



THE STATE OF WYOMING

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In reply refer to:

*Attorney General*

CHEYENNE, WYOMING 82002

JOHN D. TROUGHTON  
ATTORNEY GENERAL

April 13, 1979

Mr. Larry J. Bourret  
Commissioner of Agriculture  
Chairman, State Conservation Commission  
2219 Carey Avenue  
Cheyenne, WY 82002

*JJ*

Re: Shell Valley Watershed Improvement District

Dear Mr. Bourret:

I have reviewed your inquiries concerning the Shell Valley Watershed Improvement District. Your letters of December 28, 1978, and January 9, 1979, raise two questions:

1. Whether or not the Town of Greybull can represent its residents respecting private property within the municipal boundaries or whether each individual landowner within the Town would be considered to be a "landowner" as defined in W.S. 41-8-101(c), and
2. Whether a watershed improvement district has the authority to sell water to customers outside of the boundaries of the District. My conclusions and analysis of these issues are as follows:

CONCLUSIONS:

1. The Town of Greybull is not a landowner within W.S. 41-8-101(c) because the word "corporation" as used therein does not include municipal corporations.
2. A watershed improvement district may contract to sell water to a customer located outside the boundaries of the district so long as the sale furthers the purposes enumerated in W.S. 41-8-102.

FACTS:

The South Big Horn Conservation District has received a petition for establishment of the Shell Valley Watershed

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Improvement District. Pursuant to W.S. 41-8-107, a public hearing was held November 15, 1978, for the purpose of ascertaining the practicability and feasibility of creating the proposed watershed improvement district. It appears that the Town of Greybull is included within the boundaries of the proposed district, and that the petition for establishment of the proposed district, required by W.S. 41-8-105, was signed by the mayor of the Town of Greybull, but not by the individual owners of land located within the boundaries of the Town of Greybull.

DISCUSSION OF QUESTION NO. 1:

Pursuant to W.S. 41-8-120, it appears that the Legislature intended cities and towns to be considered as public corporations for purposes of the watershed improvement district laws. That categorization is consistent with the provisions of W.S. 15-1-101(a)(i), which defines Wyoming cities and towns as municipalities, i.e. municipal corporations. A municipal corporation is different from an ordinary business corporation in that it has a dual character - public and private. Associated Enterprises, Inc. v. Toltec Watershed Improvement District, 490 P.2d 1069 (Wyo. 1971), affirmed 410 U.S. 743, 93 S. Ct. 1237, 35 L. Ed. 2d 675 (1972). As a general rule of law, the word "corporation" does not include a municipal corporation unless such a construction is required by the context of the statute and nothing in the statutes concerning watershed improvement districts appears to require the town to be construed as a corporation and hence a landowner within W.S. 41-8-101(c).

The purpose of the watershed improvement district is proprietary in nature, Associated Enterprises v. Toltec Watershed Improvement District, 490 P.2d 1069 (Wyo. 1971). Those purposes benefit the property interests of landowners within the district. Moreover, land ownership is the focal point of voting requirements within the statute and provides the basis for assessment for benefits provided thereunder (e.g., W.S. 41-8-101).

The constitutionality of this landowner-based system is premised upon the fact that those who are most directly affected by the function of the district are the ones who control its affairs through the election process, Toltec Watershed Improvement District v. Associated Enterprises, supra, at p. 1071. It follows that a town, such as the Town of Greybull, could not, therefore, disenfranchise its residents by representing their collective property interests

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under the terms of the statute, and, in fact, the definition of landowners found in W.S. 41-8-101(c) clearly and expressly encompasses all persons holding an interest in land within the district boundaries.

DISCUSSION OF QUESTION NO. 2:

W.S. 41-8-113(a)(ii) empowers the board of directors of a watershed improvement district to "sell, lease, or otherwise dispose of" any real or personal property, or rights or interests therein, "in furtherance of the purposes and provisions of this act (Sections 41-8-101 to 41-8-126)." Among the purposes of the act enumerated in W.S. 41-8-102 are "the utilization and disposal of water, and thereby to preserve and protect land and water resources, and protect and promote the health, safety and general welfare of the people of this state."

It is well settled law that water falls within the purview of "real or personal property." McCarter v. Hudson County Water Co., 70 N.J. Eq. 695, 65 A. 489, affirmed 209 U.S. 349, 28 S. Ct. 529, 52 L. Ed. 828 (1908). Therefore, so long as a sale of water to a customer located outside the boundaries of a watershed improvement district furthers the purposes enumerated in W.S. 41-8-102, the directors of the district have the power to make such a sale.

I hope this response answers your questions concerning this matter. If I can be of any further assistance, please do not hesitate to contact me.

Very truly yours,

  
Jack D. Palma II  
Senior Assistant  
Attorney General

JDP:gmv

**This letter of advice shall not be considered a formal Attorney General opinion and shall not be copied, reprinted or disseminated as such.**