

**Opinion No. 227.****Water Conservation Board—Timberland, Acquisition from Federal Government.**

HELD: It is doubtful that the Water Conservation Board has power to acquire forests and timberlands.

---

January 9, 1936.

Mr. L. L. White  
Acting State Forester  
Missoula, Montana

You have requested my opinion on the question whether the State, through the State Water Conservation Board, has legal authority by reason of the provisions of Chapter 96, Laws 1935, to enter into cooperative agreements with the Federal Government for the purpose of timberland acquisition under the terms of H. R. 6914, known as the Fulmer Act, passed by the 74th Congress.

Chapter 96, Laws 1935, uses rather broad language. Section 4 thereof gives the board power to undertake a program of public works which, among other things, includes: "c. To acquire land, construct, maintain and operate works and systems for the conservation and development of natural resources."

Section 3 of the Act also gives the board power "to cooperate with the Federal government or any board or

agency thereof and to avail itself of any authority of Federal laws, rules and regulations, in relation to and in connection with the provisions of the statutes of the United States enacted by Congress of the United States designed to promote flood control, rehabilitation of agriculture, etc." No doubt the acquisition and administration of timberland vitally affects the program of flood control and the rehabilitation of agriculture.

Section 2 of the Act declares it to be the policy of the State to cooperate and assist the National government "in promoting the rehabilitation of agriculture, trade and industry through conservation and development of natural resources, etc." It is, undoubtedly, true that the conservation and development of such natural resources, as forests and timberlands, would to a material degree in some parts of the state affect agriculture and effect a rehabilitation thereof.

It might be argued, however, that if the legislature had intended to cover such an important field as forests and timberland that some express mention thereof would have been made in the title as well as in the body of the Act, and that they would not have left the power of the board to deal therewith to be implied from the express powers granted or inferred from such general power as is granted in Section 4c, supra.

We do not, therefore, feel that we can advise with any positive assurance of being upheld by our Supreme Court that the State Water Conservation Board has such authority. Until the court shall have directly passed upon the question, we feel that there must remain some doubt as to the extent of the power of the Board to enter into agreements with reference to timberlands. We suggest and advise, if it is felt desirable that the State Water Conservation Board should possess such power, that the next legislature be requested to deal with the matter and expressly enact suitable legislation.