April 9, 1953
Opinion No. 53-66

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Hon. Edward Massey
State Mine Inspector
Phoenix, Arizona

Dear Sir:

Your request for an opinion from this office regarding the power of the State Mine Inspector to confiscate and destroy explosives is acknowledged and such opinion is hereby transmitted.

The State Mine Inspector was given a mandatory duty to prescribe and promulgate necessary rules and regulations pertaining to the storing and/or keeping of blasting power and other explosives under Section 65-213a of the State Mining Act. The Legislature by this statute formulated the policy and established the framework within which the Mine Inspector's office could promulgate the necessary administrative rules to carry out the purpose of the Act.

No rules and regulations have been adopted pursuant to this legislative mandate, therefore, the Mine Inspector's only powers relative to explosives are those specifically set forth in Section 65-213 of the Act, which only prohibits the using or selling of explosives over one year old. Since there are no rules or regulations and no statutes other than Section 65-213 governing the storing or keeping of blasting powder and other explosives, the State Mine Inspector manifestly does not have power to confiscate or destroy the explosives in question.

It is equally true that due to the failure of the State Mine Inspector to promulgate any rules and regulations concerning the possession of explosives, there is no penalty for such possession.

Yours very truly,

JRE:CMG

JOHN R. ELLIOTT
Assistant to the
Attorney General