

Office of the
Attorney General
State of Wyoming
Cheyenne

June 7, 1961

Mr. Kenneth R. Sturman
The Wyoming State Soil Conservation Committee
308 Capitol Building
Cheyenne, Wyoming

Dear Mr. Sturman:

I have examined your request for a opinion concerning certain matters effecting the soil and water conservation districts.

You have posed two questions, the first of which is as follows:

"If, after a landowner once agrees to have his lands become a part of a legally organized Soil and Water Conservation District, and has not withdrawn such lands, is the landowner and his lands subject to the provisions of the Wyoming Soil and Water Conservation Districts Laws, rules and regulations of the State Soil and Water Conservation Committee, and the ordinances enacted in accordance with Section 11-246, WS' 57?"

It is my opinion that if a landowner agrees to have his land become a part of a legally organized soil and water conservation district and has not withdrawn such lands the landowner and his lands are subject to the provisions of Section 11-246, Wyoming Statutes, 1957, as amended by Chapter 193, Session Laws of Wyoming, 1959

You must bear in mind, however, that when we speak of withdrawal, in accordance with the provisions of Section 11-240, Wyoming Statutes, 1957, as amended, the land owner may have his said lands withdrawn from the district at any time after one year after its organization, and consequently, you are faced with the proposition that after the one year has expired there is always the possibility that the land owner can eliminate himself from the provisions of Section 11-246, Wyoming Statutes, 1957, as amended, so that he could not be compelled to comply with these provisions if he has followed the requirements of the statute with regard to notice, etc.

I must also call your attention to the fact that any owner of the land within a proposed district may have his owned and leased lands excluded from a proposed district upon presentation of a petition not less than seven days prior to holding of the referendum of the organization of the district.

Your second question, "When the word 'May' is used in the Soil and Water Conservation Law, how is it to be legally interpreted?", is rather difficult to define specifically. Throughout Section 11-246 the word "shall" is used and consequently where the word "may" appears I would think that as a general term it would be one of permission. The best I could do for you in regard to the general use of this term is the definition contained in Ballentine's Law Dictionary, Second Edition, which reads as follows:

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"The word means 'must' or 'shall' only in cases where the public interest and rights are concerned; or where the public or third persons have a claim de jure that the power should be exercised; or where something is directed to be done for the sake of justice of the public good.

"The word 'may' must be understood to have been used in a permissive sense where it is expressly coupled with the word 'discretion' in such a way as to negative the possibility of its use in a mandatory sense. In a statute, the word 'shall' may be construed as 'may' where the connection in which it is used, or the relation into which it is put with other parts of the same statute indicated that the legislature intended that it should receive such a construction; but if any right of anyone depends on giving the word an imperative construction, the presumption is that the word was used in reference to such right or benefit."

Yours truly,

S/

W. M. Haight

T/

W. M. Haight
Deputy Attorney General

WMH:hb