



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

IN REPLY REFER TO:

M-37003

JAN 18 2001

Memorandum

To: Assistant Secretary, Policy, Management and Budget
Director, Office of Hearings and Appeals

From: Solicitor

Subject: Binding Nature of Solicitor's M-Opinions on the Office of Hearings and Appeals

On November 29, 1988, Solicitor Ralph W. Tarr sent a memorandum to the Assistant Secretary, Policy, Budget and Administration, explaining proposed revisions to the Departmental Manual clarifying that the authority delegated by the Secretary to the Office of Hearings and Appeals (OHA) does not include the authority to overrule or modify Solicitor's M-Opinions. On December 13, 1988, Secretary Donald Paul Hodel amended the Departmental Manual in the manner described by Solicitor Tarr. In keeping with Solicitor Tarr's memorandum and the release signed by Secretary Hodel, both attached here, we wish to reaffirm that Solicitor's M-Opinions are binding on the OHA. Furthermore, M-Opinions do not require the Secretary's concurrence to bind OHA.

The Departmental regulations state:

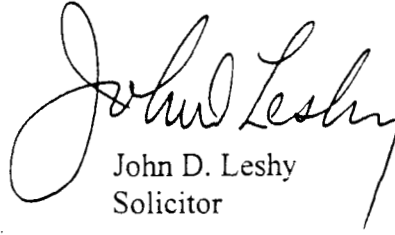
The Office of Hearings and Appeals headed by a Director, is an authorized representative of the Secretary for the purpose of hearing, considering and determining, as fully and finally as might the Secretary, matters within the jurisdiction of the Department involving hearings, and appeals and other review functions of the Secretary.

43 C.F.R. § 4.1 (1999). This section was published in the Federal Register with a footnote stating:

The organization of the Office of the Hearings and Appeals and the authority delegated by the Secretary to the Director and other principal officials of the Office are set forth in Part 111, Chapter 13, of the Departmental Manual; in Release No. 1213 of July 17, 1970 (211 DM 13), and a notice published in the Federal Register on July 28, 1970, 35 F.R. 12081.

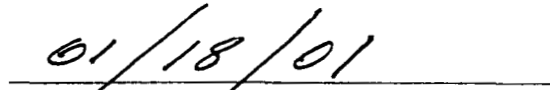
36 Fed. Reg. 7187 n.1 (1971). This footnote clarifies that nothing in section 4.1 conferred

jurisdiction on OHA in excess of that granted in the Departmental Manual. The purpose of the phrase, "as fully and finally as might the Secretary," in section 4.1 is merely to inform the public that decisions by OHA are final agency actions for purposes of judicial review.


John D. Lesby
Solicitor

I concur in this Opinion:


Secretary of the Interior


Date

Attachments (2)



United States Department of the Interior



OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

SEC. GL. 0141

NOV 29 1988

Memorandum

To: Assistant Secretary
Policy, Budget and Administration

From: Solicitor

Subject: Purpose of change in Departmental Manual

The attached revisions of the Departmental Manual clarify the delegations of authority to the Solicitor and to the Office of Hearings and Appeals (OHA). The Solicitor is the chief legal officer of the Department, 43 U.S.C. § 1455, and is delegated "all of the authority of the Secretary." 209 DM 3.1 Pursuant to regulations, OHA decides, as fully and finally as might the Secretary, disputes which arise in certain enumerated areas. 43 C.F.R. § 4.1. (The revision to the delegation would not affect any statutory authority of the Board of Contract Appeals). Since establishment of OHA in 1970, there has been considerable confusion over the status of a formal legal opinion signed by the Solicitor (an "M-Opinion") when the same legal issue is addressed by OHA. The revisions amend 209 DM 3 and 211 DM 13 to clarify that an M-Opinion is binding on all Departmental offices including OHA and may only be modified or overruled by the Solicitor, Under Secretary or Secretary. This clarification recognizes that the Solicitor has the same status with regard to legal interpretations that Assistant Secretaries have in their respective program areas. OHA has long recognized that it lacks authority to review decisions made by, or directed by, an Assistant Secretary because those officials are delegated "all of the authority of the Secretary." E.g. Blue Star, Inc., 41 IBLA 333 (1979).

Ralph W. Tarr

DEPARTMENTAL MANUAL



TRANSMITTAL SHEET

PART 209 DM 3 211 DM 13	SUBJECT Delegations - Solicitor Delegations - Office of Hearings and Appeals	RELEASE NUMBER 2823
FOR FURTHER INFORMATION, CONTACT Office of the Solicitor		DATE DEC 13 1988

EXPLANATION OF MATERIAL TRANSMITTED:

This release, 209 DM 3 and 211 DM 13, provides new subsections recognizing the binding nature of final legal interpretations (M-Opinions) issued by the Solicitor on matters within the jurisdiction of the Department. Redlegation of this authority is limited to a Deputy Solicitor. Finally, the authority to modify or overrule an M-Opinion is expressly reserved from the delegation to the Office of Hearings and Appeals.

Ronald Paul Hodel
Secretary of the Interior

FILING INSTRUCTIONS:

Remove:

209 DM 3
(2 sheets)

211 DM 13
(2 sheets)

Insert:

209 DM 3
(2 sheets)

211 DM 13
(2 sheets)