

March 10, 1971

Fred Reed
Assistant Attorney General
Office of the Attorney General
Capitol Bldg.
Cheyenne, Wyoming 82001

Dear Fred,

The recent change in the Conservation Districts Law has prompted a request for an interpretation by the State Attorney Generals Office.

Section 15, Subsection (H) of Section 11-240 was amended in Senate File 99. Included in this subsection were provisions for the inclusion of additional land to districts. This language was stricken from the Law, and new language inserted.

The new language doesn't provide for inclusion of land as was originally intended.

The previous language pertained to adding an area of land, that may include lands of others rather than the petitioners. Thus, hearings were held as required and determination made on the result of the hearing, since an on-petitioners included in the area may have objected.

There was never any specific language relating to an individual unit that petitioned the district to have only his lands added. When such cases arise, he petitioned the district for the addition, the district petitioned the State Soil and Water Conservation Committee and a hearing was duly held. This seemed unnecessary since there seemed to be little question about the individuals intent and he was requesting the addition only of lands owned and controlled by him. Because of this time consuming procedure, the committee sought to simplify the process by eliminating the hearing and requiring only the endorsement of the local board of supervisors. Such language was inadvertently omitted in the law revision.

My question is this: Can a tax supported state entity (the local district) deny an individual requested service, in this case provided by a tax supported Federal entity (the Soil Conservation Service)?

Can the (now) State Commission add an individual unit to a district by the promulgation of administrative procedures for this purpose?

Only a portion of Weston County remains outside a conservation district in Wyoming. Individual units have requested contiguous inclusion in the Beaver Skull District. I'd appreciate your opinion on how this might be accomplished, if at all.

Sincerely,

7/10/71



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JAMES E. BARRETT
ATTORNEY GENERAL

April 12, 1971

MEMORANDUM

TO: Marvin Cronberg
Executive Secretary
Wyoming State Soil and
Water Conservation Commission

BY: Wm. L. Kallal
Assistant Attorney General

I am in receipt of your letter of March 10, 1971 to Fred Reed wherein you posed several questions with respect to the effect of the recent changes in the Conservation District law.

QUESTION: Can a tax supported state entity (the local district) deny an individual requested service, in this case provided by a tax supported federal entity (the Soil Conservation Service)?

ANSWER: No.

QUESTION: Can the (now) state commission add an individual unit to a district by the promulgation of administrative procedures for this purpose?

ANSWER: Yes.

DISCUSSION

GENERAL BACKGROUND:

Section 15, subsection (H) of Section 11-240 was amended in Senate File 99. Included in this original subsection were provisions for the inclusion of additional lands to districts. This language was stricken from the law by the 1971 legislature. The new language does not provide for the inclusion of land as was originally intended.

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QUESTION NO. 1: The answer to Question No. 1 is a definite yes. A state entity can never summarily refuse a private party benefits afforded by a federal entity, without proper justification or cause. Therefore, in the case at hand, the legislature's vitiating the right of a party to petition to be included within an existing conservation district, without any reason or justification whatsoever, is arbitrary, capricious and cannot be allowed to stand. The pertinent law in this given area is set forth in the Fourteenth Amendment to the United States Constitution, Section 1, which provides in part as follows:

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protections of the law." (Emphasis supplied.)

Whenever the Federal government provides a service, such as the soil conservation service, and makes it available to all of the states, the states, in making it available to their local citizens, cannot be arbitrary or capricious in the manner in which they allow, or do not allow, parties to enjoy the benefits of it. In the case at hand we have a joint effort on the part of a state and federal level, the state level not supplanting, but supplementing the federal level as to the administration of this particular service. Therefore, unless a state proceeds in a manner consistent with the goals and purposes of the Act, any action it takes in denying a person the right

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to be included within a soil conservation district would be unlawful, if the admittance of that person into a particular soil conservation district would have been in accord with the goals of the Federal Soil Conservation Service.

To adequately answer this question we have to consult the United States Code Annotated which sets forth the relevant law, setting up the soil conservation service at federal level. Under 16 U.S.C.A. 590(b), the services afforded by the Soil Conservation Service may be rendered "on any other lands, upon obtaining proper consent or the necessary rights or interest in such lands."

Therefore, the right to participate within the federal soil conservation service is predicated upon proper consent. Granted, although subsection (b) does not spell out the manner in which such consent is to be obtained, and it would undoubtedly have to be obtained in a workable fashion at the state level, a state cannot arbitrarily deny one the right to be included within a district, as the legislature has inadvertently done here. If a person has the authority to consent and he does consent, he may be included within the soil conservation services so long as his inclusion in a particular district is consistent with the purposes of the soil conservation service itself. The policies and purposes of the soil conservation service are set forth in 16 U.S.C.A. Section 590(g) subsection (a) which states in part:

"It is declared to be the policy of this chapter also to secure, and the purposes of this chapter shall also include,
(1) preservation and improvement of soil fertility; (2) promotion of the economic use and conservation of land; (3) diminution of exploitation and wasteful and unscientific use of national resources; (4) the protection

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of rivers and harbors against the results of soil erosion in aid of maintaining the navigability of waters and water courses and in aid of flood control; and (5) the establishment, at as rapid a rate as the Secretary of Agriculture determines to be practicable in the general public interests, of the ratio between the purchasing power of the net income per person on farms and that of the income per person not on farms***"

Therefore, so long as a person consents to participate with the soil conservation service, agrees to meet the standards and follow the practices and policies of the soil conservation district, and his inclusion within the district would be in accord with the policies and purposes of the Act as set forth in 16 U.S.C.A. 590(g) subsection (a), a State cannot unilaterally, via legislation, summarily deprive him of his right to be included within a soil conservation district. To do so, would be an abridgment of the Fourteenth Amendment of the United States Constitution, in that, the State would be denying a right of federal citizenship to a person who desired inclusion within a soil conservation district, had consented thereto, and his inclusion would not be contrary to the purposes of the soil conservation act.

QUESTION NO. 2. Since the 1971 legislature amended the Soil Conservation District's law by striking the language setting forth the manner by which additional parties could be included within a soil conservation district, we must now consider the question answered in the affirmative above of whether or not the State commission could at this time add an individual to a district via administra-

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tive procedures. Our first step in answering this question is to ascertain the purpose of the soil and water conservation districts law of Wyoming. Under Section 11-236, Wyoming Statutes 1957, as amended, the following is provided:

"It is hereby declared to be the policy of the legislature to provide for the conservation of the soil, and soil and water resources of this state, and for the control and prevention of soil erosion and for flood prevention or the conservation, development, utilization, and disposal of water, and thereby to stabilize ranching and farming operations, to preserve natural resources, protect the tax base, control floods, prevent impairment of dams and reservoirs, preserve wildlife, protect public lands, and protect and promote the health, safety and general welfare of the people of this state." (Emphasis supplied)

Therefore, if it can be shown that the inclusion of a particular party within a soil conservation district will effectuate the purposes set forth in Section 11-236, it is proper to include such a person. The manner in which the State committee is to include such a person, in view of Section 11-240 having been amended away, presents somewhat of a problem. However, under Section 11-238 the State Committee is charged with certain powers and duties. Subsection (a) of Section 11-238 provides that the State Committee is to

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"Keep a record of its official actions, adopt a seal, --- promulgate such rules and regulations as may be necessary for the execution of its functions under this Act." (Emphasis supplied.)

When we combine the purposes of the Act set out in Section 11-236, Wyoming Statutes 1967, as amended, and also the powers and duties section as set forth in Section 11-238, it is evident that the State Committee does have the right to promulgate rules and regulations which would allow the inclusion of additional parties within a particular state conservation district, whenever, in the view of the State Committee, the purposes of the Act are being fulfilled.

Respectfully submitted,



Wm. L. Kallal

Assistant Attorney General

WLK:gs