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June 14, 1999

Mr. Ron Micheli, Director
Wyoming Department of Agriculture
2219 Carey Avenue
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RE: Conservation District Water Quality Monitoring and Data Collection

Dear Ron:

You have requested our opinion on the following issues on behalf of the Wyoming Association of Conservation Districts:

1. If a conservation district collects water quality data utilizing either mill levy funding or state appropriations, and retains this data within district files, is this information subject to disclosure to the public under the Wyoming Public Records Act?
2. Can a conservation district collect water quality data utilizing district personnel and equipment and never take custody of the data and, instead, leave it in the custody of the landowner?
3. If a conservation district collects water quality data, retains it in their files, and it is subject to public disclosure under the Wyoming Public Records Act, does the Public Records Act exempt water quality data from public disclosure requirements on the basis that it is proprietary information?

Mr. Ron Micheli
June 14, 1999
Page 2

The Public Records Act is found at WYO. STAT. § 16-4-101 *et seq.* Generally, the policy of the Act is that all public records shall be open for inspection by any person at reasonable times, except as provided in the Act or as otherwise provided by law. WYO. STAT. § 16-4-202(a).

The term "public records" is defined at WYO. STAT. § 16-4-201(a)(v) as follows:

'Public records' when not otherwise specified includes the **original and copies of any** paper, correspondence, form, book, photograph, photostat, film, microfilm, sound recording, map drawing or other document, regardless of physical form or characteristics **that have been made by the state of Wyoming and any counties, municipalities and political subdivisions thereof** and by any agencies of the state, counties, municipalities and political subdivisions thereof, **or received by them in connection with the transaction of public business, except those privileged or confidential by law;** (Emphasis added.)

"Political subdivision" means "every county, city and county, city, incorporated and unincorporated town, school district and special district within the state." WYO. STAT. § 16-4-201(a)(iv). "Official custodian" means "any officer or employee of the state or any agency, institution or political subdivision thereof, who is responsible for the maintenance, care and keeping of public records, regardless of whether the records are in his actual personal custody and control." WYO. STAT. § 16-4-201(a)(ii).

The Wyoming Conservation Districts Law is found at WYO. STAT. §§ 11-16-101 through 11-16-134. The act declares it is the policy of the legislature to provide for the conservation of the soil, and soil and water resources of this state. WYO. STAT. § 11-16-103(b). WYO. STAT. § 11-16-113(a)(ii) indicates that upon creation a conservation district is a governmental subdivision and a public body, corporate and politic. In addition, WYO. STAT. § 11-16-102(a)(v) defines "district" or "conservation district" as "a governmental subdivision of this state, and a public body corporate and politic, organized in accordance with this act." It would seem clear that a conservation district is a governmental subdivision of the state of Wyoming and subject to the Public Records Act.

Mr. Ron Micheli
June 14, 1999
Page 3

Generally, the Public Records Act is to receive a liberal construction in favor of disclosure and against withholding, and exemptions are to be construed narrowly. *Sheridan Newspapers, Inc. v. City of Sheridan*, 660 P.2d 785, 793 (Wyo. 1983). The policy and dominant object of Public Records Act is disclosure, not secrecy; exemptions, therefore, are to be construed narrowly. *Laramie River Conservation Council v. Dinger*, 567 P.2d 731, 733 (Wyo. 1977). The court explained in *Laramie River Conservation Council v. Dinger, supra*,

The disclosure acts promote within the agencies affected a sensitiveness to the needs of the public and make democratic government function in a modern society. With some necessary exceptions, recognized by Wyoming's records and meetings act, state agencies must act in a fishbowl . . .

Id. 567 P.2d at 734.

"[I]t is for the government to remember that the written, viewing and broadcasting press are the eyes and ears of the people." *Sheridan Newspapers Inc., supra*, 660 P.2d at 791. In *Houghton v. Franscell*, 870 P.2d 1050, 1056 (Wyo. 1994), the Court held the Wyoming Public Records Act required disclosure of physician recruitment contracts, and were not hospital records under the exception found at WYO. STAT. § 16-4-203(d)(vii).

In *Sublette County Rural Health Care v. Miley*, 942 P.2d 1101 (Wyo 1997), the Wyoming Supreme Court reviewed the statutory exception found at WYO. STAT. § 16-4-203(d)(v), which provides:

(d) The custodian shall deny the right of inspection of the following records unless otherwise provided by law:

(v) Trade secrets, privileged information and **confidential** commercial, financial, geological or geophysical data furnished by or obtained from any person. (Emphasis added.)

In its analysis the Wyoming Supreme Court in *Sublette County Rural Health v. Miley, supra*, cites *National Parks and Conservation Ass'n. v. Morton*, 498 F.2d 765 (D.C. Cir. 1974), which addressed the commercial and financial exception found in the federal Freedom of Information Act. The case involved agency records

Mr. Ron Micheli
June 14, 1999
Page 4

concerning concessions operated in the national parks. A two-fold justification for the exemption of commercial material was noted:

- (1) encouraging cooperation by those who are not obliged to provide information to the government, and
- (2) protecting the rights of those who must.

The court concluded:

- To summarize, commercial or financial matter is 'confidential' for purposes of the exemption if disclosure of the information is likely to have either of the following effects: (1) to impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.

Id. 498 F.2d at 770.

The Wyoming Supreme Court in *Sublette County Rural Health Care v. Miley*, *supra*, adopted the above-cited criteria for discerning confidential, commercial or financial data under the Wyoming Public Records Act. The court held that the disclosure of the doctors' financial reports would likely impair the future ability of the District to obtain necessary information. The court explained "[T]he doctors could not be expected to agree to turn over sensitive financial data if the District, in turn, is required by law to disseminate that information to the public." *Id.* 942 P.2d at 1104. Thus, the doctors' financial reports were held to be confidential.

The Wyoming Supreme Court also distinguished between "compelled information" and "voluntary information". The *Miley* court explained:

Furthermore, if the information had been furnished as a completely voluntary submission, the first test under the two part criteria of *National Parks* would furnish an adequate basis for a determination of confidentiality.

Id. 942 P.2d at 1104.

We understand that the water quality data collected by conservation districts is primarily collected on a voluntary basis with the permission of the

Mr. Ron Micheli
June 14, 1999
Page 5

affected landowner. In addition, the information is collected with public funds, as opposed to private funds.

We believe such information to be "public records" as defined in WYO. STAT. § 16-4-201(a)(v). It is not inconceivable that a court under certain circumstances could find such information to be confidential, however, we believe the overriding policy of the Wyoming Public Records Act is disclosure, not secrecy. Water quality information and monitoring data collected with public funds should be available to the public as a public record. It is our opinion that such information is not confidential and cannot be shielded from disclosure by leaving it with the landowner.

Sincerely,



Gay Woodhouse
Attorney General



Michael L. Hubbard
Deputy Attorney General

MLH:cc