No. 472

SOIL CONSERVATION DISTRICTS, consolidation of—CONSOLIDATION OF SOIL CONSERVATION DISTRICTS

Held: Under Chapter 72, Laws of 1939, Montana State Soil Conservation Districts may not be consolidated.

August 27, 1942.

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

Dear Mr. Anderson:

You have inquired of this office whether two or more soil conservation districts now organized and functioning may be consolidated to effect what supervisors of these districts believe will be greater efficiency of operation.

I have examined carefully the provisions of Chapter 72, Laws of 1939, under which the soil conservation districts were created and are operating. I find contained therein no authority or power granted either to the soil conservation districts themselves or to the state committee to effect consolidation of existing districts.

A soil conservation district is defined by Section 3 of Chapter 72, Laws of 1939, as a "governmental division of this State, and a public body corporate and politic." Since it is a body corporate, it is in much the same position as a county, in that it has only such powers as are expressly conferred by statute. Its executive body must in every instance justify its actions by reference to the provisions of law defining and limiting its

powers. Only where there is no question of the existence of the power to act is there freedom in the use of discretion in selecting a mode of operation. (Morse vs. Granite County, 44 Mont. 78, 89, 119 Pac. 286; Franzke vs. Fergus County, 76 Mont. 150, 245 Pac. 962.)

It must be noted that, under Section 14 of Chapter 72 of the laws of 1939, concerning the discontinuance of districts it is provided a petition for the termination and discontinuance of a district may be filed at any time **after five years after the organization of the district.**

It is therefore my opinion consolidation of two or more soil conservation districts now organized and functioning may not be effected under Chapter 72, Laws of 1939.

However, if it is the sense of your committee that consolidation of certain districts may bring about greater efficiency in the operation of the soil conservation program within this state your committee should call the attention of the 28th Legislative Assembly to the fact when it convenes in January, 1943, and suggest appropriate legislation granting the power which you deem necessary and proper.

Sincerely yours,

R. V. BOTTOMLY
Attorney General