

No. 420

**SOIL CONSERVATION DISTRICT—LAND OCCUPIER—
LESSORS AND LESSEES—REFERENDUM**

- Held: 1. "Land occupiers," as used in Chapter 72 of the Laws of 1939, includes both lessor and lessee of the same parcel of land.
2. A referendum must be held to include additional territory to an existing soil conservation district here the total of the operators are eight in number, but there are non-operating owners of the land, so that the total of the two groups is in excess of ten in number.

May 27, 1942.

Mr. Truman C. Anderson
State Coordinator and Secretary
State Soil Conservation Committee
Bozeman, Montana

Dear Mr. Anderson:

You have submitted the following questions for my opinion:

1. Are landowners and lessees of the same parcel of land "land occupiers" within the meaning of sub-section 10, Section 3 of Chapter 72, Laws of 1939?

2. Is it necessary, under the provisions of Sub-section H, Section 5, Chapter 72, Laws of 1939, to hold a referendum for including additional territory within an existing soil conservation district where seven petitioners who, with one other person, operated all of the land in the proposed addition, but all the owners and operators of the proposed addition exceed ten in number?

In considering the first question submitted, it is necessary to consider sub-section 10, Section 3, Chapter 72 of the Laws of 1939, which provides:

“‘Land occupier’ or ‘occupier of land’ includes any person, firm, or corporation who shall hold title to or shall be in possession of, any lands lying within a district organized under the provisions of this act, whether as owner, lessee, renter, tenant, or otherwise.”

As you will note, the act provides any persons “who hold title to” are to be considered “land occupiers” and it is also provided persons who shall be in possession of land are “land occupiers.”

A rule of construction which is helpful in interpreting this section is that expressed in the case *In Re Wilson’s Estate*, 102 Mont. 178, 56 Pac. (2nd) 733, wherein the Court said:

“In the construction of a statute the primary duty of the court is to give effect to the intention of the legislature in enacting it, and every word, clause, phrase and sentence must be given effect, if possible.”

It would violate the above rule of construction to hold an owner of the land was not included with his lessee in the right to be a “land occupier” under the statute—and the converse would likewise be true, the lessee having an equal right with his lessor.

The answer to the second question is apparent after the consideration of the first problem. There are eight operators of the proposed addition to the Soil Conservation District. There is a sufficient number of non-operating owners of this land so that the total number of the two groups—both groups being considered “land occupiers”—exceeds ten in number. Then, under the mandatory provisions of sub-section H, Section 5 of Chapter 72, Laws of 1939, a referendum must be held to ascertain whether additional territory shall be included in a district.

It is my opinion:

1. “Land occupier,” as used in Chapter 72 of the Laws of 1939, applies equally to the lessee and lessor of the same parcel of land, both of which are eligible to vote at a referendum on the inclusion of additional territory to a Soil Conservation district;
2. A referendum must be held, under the provisions of sub-section H, Section 5 of Chapter 72 of the Laws of 1939, to include additional territory to an existing Soil Conservation District where there are eight operators of the proposed addition, but there is a sufficient number of owners so that the total number of operators and owners exceeds ten.

Sincerely yours,

HOWARD M. GULLICKSON
Attorney General