

C
O
P
Y

OPINION NO. 88
July 20, 1956

To: William L. Chapman, Commissioner of Agriculture

By: Bruce P. Badley, Assistant Attorney General

QUESTION: Does W.C.S. 1945, 34-1409, Subsection (B) apply to federal lands, namely Taylor Grazing and Bureau of Land Management lands, under the Department of Interior, and to State of Wyoming lands as leased to operators as public school lands. ANSWER: Yes, the law does apply but the lessee cannot exclude lands without consent of lessor.

QUESTION: Please define or classify those lands referred to under the above quoted land as "owner and leased lands."

ANSWER: The general definitions apply, however, in applying the law to this statute, the State Soil Conservation Committee must consider the desires and wishes of the owner as paramount. The desire of the lessee is not controlling.

The interpretation of this section of W.C.S. 1945, 34-1406 (B), was considered in an opinion written by former Deputy Attorney General Hal E. Morris, November 15, 1944, for Mr. Edgar A. Reeves, Secretary of the State Soil Conservation Committee. Your question has been answered in an opinion, a part of which is quoted as follows:

"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 District 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."

The opinion continues to explain and interpret the law:

"3. Can the State Committee exclude State Lands which are requested to be excluded by the lessee?

"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 mentoned. 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."

The opinion does not define the state lands, but we interpret this to mean "State of Wyoming Lands." We observe from that opinion that leased lands from the State cannot be excluded by application of the lessee.

Let us look further at the same opinion:

"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 proof the committee would require.

That opinion was given in 1944. Let us consider therefore any change which might have taken place subsequent to that time by the legislature or by interpretation by the courts. The 1945 legislature amended only subdivision (b) to the extent that it inserted the following wording:

"...and may have his said lands withdrawn from such district at any time after one year after its organization, subject to any existing contracts with the soil conservation district, upon sixty (60) days notice by petition filed with the State Committee. In either of said cases...."

By insertion of the above wording the meaning and application of Subdivision (B) was not changed but merely extended the time in which the "owner" could petition for exclusion of his lands.

We see no reason to deviate from the former opinion and recommend that the interpretation quoted above must be applied, which in summary is that, "the owner of lands must petition for exclusion from a Soil Conservation District and he cannot do so for his leased lands unless the lessor consents or delegates specific authority to the lessee for exclusion."