

Opinion No. 100.**State Soil Conservation Districts Law
—Federal Laws—Statutes—Soil
Conservation Districts.**

HELD: The State Soil Conservation Districts Law (Chapter 72, Laws of 1939) authorizes State Soil Conservation Districts to perform the tasks required of "state or local organizations" under the recently enacted Federal law entitled, "Watershed Protection and Flood Prevention Act."

November 13, 1954.

Mr. John G. Buttelman, Chairman
State Soil Conservation Committee
Box 855
Bozeman, Montana

Dear Mr. Buttelman:

You have requested my opinion with reference to the following facts:

On August 4, 1954, the President of the United States approved Public Law 566, 68 Statutes 666, called the "Watershed Protection and Flood Prevention Act." Section 4 of this new Federal Law provides that:

a. when a qualified state agency has obtained the necessary land, easements, or rights of way without cost to the Federal Government;

b. has assumed the proportionate share of the cost of installing works of improvement as determined by the Secretary of Agriculture to be equitable in consideration of the benefits to be derived;

c. has made arrangements satisfactory to the Secretary of Agriculture for defraying costs of operating and maintaining said improvements;

d. has acquired, or provided assurance that landowners have acquired such water rights, pursuant to State law, as may be needed in the installation and operation of the work of improvement;

e. and has obtained agreements to carry out recommended soil conservation measures, and proper farm plans, from owners of not less than fifty (50) per centum of the lands situated in the drainage area above such work of improvement; the Federal government will then conduct necessary investigations, surveys, and studies to determine the physical and economic soundness of the proposed work of improvement, including a determination as to whether benefits will exceed the costs. If the determination made by the Federal government is favorable, financial and other assistance will be given to the state organization by the Federal government.

In your opinion request you ask if any existing state organization has the authority to perform the functions listed in "a" through "e" of the above statement of facts, and more particularly whether the State Soil Conservation districts have such power.

Section 1 of the new Federal law states in part that:

" . . . it is the sense of Congress that the Federal Government should cooperate with States and their political sub-divisions, soil or water conservation districts, flood prevention or control districts, and other local public agencies for the purpose of preventing such damages and of furthering the conservation, development, utilization, and disposal of water and thereby of preserving and protecting the Nation's land and water resources."

The primary purpose of Public Law 566 is further restricted in Section 4, sub-section 2 of the Act wherein it is stated:

" . . . that no part of the construction cost for providing any capacity in structures for purposes other than flood prevention and features related thereto shall be borne by the Federal Government under the provisions of this Act . . . "

In 1939 the Montana State Legislature enacted Chapter 72, Laws of 1939, commonly called the "State Soil Conservation Districts Law," and in Section 2 thereof (Section 76-102, R.C.M., 1947), stated in part that the purpose of the Act was to:

" . . . provide for . . . prevention of soil erosion and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs . . . "

A review of the provisions of the State Soil Conservation Districts Law reveals that under Section 76-108, R.C.M., 1947, sub-section 5, a soil conservation district has the power:

"To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests therein . . . "

as required by Public Law 566, supra. Further, such a district under sub-section 11 of Section 76-108, supra, has the power to:

" . . . require contributions in money, services, materials, or otherwise to any operations conferring such benefits, and may require land occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion thereon;"

Section 76-109, R.C.M., 1947, sets forth the rules which a State Soil Conservation District Supervisor must follow in adopting regulations concerning the use of land, and this section provides in part that there be a vote on the proposed regulation at which all land occupiers within the district can

vote, and that in order for the regulation to be placed in use it must have received the favorable vote of at least sixty-five (65) per centum of the ballots cast. This requirement in the state law gives positive assurance that the applicable provisions of Section 4 of the Federal law will be followed.

The State Soil Conservation Districts Law was enacted with a primary purpose of preventing soil erosion due to floods, and as such it fulfills the stated purpose for which Public Law 566, supra, was enacted. The State Soil Conservation Districts Law gives the state soil conservation districts the power to perform the functions required under the recently enacted Federal law, and thus there would not appear to be any necessity for enacting further state legislation at this time.

It is therefore my opinion that the state soil conservation districts are the proper organizations to cooperate with the designated Federal agencies in administering Public Law 566, and further that this assistance can be furnished under the existing provisions of the State Soil Conservation Districts Law.