



WILLIAM J. SCOTT  
ATTORNEY GENERAL  
STATE OF ILLINOIS  
SPRINGFIELD

April 7, 1978

FILE NO. S-1355

**ENVIRONMENTAL PROTECTION:**  
Authority of Department of Mines and  
Minerals to Lease Abandoned Lands  
From a Unit of Local Government

Honorable Dave O'Neal  
Lieutenant Governor  
Chairman, Abandoned Mined Lands and  
Reclamation Council  
State House  
Springfield, Illinois 62706

Dear Lieutenant Governor O'Neal:

I have your letter wherein you ask the following  
questions:

1. Does section 5 of the Abandoned Mined Lands Reclamation Act authorize the Department of Mines and Minerals to lease abandoned lands from a unit of local government?
2. Must transfers of reclaimed lands from the State to units of local government under section 9 of the Act be in exchange for valuable consideration?

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3. May the Department of Conservation transfer its control of abandoned lands which are owned by the State in fee simple to the Department of Mines and Minerals for the purposes of reclamation?

The Department of Mines and Minerals, at the direction of the Abandoned Mined Lands Reclamation Council, has the authority to acquire property necessary for the reclamation of abandoned lands. Section 5 of the Abandoned Mined Lands Reclamation Act (Ill. Rev. Stat. 1975, ch. 93, par. 255) reads as follows:

"The Department, at the direction of the Council, shall acquire by purchase, exchange, gift or otherwise, the fee simple title or any lesser interest in and to such land, rights or other abandoned property as the Council considers necessary for the reclamation of abandoned lands. No such property may be acquired at a price higher than its fair market value as determined by independent appraisal." (Emphasis added.)

The provisions of a statute must be construed in light of the general purpose and object of the act in order to effectuate the main intent and scheme therein expressed. (People ex rel. Sampson v. Funkhouser (1944), 385 Ill. 396, 403.) Because it has been held that a leasehold is an interest in land (People v. Shedd (1909), 241 Ill. 155, 165; People v. Hardt (1946), 329 Ill. App. 153, 158), it may be contended that section 5 authorizes the Department to lease abandoned land from a unit of local government. This contention, however, disregards the statutory scheme for transferring reclaimed land to units of local government.

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According to this scheme, reclaimed land that is not retained by the State for governmental purposes may be transferred to a unit of local government which has complied with the requirements of section 9 of the Act. (Ill. Rev. Stat. 1975, ch. 93, par. 259.) Section 9 generally requires the unit of local government to submit a plan for the use of the reclaimed land to the Abandoned Mined Lands Reclamation Council. If the Council approves the plan, the Director of the Department of Mines and Minerals may transfer the land to the unit of local government.

This statutory scheme would be thwarted if the Department of Mines and Minerals were to lease abandoned lands from a unit of local government. A lease, by its very nature, is subject to termination; upon termination of the lease, the lessee's possessory interest reverts to the lessor. (49 Am. Jur. 2d, Landlord and Tenant, Section 1.) A lease of abandoned land from a unit of local government would create the possibility that the governmental unit could obtain control over reclaimed land upon the termination of the lease without having submitted a plan for its use. Thus a lease could be used to circumvent the requirement that a unit of local government must submit a plan for the use of reclaimed land before the land is transferred to the unit. Because the lease of abandoned land from a unit of local government

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would allow the unit to use the reclaimed land without submitting a reclamation plan, it is my opinion that section 5 of the Act may not be construed to authorize the Department to lease abandoned land from a unit of local government.

In your second question you ask whether transfers of reclaimed land to units of local government under section 9 must be for valuable consideration. After describing the procedure by which a unit of local government may submit a plan for the use of reclaimed lands to the Abandoned Mined Lands Reclamation Council, section 9 then states:

" \* \* \*

If the Council certifies to the Director its approval of a plan submitted under this Section, the Director may cause title to the affected lands to be transferred to the unit or units of local government submitting that plan.

If no such plan is timely filed or approved, the Director shall cause the affected lands to be sold at public sale, after reasonable notice of sale, to the highest, responsible bidder."  
(Emphasis added.)

Section 9 contemplates a transfer of reclaimed land to the unit or units of local government submitting an approved plan and a sale of reclaimed land when no plan is approved. The terms "transfer" and "sale" are not synonymous. (Sinas v. City

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of Lansing (1969), 382 Mich. 407, 413, 170 N.W. 2d 23, 26;

Halsted v. Globe Indemnity Co. (1932), 258 N.Y. 176, 179, 179

N.E. 376, 377.) The term "transfer" is defined as the passage of

ownership or control whether by sale or gift. (Black's Law

Dictionary 1669 (4th Ed. Rev. 1968).) A sale is a particular

type of transfer. The word "sale" is defined as a transfer of

property for valuable consideration. (Talty v. Schoenholz (1922),

224 Ill. App. 158, 162.) Where the legislature uses two words

with distinct meanings in the same statute, it is presumed that

each word is intended to have a meaning distinct from the other.

(Wall v. Chesapeake & Ohio Ry. Co. (1919), 290 Ill. 227, 233.)

The fact that section 9 provides that the Director of the Depart-

ment of Mines and Minerals may transfer reclaimed lands to units

of local government while reclaimed lands in general are to be

sold demonstrates a legislative intent to authorize the Director

to transfer reclaimed lands to units of local government without

requiring valuable consideration. Therefore, it is my opinion

that when the Abandoned Mined Lands Reclamation Council approves

a unit of local government's plan for the use of reclaimed land,

the Director of the Department of Mines and Minerals may transfer

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the reclaimed land to the unit of local government without requiring valuable consideration.

In regard to your third question, section 63a10 of the Civil Administrative Code of Illinois (Ill. Rev. Stat. 1975, ch. 127, par. 63a10) authorizes the Department of Conservation to transfer real estate under its control to another Department of State government. Section 63a10 authorizes the Department of Conservation:

"To transfer jurisdiction of or exchange any realty under the control of the Department to any other Department of the State Government, or to any agency of the Federal Government, or to acquire or accept Federal lands, when such transfer, exchange, acquisition or acceptance is advantageous to the State and is approved in writing by the Governor. \* \* \*"

It is my opinion that section 63a10 authorizes the Department of Conservation to transfer abandoned land under its control to the Department of Mines and Minerals for the purposes of reclamation.

Furthermore, it is my opinion that the Director of the Department of Mines and Minerals, with the approval of the Abandoned Mined Lands Reclamation Council, may agree to return the abandoned land to the Department of Conservation when the reclamation project is completed. One source of authority for such an agreement between the two Departments is the Intergovern-

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mental Cooperation Act. (Ill. Rev. Stat. 1975, ch. 127, par. 741 et seq.) Section 9 of the Abandoned Mined Land Reclamation Act provides that upon completion of the reclamation project, the Director of the Department of Mines and Minerals may notify units of local government that reclaimed lands that "will not be retained by the State for governmental purposes" may be transferred to units of local government. Hence, the State has the option of retaining reclaimed land for governmental purposes. A reclamation project that includes an agreement to return State-owned abandoned land to the control of another Department of State government exercises this option.

Very truly yours,

A T T O R N E Y   G E N E R A L