

**Opinion No. 195.****Soil Conservation Districts—Corporations, assumption of obligations of by political subdivisions—Lands.**

Held: A state soil conservation district has no authority to purchase lands of a private corporation in the process of liquidation if a part of the purchase price will be the assumption by the soil conservation district of the obligations of the corporation.

March 31, 1944.

Mr. J. E. Norton, Chairman  
State Soil Conservation Committee  
Box 855  
Bozeman, Montana

Dear Mr. Norton:

You have requested my opinion concerning the following question:

“Has a state soil conservation district the power to purchase lands of a private corporation which is in the process of liquidation and as a part of the purchase price, assume the obligations of the corporation?”

Section 3 of Chapter 72, Laws of 1939, contains the following definition:

“‘District’ or ‘soil conservation district’ means a governmental subdivision of this State, and a public body corporate and politic, organized in accordance with the provisions of this act, for the purposes, with the powers, and subject to the restrictions hereinafter set forth.”

Section 1 of Article XIII of the Montana Constitution provides:

“Neither the state, nor any county, city, town, municipality, nor other subdivisions of the state shall ever give or loan its credit in aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association or corporation, or become a subscriber to, or a shareholder in, any company or corporation, or a joint owner with any person, company or corporation, except as to such ownership as may accrue to the state by operation or provision of law.”

By the terms of the Soil Conservation Act a soil conservation district is a subdivision of the state and comes within the provisions of Section 1 of Article XIII of the Constitution.

A soil conservation district has the power to purchase land. (Section 8, Chapter 72, Laws of 1939.) However, in making a purchase the credit of a district cannot be loaned to the seller.

In the facts recited in the question, the effect of the purchase plan would, in all probability, involve the credit of the district. The creditors of the corporation have the right to look to the assets of the corporation for payment and these assets, if they are land, must be converted into cash by a sale and the cash distributed to the creditors. If the liquidating officers or trustees of the corporation convey the assets to a soil conservation district and advise the creditors that the district has assumed the obligations, the creditors will permit such a transfer of assets on the strength of the credit of the district. The result of such a transaction would be that the credit of the district has been loaned to the liquidating officer of the corporation as an aid to the termination and winding up of the affairs of the corporation and would be a violation of the terms of Section 1, Article XIII of our Constitution.

In *Walker v. Cincinnati*, 21 Ohio St. 15, 8 Am. Rep. 24, the Ohio Court had under consideration a provision of the Ohio Constitution similar to Section 1, Article XIII of our Constitution and said:

“The mischief which this section interdicts is a business partnership between a municipality or subdivision of the state, and individuals, or private corporations or associations. It forbids the union of public and private capital or credit in any enterprise whatever.”

It is therefore my opinion that a state soil conservation district has no authority to purchase lands of a private corporation in the process of liquidation if a part of the purchase price will be the assumption by the soil conservation district of the obligations of the corporation.

Sincerely yours,  
R. V. BOTTOMLY  
Attorney General