

Mr. UDALL. Senator, I know you want your legal counsel to give you his views. Why don't I agree to provide you with a letter in which we set forth the legal basis as we see it? I think we should make a good record.

Senator METCALF. Please. I don't want to extend this hearing on a legal basis but I would like to have for the record the legislative history and the answer to some of the questions raised, your views about why you can go in on private land and insist that they not mine at all perhaps or that they have to do certain things that they haven't had to do heretofore, nor has any State required them to do.

(The opinion referred to follows:)

CONSTITUTIONALITY OF S. 3132, 90th CONGRESS (M-36748), AUGUST 8, 1968

CONSTITUTIONAL LAW

Federal regulation of future surface mining operations would be valid exercise by the Congress of the power conferred upon it by the Commerce Clause.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR,
Washington, D.C., August 8, 1968.

M-36748.

Memorandum To: Secretary of the Interior.

From: Solicitor.

Subject: Constitutionality of S. 3132, 90th Congress.

You have asked me for an expression of my views with respect to the constitutionality of S. 3132, a bill to provide for the cooperation between the Secretary of the Interior and the States with respect to the future regulation of surface mining operations, and for other purposes.

The question of constitutionality arose at hearings on S. 3132 before the Senate Committee on Interior and Insular Affairs on April 30, and May 1-2, 1968.

In my opinion the passage of the bill would be a valid exercise by the Congress of the power conferred upon it by the Commerce Clause.

S. 3132 would "provide a nationwide program to prevent or substantially reduce the adverse effects to the environment from surface mining, to assure that adequate measures will be taken to reclaim surface mined areas after operations are completed, and to assist the States in carrying out such a program" (section 3, subsection (f)). It would apply to "each surface mine, the products of which enter commerce or the operations of which affect commerce, and the surface mined area¹ thereof" (section 4).

Section 7 of the bill provides for the filing by a State with the Secretary of the Interior of a "State plan" for the regulation of surface mines and the reclamation of surface mined areas located within the State, and for the approval of the plan by the Secretary if he determines that the plan includes laws and regulations which meet the requirements and encompass the criteria set forth in subsection (a) (1) and that the plan includes adequate provisions for effective administration and enforcement.

Section 8 of the bill would authorize the Secretary (upon the expiration of two years after the passage of the bill) to issue regulations "for the operation of surface mines and for the reclamation of surface mined areas" in a State for which no State plan had been approved, and sections 12 and 13 of the bill would provide for the enforcement of such regulations. A State might submit a State plan after Federal regulations had been issued; if the plan were approved the Federal regulations would cease to be effective (section 9). The Secretary would be authorized to withdraw approval of a State plan if, after opportunity for a hearing, he determined that the State had failed substantially to comply with the plan or to enforce it adequately (section 7, subsection (b)).

I assume that no one would seriously characterize section 7 of the bill as an invitation to the States to take action precluded by the Federal Constitution.²

¹ Subsection (e) of section 2 of the bill provides that "'surface mined areas' means any area on which the operations of a surface mine are concluded after the effective date of a State plan or the regulations issued under section 8 of this Act, whichever is applicable."

² *Goldblatt v. Town of Hempstead*, 369 U.S. 590 (1962).