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Mr. Virgil Willett  
Director  
Alabama Surface Mining Commission  
P. O. Box 2390  
Jasper, Alabama 35501

Surface Mining Commission -  
Mines and Mining - Bonds

Surety bonds for coal mining operation made out to the Jefferson County Commission are not by operation of law automatically assigned to the Alabama Surface Mining Commission because of passage of the Alabama Surface Mining and Reclamation Act of 1981.

Dear Mr. Willett:

We are in receipt of your letter of July 2, 1985, seeking an opinion from this office on the following question:

"The Jefferson County Commission has recently requested that the Alabama Surface Mining Commission accept an assignment of its surety bonds for reclamation of certain areas. The Jefferson County Commission bases its request on Section 26 of 'The Alabama Surface Mining Reclamation Act of 1975' and a similar section in 'The Alabama Surface Mining Control and Reclamation Act of 1981', Section 9-16-106, Code of Alabama, 1975. These sections state that the article is cumulative and intended to preempt local, municipal, county and state regulation of surface coal mining operations and to supplement existing state law.

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The present situation is somewhat apart from the code sections in that it relates to enforcement of surety bonds held by the County Commission.

The Alabama Surface Mining Commission requests an opinion as to its obligation to accept an assignment of the Jefferson County bonds and accept responsibility for enforcement of the bonds. In addition the Commission requests an opinion as to how any statute of limitations may affect the enforcement of these bonds. . . ."

In our opinion the Alabama Surface Mining Control and Reclamation Act of 1981, most particularly Section 9-16-126, does not by operation of law assign any surety bonds held by the Jefferson County Commission to the Alabama Surface Mining Commission.

Any bond of the Jefferson County Commission may be assigned to the Surface Mining Commission, however, such assignment must be with notice to the surety and acceptance by the Surface Mining Commission.

Essentially the bonds are contracts and we find nothing in the Surface Mining Control and Reclamation Act which speaks specifically to preempting such contracts although such contracts involve coal mining operations. These contracts were executed prior to the passage of the Alabama Surface Mining Reclamation Act of 1975 and are pursuant to zoning authority of the county. The Alabama Surface Mining Commission may accept assignment of such bonds if it chooses and would have, we believe, the authority to attempt to collect on such if they were assigned.

It is our opinion that any applicable statute of limitations would begin to run once the principal had failed to faithfully perform all of the Jefferson County zoning regulations pertaining to coal surface mining. Since the bonds have yet to be assigned to the Surface Mining Commission and have been under the control of the Jefferson County Commission Zoning Authority, it may be difficult for the Alabama Surface Mining Commission to determine on its own at what time in the past the bonding conditions were breached (if they have been breached); rather the Commission would have

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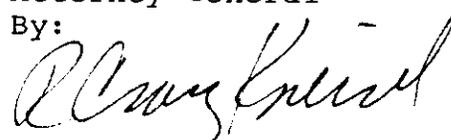
to rely on Jefferson County officials and this may make it difficult to determine whether an applicable statute of limitations has run or not.

We hope that we have sufficiently addressed your question and if you have additional questions, please do not hesitate to contact us.

Sincerely,

CHARLES A. GRADDICK  
Attorney General

By:



R. CRAIG KNEISEL  
Assistant Attorney General

RCK/dn