

**Irrigation Districts—Bond Not Required — Preliminary Expense.**

Upon submitting a petition for the creation of an irrigation district under Chapter 14, Laws of Extraordinary Session of 1919, it is not necessary to furnish a bond to cover preliminary cost.

Sept. 9, 1919.

Montana Irrigation Commission,  
Building.

Gentlemen:

I have your letter of August 30th, requesting an opinion upon Chapter 14 of the Laws of the Extraordinary Session of the Legislature of 1919, insofar as it relates to payment of costs by petitioners for an irrigation district under Section 4 of said Act. Your specific question is whether or not persons who unite in presenting a petition to create an irrigation district under the Act in question are still required to furnish a bond to cover the preliminary costs.

You are advised that petitioners desiring to create an irrigation district under what is known as the Donlan bill, designated as Chapter 14 of the Extraordinary Session Laws of the Legislative Assembly, need not furnish a bond with their petition. Section 4 of said Act provides as follows:

“The Secretary of the Montana Irrigation Commission shall thereupon (after said petition is filed with the Clerk of the District Court) advise the party or parties filing the petition for the proposed irrigation district, of the amount of the preliminary expenses of the State Engineer, which amount shall be forthwith paid to the Secretary of the Montana Irrigation Commission and by him turned over to the State Treasurer, to be credited to the Montana Irrigation Fund hereinafter created. Upon payment of such amount to the Secretary of the Montana Irrigation Commission, the State Engineer shall make preliminary examination of the lands to be included in the proposed irrigation district and the source from which the lands are to be irrigated, and shall make a report to the commission as to the feasibility and advisability of the creation of such proposed district. The expenses of the State Engineer (not including his salary) shall be paid out of the funds so deposited with the Secretary of the Montana Irrigation Commission, and any surplus, over and above said expenses of the State Engineer, shall be returned to the petitioner by a warrant drawn upon the Montana Irrigation Fund.’

You will note that under the Irrigation Law passed by the last extraordinary session of the legislature a bond is not required to cover costs and would not be acceptable. The State Engineer is not authorized to act until cash funds are in the hands of the Secretary of the Montana Irrigation Commission. The petition is filed with the clerk of the district court of the county in which a district is petitioned for and the clerk shall thereupon forward a copy of said petition to the Montana Irrigation Commission. The copy of said petition is then referred to the State Engineer who shall advise the commission of the estimated amount of his expenses in making the preliminary examination of the lands to be included in the proposed district.

In this connection, it will be noted that cash funds are required instead of the bond, and the State Engineer in making his estimate of expenses should estimate a sufficient amount to cover such expenses.

You further ask whether the instructions you propose to issue to petitioners are correct. The instructions which you propose practically embody what has been said in this letter and you are advised that they are correct.

Respectfully,

S. C. FORD,

Attorney General.