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OFFICE OF THE ATTORNEY GENERAL
State of Wyoming
Cheyenne

August 28, 1957

OPINION NO. 70

To: William L. Chapman, Chairman
State Soil Conservation Committee
B U I L D I N G

By: Ralph M. Kirsch
Assistant Attorney General

QUESTION NO. 1: May a local sponsoring organization (Soil Conservation District) make a binding arrangement with the United States Department of Agriculture to meet the local share of funds for constructing irrigation storage reservoirs?

ANSWER: Yes.

QUESTION NO. 2: If the answer is in the affirmative, what type of commitments would the Soil Conservation District need from the cooperators before entering into the arrangement with the United States Department of Agriculture?

ANSWER: See opinion.

QUESTION NO. 3: How may the District be assured of having the necessary funds to perform maintenance work when needed?

ANSWER: See opinion.

Sec. 34-1409, W.C.S., 1945, as amended, provides in part as follows:

> "A soil conservation district organized under the provisions of this Act (Sec. 34-1401--34-1417 shall constitute a governmental sub-division of this state... and the supervisors thereof, shall have the following powers... (J) to take over by purchase, lease or otherwise, and to administer, any.... flood prevention projects, conservation of water, water utilization... and to enter into agreements with the United States or any of its agencies... to effect cooperation with the United States or any of its agencies under United States Public Law 566 approved August 4, 1954, or any amendments thereto, in connection with the acquisition, construction, operation, or administration of any... flood prevention projects, conservation of water, water utilization, disposal of water in water shed areas and other water projects within its boundaries..."

As stated in the Act, a Soil Conservation District has the authority to enter into an agreement with the United States Government for the construction and operation of any water project. We believe this language is broad enough to include irrigation storage reservoirs. See Opinions written by Howard B. Black, Attorney General, dated March 15, 1955, and March 21, 1955.

Question No. 2 appears to be answered by sub-section (L) of Sec. 34-1409, W.C.S., 1945 as amended which provides as follows:

> "As a condition of the extending of any benefits under this Act (Sec. 34-1401--34-1417) to, or the performance of work upon, any lands not owned or controlled by this state or any of its agencies, the supervisors may require contributions in moneys, services, materials or otherwise to any operations conferring such benefits and may require owners and occupiers of land to enter into and to perform such agreement or covenants as to the permanent use of such lands as will tend to prevent or control the erosion thereon and to promote the best use of such lands."

As stated in this sub-section, supervisors may, prior to conferring benefits, require owners and occupiers of land to enter into an agreement or covenant. In this situation, we seriously doubt that such an arrangement would be effective. Any agreement would have to be voluntarily entered into between the Soil Conservation and the cooperators. We are unable to find any statutory authority permitting the Soil Conservation District to raise revenue by assessments or issuing bonds.

Congress by the Act of August 4, 1954, Chap. 656, Sec. 1, 68 Stat. 666, as amended August of 1956, 70 Stat. 1088, 16 U.S.C.A., Sec. 1001 (1956 Pam.) provided as follows:

> "The Secretary shall require as a condition to providing Federal Assistance for the installation of works of improvement that local organizations shall --
>
> (1) acquire without cost to the Federal Government such land, easements, or rights-of-way as will be needed in connection with works of improvements installed with Federal assistance;
>
> (2) assume (A) such proportionate share, as is determined by the Secretary to be equitable in consideration of the direct identifiable benefits, of the costs of installing any works of improvement, involving Federal assistance, which is applicable to the agricultural phases of the conservation, development, utilization, and disposal of water, and (B) all of the cost of installing any portion of such works applicable to other purposes except that any part of the construction cost (including engineering costs) applicable to flood prevention and features relating thereto shall be borne by the Federal Government and paid for by the Secretary out of funds appropriated for the purposes of this chapter;
>
> (3) make arrangements satisfactory to the Secretary for defraying costs of operating and maintaining such works of improvement, in accordance with regulations presented by the Secretary of Agriculture;
>
> (4) acquire, or provide assurance that landowners or water users have acquired, such water rights, pursuant to State law, as may be needed in the installation and operation of the work of improvement;
>
> (5) obtain agreements to carry out recommended soil conservation measures and proper farm plans from owners of not less than 50 per centum of the lands situated in the drainage area above each retention reservoir to be installed with Federal assistance; and

(6) submit a plan of repayment satisfactory to the Secretary for any loan or advancement made under the provisions of section 1007 of this title."

We think it probable that the local sponsoring organization could, by contract, acquire such land, easements or rights-of-way as required by sub-section 1 and 4 of this Act. But, we fail to find any but the most nebulous and vague means whereby the district could make arrangements to defray the costs of operating and maintaining such works of improvements. As stated in the Act, such arrangements must be satisfactory to the United States Secretary of Agriculture, and we doubt that the arrangements possible under the Wyoming Soil Conservation District law would be satisfactory to the United States Department of Agriculture.

As to Question No. 3, it appears that the District Supervisors must have funds in the form of cash or in the form of contracts before a contract they enter into would be valid. They are not authorized to impose any financial obligation upon the owners and occupiers of land, nor upon the State of Wyoming. No ultimate means are provided for assuring any funds to the district.

APPROVED BY:

(signed) Thomas O. Miller
Attorney General