



THE STATE OF WYOMING

6-6-90  
Bill  
Feb

*Attorney General*

123 CAPITOL BUILDING  
CHEYENNE, WYOMING 82002  
TELECOPIER: 307-777-6869

ADMINISTRATION 307-777-7841  
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NATURAL RESOURCES 777-7824, 777-7825  
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ATTORNEY GENERAL

May 25, 1990

M E M O R A N D U M

TO: Don Rolston, Commissioner of Agriculture  
Grant Stumbough, Soil Conservation, Water  
Quality Consultant

FROM: Donna L. Rice *D.R. by R.C.*  
Assistant Attorney General

QUESTION: When a petition requesting an election to  
impose a conservation district mill levy is  
presented by conservation district supervisors  
to county commissioners pursuant to W.S. 11-16-  
134, must the county commissioners put the  
question on the election ballot?

RESPONSE: Yes.

Discussion

The commissioners may appropriate funds from the general  
fund for soil and water conservation or levy up to one  
mill. If a levy is to be requested, the conservation  
district supervisors must present a petition to the  
commissioners requesting that the issue be put on the  
ballot. This has been done in the Cody County Conservation  
District and the commissioners have refused to put the matter  
on the ballot.

W.S. 11-16-134(b) (1987) states:

The proposition to impose a tax under  
this act shall be at the expense of the  
county and may be submitted to the  
electors of the county upon the receipt  
by the board of county commissioners of a  
petition requesting the election signed



by a majority of the supervisors of the district. The election shall be at the direction and under the supervision of the board of county commissioners. (Emphasis added).

In applying the rules of statutory construction, W.S. 11-16-134(b) is discretionary due to the use of the term "may be submitted to the electors"... . Generally the word "may" when used in a statute is permissive only and operates to confer discretion unless the contrary is clearly indicated by the context of a statute. Mayor v. Board of Land Comm'rs, 192 P.2d 403 (Wyo. 1948).

However, the Wyoming Supreme Court has construed the word "may" as mandatory in some situations as follows:

The word "may" in a statute will be construed to mean "shall" whenever the rights of the public or of third persons depend on the exercise of power or performance of duty to which it refers. The word "may" in a statute means "shall" in all cases where public interests and rights are concerned or public duty is imposed on public officers, and public or third persons have a de jure claim that power shall be exercised. The Board of County Commissioners of the County of Fremont v. State of Wyoming ex rel. Miller, Gallinger et. al., 369 P.2d 537 at 542 (Wyo. 1962).

"may" being construed as mandatory only when public interests and rights are involved, or when the public or individuals have a de jure claim that the power given by the statute should be exercised. Burnham Hotel Co. v. City of Cheyenne, 222 P.1 Wyo. 1924).

Also, a newer 1989 statute, states:

W.S. 39-2-402(e)  
There shall be annually levied and assessed upon the taxable value of property within the limits of the following special district taxes when applicable:

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(xii) Not to exceed (1) mill by a soil and water conservation district as provided by W.S. 11-16-133 and 134. (Emphasis added).

This is not discretionary. The word "shall" is mandatory. In construing statutes, the use of the word "shall" except in its future tense, indicates a mandatory intent unless the context otherwise indicates. Maryland v. State, 568 P.2d 897 (Wyo. 1977).

Under the laws of statutory construction, the pertinent case states:

All statutes relating to the same subject or having the same general purpose must be read as constituting one law, and, where possible, should be harmoniously construed in order to avoid conflicting and confusing results; however, if conflict cannot be reconciled so that provisions can stand together, then the later provision will prevail over the prior one, and prior law is considered amended by implication only to the extent of the conflict. Johnson v. Safeway Stores, Inc, 568 P.2d 908 (Wyo. 1977).

If inconsistent statutes cannot be reconciled, dates of enactment will be considered in determining legislative meaning and effect given to the later one. Marsh v. Aljoe, 282 P. 1055, 41 Wyo. 119 (1929).

#### Conclusion

So long as the tax does not exceed the (1) mill authority, the commissioners must accept the petition presented by the conservation district supervisors and put the matter on the ballot.

DLR:rlc