

**Opinion No. 56-6442**

May 14, 1956

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. John A. Garcia, State Inspector of Mines, 1024 Park Avenue, SW,  
Albuquerque, N.M.

You have presented for our opinion the question:

". . . is the State Inspector of Mines authorized to order that no mining operations shall be commenced in a mine which is being reactivated after a period of abandonment, until the State Mine Inspector or his deputy shall have inspected such mine?"

You indicated that, generally, the reactivation or reopening of abandoned mines, particularly underground mines, is extremely hazardous due to defective timbering, deterioration of safety equipment, accumulation of gases, etc.

Section 63-4-5, N.M.S.A., 1953, which section prescribes the Mine Inspector's duties in subsection (a), provides:

"He shall make a careful and thorough inspection of every mine operated in the state as often as in his opinion may be necessary, but at least once yearly."

Section 63-4-12, N.M.S.A., 1953, provides:

"When any mine or portion of a mine, or machine, device, apparatus or equipment in the judgment of the inspector, is in so dangerous a condition from any cause, as to jeopardize life or health, he shall at once direct the management of the mine to remove the dangerous condition or safeguard the equipment forthwith; should the inspector find during his inspection of the mine, such dangerous condition existing therein, that in his opinion any delay in removing the workmen from such dangerous places or from the entire mine might cause loss of life or serious personal injury to the employees, the inspector shall have the right to request the representative of the operator accompanying the inspector to immediately withdraw all persons from such dangerous places or from the entire mine."

We fail to find any other provision touching on your powers and duties which would point to the existence of the power you ask about. Your inquiry presents the very narrow question of your power to prohibit operation of a mine until you have had an opportunity to inspect.

Now you certainly have the power to inspect at any time you desire. However, it seems to us that in order to stop the operation of a mine, you must first determine that cause exists. Under § 63-4-12, the determination must be that there is ". . . so dangerous a

condition from any cause, as to jeopardize life or health . . ." In advance of such a determination, it seems to us that you have no power to order a cessation of operation of a working mine, and, in principle, it would seem that the same reasoning would obtain in the case of a mine which is proposed to be reactivated. It may be true that in such mines, generally, some cause would exist for recommendations and regulation and even an order that the operation of the mine be halted until conditions were corrected. But it can be conceived that in some of these such cause would not exist, and your power to hold up operation of these until you determine that cause did not exist, it seems to us, must be spelled out more clearly in the statute before we should rule that it exists.

Your question is, therefore, answered in the negative.

We may add that we are in sympathy with the action that you propose above. However, we deal with powers either given you or withheld from you by the Legislature. We think that this power has not been given you and in the interest of safety in mines you should place the matter in your Legislative file for future action.

However, as a practical matter, our ruling above should not prevent you from seeing to it that conditions in reactivated mines are safe. Although it will be an extra burden upon you, it seems that you should be able to keep close touch with any situation wherein such mines are proposed to be reactivated, and your inspections may be made coincident with or even prior to the time that these mines are put in operation so that any conditions which require correction may be ordered corrected by you.

Under § 63-5-3, you could require that the operator or owner of a mine that is proposed to be reactivated give you notice of the contemplated reactivation with such other information as you might desire. I believe that under this statute you could promulgate a regulation requiring that notice of this type be given a reasonable time prior to the reactivation by the mine owners or operators so that you could plan your inspections accordingly.

By Santiago E. Campos

Assistant Attorney General