purpose provision in section 82-4-402, MCA, is thus properly considered in determining the extent of the Board of Land Commissioners' authority under the Act to require reclamation contract commitments in addition to those mandated under section 82-4-434(2), MCA. Cf. Wyse v. District Court, 195 Mont. 434, 437, 636 P.2d 865, 866 (1981) ("[a] statute derives its meaning from the entire body of words taken together"); Vita-Rich Dairy v. Department of Business Regulation, 170 Mont. 341, 348, 553 P.2d 980, 984 (1976) ("[i]n construing legislative intent statutes must be read and considered in their entirety and legislative intent may not be gained from the wording of any particular section or sentence, but only from consideration as a whole").

Consequently, the Board is vested with administrative discretion to determine whether a particular matter should be included as part of a reclamation plan even though not required under section 82-4-434(2), MCA. See Levy v. Board of Registration and Discipline in Medicine, 378 Mass. 519, 392 N.E.2d 1036, 1040 (1979) ("[w]hen the Legislature delegates to an administrative agency a broad grant of authority to implement a program

of reform or social welfare, the administrative agency generally has a wide range of discretion in establishing the parameters of its authority pursuant to the enabling legislation"). Such discretion is, nonetheless, not limitless but must be exercised consistently with the basic purpose of the Act--the conservation and reclamation of land affected by opencut mining operations. See, e.g., Schultz v. State, 417 N.E.2d 1127, 1136 (Ind. Ct. App. 1981) ("[a]n discretion vested in an administrative agency must be delimited by statutory authority delegating that discretion to it"). Implicit in the existence of administrative discretion is the Board's right to "choose which of several permissive courses will be followed. In exercising that discretion, the factors to be taken into consideration 'are not mechanical or self-defining standards' and, thus, wide areas of judgment are implied.... Such discretion is the 'lifeblood' of the administrative process...." Riley v. State Employees' Retirement Commission, 178 Conn. 438, 423 A.2d 87, 89 (1979) (citations omitted). The Board's decision, if later judicially challenged, should "be sustained so long as it is reasonably related to the purposes of the enabling legislation". Levy v. Board of Registration and Discipline in Medicine, 392 N.E.2d at 1039. See generally § 2-4-704, MCA; Western Bank of Billings v. Montana State Banking Board, 174 Mont. 331, 340, 570 P.2d 1115, 1120 (1977); State ex rel. Montana Wilderness Association v. Board of Natural Resources and Conservation, 39 St. Rptr. 1238, 1242-43, 1251, 648 P.2d 734, 740-41, 746 (1982).

THEREFORE, IT IS MY OPINION:

Section 82-4-434(2), MCA, contains those matters which must be addressed in any reclamation contract entered into by the State Board of Land Commissioners under the Opencut Mining Act. The Board has the discretion to include other requirements in the reclamation contract which reasonably relate to the general purpose of the Act as set forth in section 82-4-402, MCA.

Very truly yours,

MIKE GREELY
Attorney General