

November 15, 1944

Mr. Edgar A. Reeves, Secretary  
State Soil Conservation Committee  
P. O. Box 966  
Laramie, Wyoming

Dear Mr. Reeves:

Your letter of November 14, 1944 requests answers to a number of questions contained therein which will be taken up in the order asked.

1. How long, after a properly prepared petition by the owner for exclusion of land from within proposed district, does the State Committee have to wait to prove by the petitioner, as required in the last paragraph of Section 6, Subsection (b)?

The Wyoming Soil Conservation Districts law, Chapter 134, Session Laws of Wyoming, 1941, to which you apparently refer, contemplates that the proof necessary to the exclusion of the land from the proposed district be submitted prior to the referendum for the creation of the district. While there is no definite requirement for a day certain upon which proof must be made, nevertheless, immediately after the referendum the State Committee is required to define the boundaries of said district and in order that the Committee may so define the boundaries, it would be necessary that the proof requisite to the exclusion of the lands be made some time prior to that definition. Also, the statute does not contemplate that one who has filed his petition for exclusion of lands should be permitted to vote at the referendum. Therefore, the date must be fixed for the furnishing of proof at some time prior to the referendum date.

In connection with the furnishing of proof of the interest in the lands of the petitioner for exclusion of lands from a proposed district, it is suggested that the State Committee has the power to make such rules concerning the time of furnishing such proof as may be reasonable considering the other provisions of the Act. A rule might possibly be made by the State Committee requiring the proof to be presented, say, not less than seven days prior to the holding of the referendum for the organization of any district.

Such rule should be made a part of the minutes of the meeting and preserved for the information of the public. This would have the advantage of making it possible for the State Committee and election officials to determine in advance who should be permitted to vote at the referendum and might save some expense in the organization of the district.

2. Should the State Committee exclude the lands of an owner when the request is made for an exclusion by the lessee without an accompanying statement of approval of such action by the owner?

The answer to this question must be "no." The last portion of subsection (b), Section 6 of the Wyoming Soil Conservation Districts Law states: "Any owner of lands within the proposed district may have his owned and leased lands excluded from such proposed district upon presentation of a petition and description of said lands to the State Committee, not less than seven (7) days prior to the holding of the referendum for the organization of the said district." The privilege of exclusion of lands from the proposed district is therefore limited to the owner who should be the petitioner in all cases. Of course, it would be possible for an owner to delegate his authority to some other person, even a lessee, to petition for the exclusion of his lands.

3. Can the State Committee exclude State lands which are requested to be excluded by the legislature?

The answer to this question must be "no." As above stated, the privilege of exclusion of the lands from the district is limited to the owner of said lands as above mentioned. Moreover, Section 15 of the Act charges agencies of the State with the duty to cooperate to the fullest extent with the supervisors of such district.

4. What may the State Committee consider as proof of interest in lands so that the Committee may be sure that they have given proper protection to the interests of owners of land whenever the State Committee makes exclusions as provided in Section 6, Subsection (b)?

Common tests of ownership include the rightful possession of a deed or other instrument conveying the property to the claimed owner. The records of the county clerk's office would ordinarily show the name of the owner of the lands. More again, it might be said that the State Committee might well adopt rules showing what proofs the Committee would require.

5. When lands are in an estate, who has the authority to make the request to the State Committee for such lands to be excluded?

Generally, the administrator or the executor of an estate has the power, under the supervision of the court, to do such acts concerning the property of the estate as may be deemed by the Court for the best interests of said estate.

6. Do soil conservation districts, organized and in operation have the authority to levy taxes or make general assessments or incur indebtedness?

No express provision of the Act gives Soil Conservation Districts power to levy taxes or make general assessments and in any event, the Act fails to set up any machinery to levy taxes or assessments or to collect the same. Such districts have no authority to incur any indebtedness whatsoever. Subsection (n) of Section 9 of the Act states in part: "No contract of the district supervisors or the payment of money shall be valid unless the supervisors shall have available, at the time such contract is made, funds in the form of cash or in the form of contracts sufficient for the payment thereof." Under this section, it is contemplated that the district shall at all times be solvent and be able to meet current expenses. No provision is made for the issuance of bonds or the incurring of any indebtedness beyond present ability to pay.

Generally, the procedure outlined in your letter is in accordance with the spirit of the Soil Conservation Law.

Very truly yours,  
Hal E. Morris,  
Deputy Attorney General