Opinion No. 47

Weed Control and Weed Seed Extermination Districts—Creation of District—County Commissioners —"Agricultural Land", Definition of—Lands on Indian Reservations.

Held: Upon the hearing of the petition, if landowners owning 51% of the agricultural lands, within the district, have or shall file written consent for the creation of the district at the time of the hearing, the county commissioners shall proceed to hear the said petition, and they shall, by an order duly made and entered on their minutes, after they find that landowners owning 51% of the agricultural land within the district have filed their written consent for the creation of the district, declare the district created, setting forth the name and boundaries of the district and the land contained therein. The term "agricultural lands" as used in the act means land being cultivated or those lands which are susceptible of cultivation for the production of food or feed crops. That lands on Indian Reservations, wherein the United States retains or withholds title, may not be included, either to make up the 25% of petitioners or the 51% necessary to create the district, and may not be taxed in any manner by the State or its subdivisions.

July 14, 1947

Mr. Bert Kronmiller
County Attorney
Big Horn County
Hardin, Montana

Dear Mr. Kronmiller:

You have submitted to this office for my opinion two questions relative to Chapter 195, Laws of 1939, as amended by Chapter 90, Laws of 1941, and as amended by Chapter 228, Laws of 1947, which deals with the creation of weed control and weed seed extermination districts.

Your first question deals with the percentage of owners that must file their written consent before the creation of the district may be consumated.

Your second question requires the determination of the meaning of "agricultural land" as defined in the act, together with its amendments.

It is to be noted that Chapter 195, Laws of 1939, and section 5 thereof,

provides that the creation of the district may be had when a petition signed by 25% of the freeholders of any proposed district, outside of any incorporated town or city of the county, is presented to the commissioners of such county asking for the creation of such a district, and the commissioners shall set a day for the hearing and order notice thereof to be given to all persons interested. This section initiates the petition and initiates the action toward the forming of the district. Section 6 then provides for the notice of the hearing.

Section 7 then provides for the hearing on the petition, and that any land owner in the district may file his written objections to the creation of the district. Section 7 further provides that if landowners owning 51% of the agricultural lands within the proposed district shall file written consent for the creation of the district then at this point the county commissioners have jurisdiction and authority to act, and under said Section 7, as amended by Chapter 228, Laws of 1947, the commissioners shall, when they find that 51% of the landowners of agricultural lands within the district have filed written consent for the creation of the district, make and enter an order on their minutes declaring the district created.

You will note that before the amendment of Section 7 of the said act, it was left in the discretion of the Board of County Commissioners as to whether or not they would create the district, even if 51% of the landowners of agricultural lands within the district had filed their consent, but under the amended Section 7 of Chapter 228, Laws of 1947, when the commissioners find that 51% of the owners of the agricultural land within the district have filed their written consent for the creation of the district it is now mandatory that the commissioners, by an order duly made and entered on the minutes, declare the district created.

Under Section Second of Ordinance 1 of the State Constitution, it is provided, among other things, that: "That the people inhabiting the said proposed State of Montana, do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within said limits owned or held by any Indian or Indian tribes, and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States, * * *."

Title to allotted Indian lands remains in the United States until patent has been issued to the Indian.

Only patented lands wherein a patent has been issued to the Indian is the land subject to taxation. The United States must first release or extinguish its title before Indian land is subject to taxation.

It would seem from the foregoing that the county commissioners do not have authority or jurisdiction to make such an order until, on the hearing, they find that 51% of the landowners of agricultural land within the proposed district have filed their written consent.

I believe the foregoing answers all of your questions other than that contained in your second question.

In arriving at the legislative intent in regard to "agricultural land" we deem it necessary to review all matters which will throw light upon this subject.

It appears all through the history of our Constituion and statutory law there has been a definite understanding that agricultural land means a certain class of lands. Referring to Section 1, Article XVII of the State Constitution, we find that the Constitutional Fathers classified the lands of the state as follows:

> "State lands shall be classified by the board of land commissioners, as follows: First, lands which are valuable only for grazing purposes. Second, those which are principally valuable for the timber that is on them. Third, agricultural lands. Fourth, lands within the limits of any town or city or within three miles of such limits."

From the foregoing we find that the term 'agricultural lands', which is synonymous with the term 'lands agricultural in character', includes all lands of the state not included within the limits of a town or city, nor within three miles of such limits, lands valuable only for grazing purposes, and lands principally valuable for the timber on them, and, except for the special exclusion of lands which may be agricultural in character lying within the three-mile limit of cities and towns, which, of course, has no application here. However, this fundamental law of our land may be taken as a guide for the classification which the legislature has given us of 'agricultural land' under the act here in question.

Now, turning to our statutory law we find that Section 2025, Revised Codes of Montan, 1935, makes it the duty of the board of county commissioners of the several counties of the state of Montana to provide for the classification of all lands within their county, **except** vacant lands in forest reserves, **Indian reservations,** and unsurveyed lands. The above classification must be made and a record thereof kept upon such maps and plats and entered upon the books of record of the county ,as may be prescribed by the board of equalization.

Section 2026, Revised Codes of Montana, 1935, then provides the basis of classification of all lands. First, agricultural lands; second, irrigated or non-irrigated lands; third, grazing lands; fourth, timber lands and stump lands; fifth, lands bearing stone, coal or valuable deposits; sixth, lands bearing natural gas, petroleum or other mineral deposits; seventh, lands which may be valuable for more than one purpose shall be so classified. All lands shall be classified in accordance with the legal subdivision thereof. The State Boar dof Equalization may provide for such other and additional subdivisions of classification herein enumerated as they may deem proper.

The New Century Dictionary defines agriculture as "the cultivation of lands, as in seeding and raising of crops". Funk & Wagnalls New Stand- Dictionary defines agriculture as "the cultivation of the soil for food products". 2 Corpus Juris, 988, defines the term agriculture as "the art or science of cultivating the soil, especially in fields of large quantities, including the preparation of the soil, planting the seeds, the raising and harvesting of the crops, and the rearing, feeding and management of livestock, tillage and farming."

The Supreme Court of Tennessee, in the case of Simons v. Lovell, 7 Heisk 510-516, states:

> "But in a more common and appropriate sense it is used to signify that species of cultivation which is intended to raise grain and other field crops for man and beast."

In the case of Robinson v. Eberhart, 148 Cal. 495, 83 Pac. 452, the Court construed the phrase "suitable for cultivation" to include all land which by ordinary farming methods is satisfactory for agricultural purposes.

The Supreme Court of Montana in a case of similar nature defined the term as follows:

> "It will be seen that the term 'agricultural lands,' or lands 'agricultural in character,' may be used in a broad or in a restricted sense, depending upon the intention of the legislature in the use of the term, and that the legislative intent expressed in the Act under consideration was that, as the Act was passed for the benefit of those owning lands susceptible of being plowed and seeded, or from which crops may be produced, under section 5 of Chapter 150, the assessing officers should list those lands within their jurisdiction, and only those, of the character indicated. Many tracts of land not now used for the purpose of raising grain are 'susceptible' of being used for such purposes; hay lands and pasture lands, other than those 'valuable only for grazing purposes,' may produce crops."
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> State ex rel. Lyman v. Stewart 58 Mont. 1, 8, 190 Pac. 129

It is to be noted that throughout Chapter 195, Laws of 1939, and in the amendments contained in Chapter 228, Laws of 1947, the legislature has definitely classified the land as "agri-

cultural land" lying within the proposed district. If the legislature had intended that all lands within the district be included they would not have had to make the dsitinction in this act applying only to "agricultural lands" within the district, but could have said "all lands lying within the district" and then made whatever exceptions they might have desired. By taking the common meaning of the words "agricultural lands", the classification set forth in the Constitution and Montana statutes, and the meticulous care that the legislature used in this act and its amendments in only mentioning "agricultural lands" it appears to me, and it is my opinion that the legislature had in mind limiting the lands to be counted on examining the petitions and the written consents thereto, to the owners of agricultural lands only, and by "agricultural lands" they meant those lands which are cultivated or susceptible of being cultivated as defined by our Supreme Court in the case of State ex rel. Lyman v. Stewart, supra.

Therefore, it is my opinion that upon the hearing of such petition, if landowners owning fifty-one per cent (51%) of the agricultural lands as above defined, within the district, have or shall file written consent for the creation of the district at the time of the hearing, the county commissioners shall proceed to hear the said petition, and they shall, by an order duly made and entered on their minutes, after they find that landowners owning fifty-one per cent (51%) of the agricultural land within the district have filed their written consent for the creation of the district, declare the district created, setting forth the name and boundaries of the district and the land contained therein.

The term "agricultural lands" as used in the act means lands being cultivated or those lands which are susceptible of cultivation for the production of food or feed crops.

That lands on Indian Reservations, wherein the United States retains or withholds title, may not be included, either to make up the twenty-five per cent (25%) of petitioners nor the fifty-one per cent (51%) necessary to create the district, and may not be taxed in any manner by the State or its subdivisions.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General