

STATE MINE INSPECTOR: May obtain surveys of all mines
in the State.

June 12, 1942

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Mr. John A. Skinner
State Mine Inspector
Bureau of Mines
Jefferson City, Missouri



Dear Sir:

We are in receipt of your request for an opinion, under date of June 8, 1942, in which you inquire as to the rights of individuals owning land adjacent to premises on which there are mining operations, and as to the rights of the State Mine Inspector, if any, to obtain surveys where there is a complaint that mining operations are extended so as to constitute a trespass.

We believe that an answer to your first question is to be found in Section 14789 of the Revised Statutes of Missouri for the year 1939. It provides a summary remedy for the complaining property owner in the following language:

"When any owner, tenant or sub-tenant of a lot or lots or tract of land, shall file with any justice of the peace within the county in which said lot or lots or tract of land may be situated his or her affidavit, or the affidavit of any other credible person for them, stating that from knowledge, information or belief, the party or parties owning, controlling or working the adjoining lot or lots or tract of land, and upon which said party or parties are sinking shafts, mining, excavating and running drifts, and that said

drifts in which said parties are digging, mining and excavating mineral ore or veins of coal extend beyond the lines and boundaries of said lot or lots or tract of land, owned, controlled or worked by them, and have entered in and upon the premises of the party or parties making said affidavit, or for whom said affidavit is made, the justice of the peace, after first being tendered his lawful fees, shall issue his written order and deliver or cause the same to be delivered to the county surveyor or his deputy, commanding him, after his reasonable fees have been tendered, to proceed without delay to survey said drift by entering any and all shafts upon said lot or lots or tract of land that he (the surveyor) may see fit, for the purpose of ascertaining the course and distance of said drift or drifts, and to locate the same upon the surface."

Section 14790, R. S. Mo. 1939, provides that the order entered by the justice of the peace shall be read to the party owning or working shafts and conducting the activities concerning which complaint is made.

Section 14791, R. S. Mo. 1939, subjects any person controlling or operating mine activities concerning which complaint is made to the penalties of a misdemeanor if he refuses to permit the surveyor to make the survey.

These sections provide a full and complete remedy. If the survey shows trespass on the land of the complainant through mining operations the trespasser would, undoubtedly, cease such operations, and, if not, further proceedings may be had through an action for trespass or ejection.

With regard to your second question, that concerning the powers of your office with regard to complaints of trespass through mining operations, we are unable to find that you have any statutory authority to determine the rights of

the parties. The State Mining Inspector is empowered to obtain an accurate map of the workings of any mine, this authority being granted by Sections 14816 and 14817, R. S. Mo. 1939, which are as follows:

"Sec. 14816. The owner, agent or operator of each and every mine in this state, employing ten or more men, shall make or cause to be made, at the discretion of the inspector or other person acting in that capacity, an accurate map or plan of the workings of such mine and each and every vein thereof, showing the general inclination of the strata, together with any material deflections in the said workings and the boundary lines of said mine, and deposit a true copy of said map or plan with the clerk of the county court of each county wherein may be located the said mine; which said map or plan shall be so filed or deposited within three months after the time when this article shall take effect, and a copy of such map or plan shall also be kept for inspection at the office of the said mine; and during the month of January of each and every year after this article shall have taken effect, the said owner, agent or operator shall furnish the inspector and the clerk of the county court as aforesaid with a statement, and a further map or plan of the progress of the workings of such mine, continued from the last report to the end of the month of December next preceding, and the inspector shall correct his map or plan of said workings in accordance with the statement and map or plan thus furnished; and when any mine

is worked out or abandoned, that fact shall be reported to the inspector, and the map or plan of such mine in the office of the clerk of the county court shall be carefully corrected and verified."

"Sec. 14817. Whenever the owner, agent or operator of any mine shall neglect, fail or refuse to furnish the said inspector and clerk as aforesaid with a statement, the map or plan or addition thereto, as provided in section 14816 of this article, at the times and in the manner therein provided, the said inspector is hereby authorized to cause an accurate map or plan of the workings of such mine to be made at the expense of the said owner, agent or operator, and the cost thereof may be recovered by law from said owner, agent or operator, in the same manner as other debts, by suit in the name of the inspector and for his use."

We are unable to find that the State Mining Inspector has any authority to adjudicate any rights of the parties, after having obtained a map of a mine, either by voluntary action of the owner or after compulsion as provided in the last section, supra.

CONCLUSION

It is the conclusion of this department that any owner or tenant of any tract of land in this state, upon complaint to a justice of the peace within his county, may obtain a survey of any mining operations which, in his opinion, unlawfully extend to his premises, under the pro-

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visions of Section 14789, but that the State Mine Inspector although entitled to a survey of all mining operations has no authority to prevent trespass through mining operations by virtue of his office, as such State Inspector.

Respectfully submitted,

ROBERT L. HYDER
Assistant Attorney-General

RLH:CP

APPROVED:

ROY McKITTRICK
Attorney-General