

JIM GERINGER, Governor
RON MICHELI, Director



Wyoming
Department
of Agriculture

2219 Carey Ave., Cheyenne, Wyoming 82002-0100 (307) 777-7321 Fax (307) 777-6593

MEMORANDUM

DATE: June 12, 1995
TO: Conservation Districts
FROM: Lois Schoene
SUBJECT: Attorney General's opinion regarding Conservation District state purchasing requirements.

We recently received the attached Attorney General's opinion requested by Representative Cale Case of Fremont County. Representative Case posed the question, "Are local conservation districts covered by state purchasing requirements?"

According to the Attorney General's opinion Wyoming Stat. 9-2-1016 (b)(xiv) (see attached) conservation districts do not fit the definition of "agency" and are therefore not required to obtain bids for supplies, materials or services. Conservation Districts may still want to use the bid process in certain cases. We would caution districts to operate under ethical guidelines for purchases that are not suspect or questioned by the public if at all possible. Conservation districts need the support of the state and local voters.

If you have any further questions, please feel free to contact the Wyoming Department of Agriculture at 777-7323.

Sincerely,

Lois Schoene

Is

attachment

cc: Bobbie Hallwachs

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Office of the Attorney General

Governor
Jim Geringer

Administration
123 Capitol Building
Cheyenne, Wyoming 82002
307-777-7841 Telephone
307-777-6869 Fax

Attorney General
William U. Hill

May 19, 1995

Representative Cale Case
787 South Fourth
Lander, WY 82520

Dear Representative Case:

You have asked for our opinion on the application of statutes that control the purchase of goods and services by conservation districts. Specifically, you have inquired:

Are local conservation districts covered by state purchasing requirements?

No. The statute that prescribes how the state is to purchase goods and services is Wyo. Stat. § 9-2-1016(b)(xiv). However, that statute only applies to an agency of the state, which means "an office, department, board, commission or operating unit of the executive branch of state government." Wyo. Stat. § 9-2-1002(a)(i).

It is our view that a conservation district does not fit the definition of "agency" and is therefore not required to comply with state purchasing standards. This view is based on several things. First, a district is not created by any action of the executive branch; instead, it is created only after persons who own land within a certain area petition the State Conservation Commission to have district created. Wyo. Stat. § 11-16-109. A majority of the voters who own lands in the proposed district must approve district formation. Wyo. Stat. § 11-16-110(f).

Furthermore, a properly constituted district is "a governmental subdivision of this state and a public body corporate and politic." Wyo. Stat. § 11-16-113(a). A political subdivision would not be considered to be an executive branch agency.

It is not necessary to answer your second question, because it was based on the assumption that conservation districts had to comply with state purchasing statutes.

whom the vehicles are assigned and by whom primarily used, and the reason for the assignments.

(b) Upon the receipt of all agency reports, the department shall compile and index the information into a single compendium that will facilitate its use by the governor and the legislature. When preparing the compendium the department of administration and information shall in no manner alter or amend the information received from an agency without that agency's written direction. The report of any agency to the department is available pursuant to the Public Records Act.

(c) The compendium and the state budget document shall be submitted to each legislator. Copies of the compendium shall be furnished to the state library division within the department and the legislative service office. (Laws 1888, ch. 54, § 4; 1890, ch. 5, § 1; R.S. 1899, § 180; C.S. 1910, § 262; C.S. 1920, § 302; R.S. 1931, § 109-1412; Laws 1933, ch. 17, § 1; 1941, ch. 84, § 1; C.S. 1945, § 18-105; W.S. 1957, § 9-21; Laws 1967, ch. 83, § 1; 1969, ch. 4, § 1; 1973, ch. 215, § 2; W.S. 1977, § 9-2-103; Laws 1982, ch. 62, § 3; 1985, ch. 78, § 1; 1991, ch. 29 § 3.)

Cross references. — As to the powers and duties of state librarian, see § 9-2-417. For meaning of "department," see § 9-2-1002(a)(ii). As to legislative service office, see §§ 28-8-101 through 28-8-112.

The 1991 amendment, effective April 1, 1991, substituted "information" for "fiscal control" in the second sentence in subsection (b) and inserted "division within the department" in the second sentence in subsection (c).

Public Records Act. — The reference to the "Public Records Act" in subsection (b) is apparently a reference to §§ 16-4-201 through 16-4-205.

Repealing clauses. — Section 2, ch. 17, Laws 1933, repealed all laws and parts of laws in conflict with that act.

Section 4, ch. 84, Laws 1941, repealed all laws and parts of laws in conflict with that act.

Cited in *State ex rel. Wyoming Agril. College v. Irvine*, 14 Wyo. 318, 84 P. 90 (1906), aff'd, 206 U.S. 278, 27 S. Ct. 613, 51 L. Ed. 1063 (1907); *Witzenburger v. State ex rel. Wyo. Community Dev. Auth.*, 575 P.2d 1100 (Wyo. 1978).

§ 9-2-1015. Submission of tentative budget bill to presiding officers of house and senate.

At the time the governor distributes the state budget estimate to the legislature he shall submit to the presiding officers of the house and senate the budget bill covering the ensuing budget period containing all approved agency requests for appropriations or other revenues clearly itemized and properly classified. (Laws 1971, ch. 203, § 20; W.S. 1957, § 9-276.18:68; W.S. 1977, § 9-3-2020; Laws 1982, ch. 62, § 3.)

Cited in *Witzenburger v. State ex rel. Wyo. Community Dev. Auth.*, 575 P.2d 1100 (Wyo. 1978).

§ 9-2-1016. Procurement services division.

(a) As used in this section, "supplies" means:

commission approve or supervise the disposition of land by the state transportation commission;

(v) Warehouse or store supplies, materials and equipment which may be used or required by all agencies, and establish uniform standards and specifications for the requisition, purchase or replacement of supplies, materials and equipment;

(vi) Require each agency to report in a manner prescribed by the department the acquisition, disposition, transfer, loss or theft of all personal property. No state agency shall requisition, dispose of or transfer any personal property without the prior approval of the department;

(vii) Adopt standard forms and procedures for regulating the requisition, lease or purchase of or contract for supplies, materials, equipment or services required by agencies;

(viii) Establish uniform standards governing bidding, blanket agreements, contracts, services and estimating procedures for obtaining supplies, materials, equipment or services required by agencies;

(ix) Adopt a uniform commodity classification system designating the quality, material and brand of supplies, materials, equipment or services required by agencies;

(x) Secure and maintain insurance or otherwise protect against fire and other perils on all buildings and structures and the contents thereof, and other properties owned by the state of Wyoming or any of its agencies. The insurance shall be in an amount which is adequate to protect the interest of the state of Wyoming and, where appropriate, the interest of the United States;

(xi) Secure and maintain insurance against the risks of fire and theft and other insurance deemed necessary or required by law on all motor vehicles, trailer attachments and aircraft owned by the state of Wyoming or any of its agencies. The insurance secured and maintained shall be in an amount which is adequate to protect the interest of the state but not less than the amounts required by W.S. 1-39-101 through 1-39-120. In securing insurance the department shall take full advantage of experience ratings and groupings or master policies to the end that the insurance may be secured at the lowest possible beneficial rates and for the best interest of the state;

(xii) Secure personal liability and surety bonds for Wyoming peace officers, employees and state officials as required by statute, secure professional liability insurance for Wyoming doctors and nurses employed by the state, and secure liability insurance for all property owned by the state or any of its agencies as required by W.S. 1-39-101 through 1-39-120;

(xiii) Study, inspect, examine and test supplies, materials and equipment or services to ascertain their suitability for use by agencies;

(xiv) Establish and adopt standard forms and procedures providing that bids or contracts for supplies, materials or services shall be awarded through the use of competitive sealed bidding, competitive negotiation,