

December 16, 1974

Mr. Fred Reed
Assistant Attorney General
Capitol Building
Cheyenne, Wyoming 82002

Dear Mr. Reed,

During the Forty-second session of the Wyoming State Legislature (1973), the Wyoming Conservation District Law was changed to allow for the election of the governing body of the conservation districts to be elected on the general election ballot.

"11-243.1(b) District supervisors shall continue to be elected as provided in section 11-243 of the statutes until the board or boards of county commissioners of each county in which the district is located shall adopt a resolution to make the Wyoming Election Code of 1973 applicable as provided in Section 22.1-3(vii) thereof."

22.1-3 Elections to which code is applicable

(a) This election code applies to the following elections:

"(vii) Election of supervisors of a soil conservation district in a county whose board of county commissioners has, on or before May 1 of any year, adopted a resolution to make this election code apply."

A question has been raised in regard to whether the conservation districts are required to pay for costs of elections held in the various counties. Recalling when this proposed legislative bill was submitted to the legislature, Senator David Hitchcock proposed an amendment requiring each conservation district to reimburse the County Clerk's Office the costs of placing the district on the general election ballot. Senator Don Cundall explained how each conservation district, which is a governmental sub-division of Wyoming, received a state appropriation of \$500.00 each year to finance its entire program. He further emphasized each district does not receive enough appropriation to cover election costs, therefore, Senator Hitchcock's sub-committee did not pursue having the districts pay election costs.

As a result, the Conservation District Law and the Wyoming Election Code of 1973 does not include provisions for the conservation districts to pay any portion of the election costs.

Two Conservation Districts, even though obtaining approval of the County Commissioners as required, have recently received billings from the County Clerks for costs of the election held November 5, 1974.

My question is:

Are conservation districts required to pay election costs (printing, advertising, etc.) even though the Conservation District Law and Wyoming Election Code of 1973 does not require the districts to reimburse these costs?

Sincerely,

Don Hood
Executive Secretary

DH/MW



Attorney General

CHEYENNE, WYOMING 82002

V. FRANK MENDICINO
ATTORNEY GENERAL

June 10, 1975

MEMORANDUM OPINION

TO: Mr. Don Hood
Executive Secretary
State Conservation Commission

BY: V. Frank Mendicino
Attorney General

QUESTION: Are soil conservation districts required to pay a share of general election costs beyond that expressly assessed by statute when the election of the governing body of the district appears on the general election ballot?

ANSWER: No. See discussion.

DISCUSSION

Prior to 1974, all supervisors of Wyoming soil conservation districts were elected pursuant to W.S. 11-243, which provided for an election to be conducted by the State Conservation Commission. In response to comments that this procedure caused problems in absentee voting and uniform application of election procedures, the 1973 Wyoming Legislature enacted W.S. 11-243.1(b) which provides that:

"(b) District supervisors shall continue to be elected as provided in section 11-243 of the statutes until the board or boards of county commissioners of each county in which the district is located shall adopt a resolution to make the Wyoming election code of 1973 applicable as provided in section 22.103(vii) thereof. After such adoption of such resolution, successor supervisors shall be elected under said Wyoming election code of 1973..."

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Section 22.1-3 of the Wyoming Election Code of 1973 states:

"22.1-3. Elections to which code is applicable.

"(a) This election code applies to the following elections:

"(vii) Election of supervisors of a soil conservation district in a county whose board of county commissioners has, on or before May 1 of any year, adopted a resolution to make this election code apply."

Prior to the November, 1974 general election, county commissioners of several counties adopted resolutions pursuant to W.S. 11-254(1)(b) enabling the conservation district election to be placed on the general election ballot.

The Election Code is clear and direct as to one cost that the districts must pay. Section 22.1-26 requires that:

"The expense of preparing registry lists required by law to be provided by the county clerk in combined state-wide political subdivision elections, shall be shared on an equitable basis by the governmental entities participating in the election. The expense of preparing other registry lists shall be paid by the entity holding the election."

Beyond that direct assessment of expenses, however, the Election Code does not mention assessment of election costs, except in three areas: bond elections (22.1-293); school board or community college board elections (22.1-297); and municipal elections (22.1-311). In these situations, the governmental entity holding the election pays the cost or a proportionate share of the cost of the election.

Accordingly, it is apparent that there is nothing in the Election Code which requires Conservation Districts to pay election costs except for the costs of registry lists (22.1-26). In addition, however, an examination of the legislative record relating to the Election Code makes it clear that the Legislature specifically intended that the Conservation Districts not pay

election costs other than for registry lists.

The Election Code was introduced as Senate File 14 by the Joint Corporations, Elections and Political Subdivisions Interim Committee. The Committee recommended the following amendment:

"Page 8 -- Between lines 9 and 10 insert:
'(vii) Election of supervisors of a soil conservation district in a county whose board of county commissioners has, on or before May 1 of any year, adopted a resolution to make this election code apply thereto on condition that such soil conservation district provide or reimburse the county clerk for all necessary ballots and other election supplies therefore.'"
(Emphasis added). Senate Digest, page 40.

Before the bill passed, however, Senator Cundall made the following amendment, which was adopted and carried through to the final form of the bill:

"Page 8 -- Section 22.1-3

"Line 20 -- Insert a period after the word 'apply'.
Line 20 -- Delete last word 'thereto'
Delete lines 21, 22, 23 and 24."
Senate Digest, page 59.

The Cundall amendment removed the requirement that the districts "provide or reimburse the county clerk for all necessary ballots and other election supplies" and its passage makes it clear that the intent of the Legislature was for the districts not to have to pay such costs.

If our opinion was to consider this evidence, it seems clear that the conservation districts would only have to pay their equitable share of the expenses of registry lists as required by 22.1-26. The question remains, however, as to what evidence a court might consider in the event of a challenge by a county.

The Wyoming Supreme Court declared in Zanetti Riverton Bus Lines, Inc. v. State Board of Equalization, 584 P.2d 387 (Wyo. 1971) at page 390:

"We are well aware of the familiar canon

of construction that a thing which is within the intention of the makers of a statute is as much within the statute as if it were within the letter and that in this respect it has been declared that he who considers merely the letter of an instrument goes but skin deep into its meaning..."

The most recent declaration of the court that legislative intent should be given effect is in State v. Stern, 526 P.2d 344 (Wyo. 1974), where the court stated at page 346:

"...where legislative intent is discernible a court should give effect to that intent...."

The above decisions fail, however, to elaborate on the means of determining such intent. Is intent to be established only from an interpretation of the words of the statute, or may the acts and deliberations of the Legislature in considering the law also be used as an aid in determining intent? The latter seems to have been permitted by the court in Town of Clearmont v. State Highway Commission, 357 P.2d 470 (Wyo. 1961), where the court held that they must pay attention to the legislative history of an act in order to properly construe the statute. A Wyoming case that reached the United States Supreme Court, Flora v. U.S., 362 U.S. 145, 4 L. Ed. 2d 623 (1960), contains, at page 627, the statement that:

"...frequently the legislative history of a statute is the most fruitful source of instruction as to its proper interpretation..."

Wyoming courts do not, however, generally rely on the legislative record in construction of statutes because the Wyoming Legislature does not record and retain a complete transcript of its proceedings. The fundamental rule of the Supreme Court "is to ascertain, if possible, what the Legislature intended by the language used..." School Districts 2, 3, 6, 9 & 10 v. Cook, 424 P.2d 751, 756 (Wyo. 1967).

CONCLUSION

In view of the fact that the Statute in question is silent as to the authority of the counties to assess election costs to the soil conservation districts, it may be argued that such costs

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may be assessed. However, the clear language of the Statute, supported by the legislative history set forth herein and taken in light of Wyoming case law relative to the significance of legislative intent leads to the conclusion that soil conservation districts which are allowed by the county commissioners to hold election of supervisors as part of a general election ballot must pay an equitable share of the expenses of preparing registry lists only and are not assessable for any additional costs of the election.

Respectfully submitted,


V. Frank Mendicino
Attorney General

VFM:gb