

MINING:  
COUNTIES:  
COUNTY COURT:  
LAND RECLAMATION:

The county courts of third and fourth class counties who are conducting surface mining operations are not required to obtain permits under the provisions of

Sections 444.760 through 444.786, RSMo Supp. 1971, because they are not "operators" as defined by Section 444.765(5).

OPINION NO. 213

August 16, 1972

Mr. Robert Neuenschwander, Director  
Land Reclamation Commission  
Room B-36, State Capitol Building  
Jefferson City, Missouri 65101



Dear Mr. Neuenschwander:

This is in reply to your request for an official opinion of this office concerning the question whether county courts of third and fourth class counties who are conducting surface mining operations are required to obtain permits under the provisions of Sections 444.760 through 444.786, RSMo Supp. 1971, "The Land Reclamation Act."

Section 444.770 provides that it is unlawful, as of January 1, 1972, for any "operator" to engage in surface mining without a permit from the Land Reclamation Commission defined in Section 444.765 as follows:

"(5) 'Operator' means any person, firm or corporation engaged in and controlling a surface mining operation;"

Since counties have not specifically been included in the definition of "operator," we must look to the rules of statutory construction to see if the legislature intended to require counties to obtain a permit and operate in conformance with state requirements, especially in light of Section 444.786 which makes it a misdemeanor to mine sand or gravel without a permit.

The applicable rule is found in 82 C.J.S., Statutes, Section 317, where it is stated, at pages 554-556:

"The government, whether federal or state, and its agencies are not ordinarily to be considered as within the purview of a statute, however general and comprehensive the

Mr. Robert Neuenschwander

language of act may be, unless intention to include them is clearly manifest, as where they are expressly named therein, or included by necessary implication.

"This general doctrine applies, or applies with special force, to statutes by which prerogatives, rights, titles, or interests of the government would be divested or diminished, or to statutes under which liabilities would be imposed on the government. . . ."

This rule is followed in Missouri. See, Hayes v. City of Kansas City, 362 Mo. 368, 241 S.W.2d 888,892 (1951); City of Poplar Bluff v. Knox, 410 S.W.2d 100, 104 (Spr.Ct.App. 1966); Paulus v. City of St. Louis, 446 S.W.2d 144 (St.L.Ct.App. 1969); and State ex rel. Askew v. Kopp, 330 S.W.2d 882 (Mo. 1960).

In particular, the Supreme Court in Hayes held that a city is not a person within the purview of a motor vehicle statute requiring every "person" to operate a motor vehicle in a certain manner. See also City of Webster Groves v. Smith, 340 Mo. 798, 102 S.W.2d 618, 619 (1937) where a city was held not to be a person; and Kein v. School Dist. of the City of Carthage, 42 Mo.App. 460, 464 (K.C. Ct.App. 1890) where a school district was held not to be a person.

Accordingly, we hold that a county is not an operator within the meaning of Sections 444.760 through 444.786.

#### CONCLUSION

It is the opinion of this office that the county courts of third and fourth class counties who are conducting surface mining operations are not required to obtain permits under the provisions of Sections 444.760 through 444.786, RSMo Supp. 1971, because they are not "operators" as defined by Section 444.765(5).

The foregoing opinion, which I hereby approve, was prepared by my assistant, Walter W. Nowotny, Jr.

Yours very truly,



JOHN C. DANFORTH  
Attorney General