

Opinion No. 35.**Taylor Grazing Act Range Improvements—District Advisory Board,
powers of.**

Held: It is my opinion if the district advisory board, in its sound discretion, taking into consideration all the facts, approves the use of the funds from the Taylor Grazing Act for aiding in the removal of trespassing range horses from ranges affected, determining such use of the funds is within "range improvements" then the funds may be so used.

April 5, 1943.

Mr. H. M. Montgomery, Secretary
Taylor District Advisory Board
Malta District No. One
Chinook, Montana

Dear Mr. Montgomery:

You have presented the following question for my opinion:

May the district advisory board under the Taylor Grazing Act expend funds received under Section 10 of the act for the purpose of aiding in the removal of trespassing range horses from the ranges affected?

Your question depends on the scope of the phrase "and for such other range

improvements as the district board may approve," as used in Section 191.2, Revised Codes of Montana, 1935, as amended by Chapter 102, Laws of 1939. The pertinent part of that chapter reads as follows:

"The funds comprising said special grazing fund shall be expended only for range improvements such as fences, reservoirs, wells, and for such other range improvements as the district advisory board may approve . . ."

In Volume 19, Report and Official Opinions of the Attorney General, it was held this provision vested board discretionary powers in the district advisory board. (Opinions No. 123, 132 and 397.) Those opinions called attention to the fact that, in the absence of fraud or manifest abuse of the discretion vested in the district advisory board, its determination is conclusive. Thus, it was held the district advisory board may expend the funds for use in cricket, rodent and predatory animal control and for the purchase of fire fighting equipment to be used in controlling range fires (Opinion No. 123), for purchasing scales for weighing purposes (Opinion No. 132), and for range surveys and purchasing aerial photographs to be used in connection with the range improvement program (Opinion No. 397). In these cases the district advisory board exercised its discretion in approving such projects as coming within the scope of "range improvements."

However, I desire to call to the attention of the board that no facts were presented with the question asked. The board having broad discretionary powers, is charged with determining the facts. If a great many range horses are consuming the grass on the range and causing a large amount of damage, then their removal, no doubt, could be construed as "range improvement." The sound discretion of the board is to be exercised in determining all such matters so as to bring their actions within the meaning of and authority granted by the act.

It is my opinion that if the district advisory board, in its sound discretion, taking into consideration all the facts, approves the use of the funds from the Taylor Grazing Act for aiding in the removal of trespassing range horses from ranges affected, determining such

use of the funds is within "range improvements" then the funds may be so used.

Sincerely yours,
R. V. BOTTOMLY
Attorney General