

*Take to the Capitol Bldg on 4/14/80  
Attorney General's Office  
BJ*

April 14, 1980

MEMORANDUM

TO: Bruce Salzburg, Attorney General's Office  
FROM: Bill Gentle, Conservation Commission State Executive  
SUBJECT: Watershed Improvement District Election.

HISTORY :

The Red Lane Watershed Improvement District (W.I.D.) held their last election in Jan. of 1977, and elected Leslie Nicolen and Franklin Ralph to three (3) year terms, expiring Jan., 1980. At that time, there were three (3) other members:

Paul Kleine, elected Jan., 1975 expiring Jan., 1978  
John Doe #1, elected Jan., 1976 expiring Jan., 1979  
John Doe #2, elected Jan., 1976 expiring Jan., 1979

No additional elections were held until April of 1980.

Between 1977 and 1979, Mr. Wicker and Mr. Bay were appointed to fill terms.

During the Spring of 1978, I understand all the board members resigned and there was a public meeting at which the following individuals were appointed from the floor:

Clayton Merritt  
Mrs. Vopel  
Lou West  
Pete Dvorak  
Mrs. Sessions

As far as I can tell, no one is still on the board now, although Mr. Merritt is doing the W.I.D.'s work.

PROBLEM #1; Who can vote.

Our law states, "The Board of Supervisors of the Conservation District shall conduct these elections annually. These elections shall be in accordance with the election rules and regulations for the Watershed Improvement Districts, as outlined in the election handbook issued by the Wyoming State Conservation Commission." (41-8-112).

Our regulations state; Eligibility of voters; "All owners of land lying within the boundaries of Watershed Improvement Districts, as determined by the Board of Supervisors, shall be eligible to vote in the election. Each parcel of land is entitled to one vote." XXXVI, Sec. (4), (a), (2), (C).

The law also says, "Land owner" means any person, firm or corporation holding title to, or occupying under a contract of purchase any land lying within a Watershed Improvement District organized or proposed to be organized under the provisions of the act. (41-8-101 C).

My office sent the polling officer an incorrect set of instructions for conducting the April, 1980 elections. Our instructions stated:

Sec. 3; Any person, firm, or corporation, having lawful possessory control of land lying within the boundaries of the organized W.I.D., whether as owners, lessee, renter, tenant, or otherwise, shall be eligible to vote.

Sec. 4; In case of partnerships or man and wife, all parties shall be eligible to vote.

Sec. 7; Where title to or possession of land is held by a corporation, a duly appointed officer or agent of the corporation may be given either a general or special power of attorney by the corporation, to cast a single vote in its behalf. Such power shall be in writing. When the corporate officer or agent casts his vote, he shall exhibit to the polling officer such written power.

These instructions are for Conservation Districts, not W.I.D.

On April 18, 1980, the W.I.D. held an election and elected two individuals for three year terms. They allowed both husband and wife to vote and also allowed renters to vote.

QUESTION #1; Was the April, 1980 election legal?

QUESTION #2; If the answer to question #1 is "yes, the election was legal,"

can the two elected board members appoint the three non-filled seats as permitted in the law (41-8-112 (A) ); "Vacancies occurring before the expiration of a term shall be filled for the unexpired term by appointment of the remaining members of the Board of Directors with the approval of the Board of Supervisors." If not, should we hold an election for the three (3) seats then, select by lot which seats are for one year and two years? See Sec. (41-8-112 (A) ).

QUESTION #3; If the answer to question #1 is, "no, the April, 1980 election is illegal," then should they hold a new election, elect five (5) new people and draw lots for the length of term of each seat?

QUESTION #4; If the April, 1980 election is illegal, can the Conservation District assume control of the district until a new election is held?

The W.I.D. does have some outstanding bills at this time, and they also must submit a tax levy request to the County Commissioners very soon.

lmj

cc: Larry J. Bourret, Chairman, Conservation Commissions



In reply refer to:

*Attorney General*

CHEYENNE, WYOMING 82002  
PHONE 307 777-7841  
15 April 1980

JOHN D. TROUGHTON  
ATTORNEY GENERAL

**This letter of advice shall not be considered a formal Attorney General opinion and shall not be copied, reprinted or disseminated as such.**

Mr. William Gentle  
State Executive  
Wyoming Conservation Commission  
2219 Carey Avenue  
Cheyenne, Wyoming 82001

RE: Red Lane W.I.D.

Dear Bill:

I have reviewed your letter of April 11, concerning the election problems in the Red Lane W.I.D.

Assuming that the time line you have described is correct, I am forced to conclude that the current members of the board have no legitimate authority.

I reach this conclusion generally due to the fact that the election included ballots by individuals not entitled to vote, and that the election was therefore void.

With respect to the appointment of those to fill the unexpired terms of resigned board members, the law makes no provision for such a procedure. The resigning members should not have all resigned until appointments were made pursuant to the law. That is, the resignations should have occurred sequentially, with the remaining members appointing the members to fill the unexpired terms. Since the entire board resigned, there was no remainder to make a legal appointment. Further, the appointees should have been approved by the board of supervisors of the conservation district.

I would advise that a new election be held pursuant to the correct instructions, that the terms of office be determined by drawing lots, and that the board of supervisors assume the duties of the board in the interim.

Sincerely,

A handwritten signature in cursive script that reads "Bruce A. Salzburg".

Bruce A. Salzburg  
Senior Assistant  
Attorney General

BAS:kk