

Opinion No. 138**Taxation—Soil Conservation Districts.**

Held: Neither the State Soil Conservation Committee nor the supervisors of a soil conservation district have the power to levy and assess a soil conservation district.

December 7th, 1950.

Mr. John B. Buttleman, Chairman
State Soil Conservatinn Committee
Box 855
Bozeman, Montana

Dear Mr. Buttleman:

You have submitted a question which is substantially this:

Does the State Soil Conservation Committee or the supervisors of a soil conservation district have the power to levy and assess a soil conservation district?

I assume you mean the words "levy" and "assess" in connection with taxation.

The State Soil Conservation Districts Law embodied in Sections 76-101 to 76-116, inclusive, Revised Codes of Montana, 1947, provides for the establishment and powers of (1) The State Soil Conservation Committee and (2) Supervisors of the various soil conservation districts.

The State Soil Conservation Committee is a State agency which works in cooperation with the various soil conservation districts. A soil conservation district, organized according to law, becomes a governmental subdivision of this state and a body corporate and politic, whose governing body consists of five (5) supervisors.

General law on the subject of taxing powers states:

"Local political subdivisions of a State, such as municipal corporations, counties, towns and townships, school districts, etc., unlike the State itself, have no inherent power of taxation. Their power to tax derives entirely from statutory or constitutional grant delegating to them the power to impose taxes." 51 Am. Jur., Sec. 64, page 92.

Nowhere have I found any mention made of either the committee or the supervisors of a district having the powers to levy, assess or tax a soil conservation district. A rule of interpretation is that the courts are not to add to or detract from a statute.

"The office of the courts is simply to ascertain and declare what is in terms or in substance contained in a statute, and not to **insert** what has been omitted, or to omit what has been inserted." *Siuru v. Sell*, 108 Mont. 438, 91 Pac. (2d) 411, 123 A.L.R. 423. (Emphasis supplied.)

Nowhere in the State Soil Conservation Districts Law are there any provisions for the methods, guides, and procedure for levying and assessing as are found in other sections of the Codes where taxing is authorized. For example Chapter 18, of Title 89, Water and Irrigation, Revised Codes of Montana, 1947, sets forth the powers and provisions of taxation for irrigation districts.

Section 76-115, Revised Codes of Montana, 1947, provided for the disposition of funds under this conservation law. The only funds mentioned in this section are those that are from time to time appropriated out of the State Treasury. Nothing is said about money obtained by taxation.

From paragraph 11 of Section 76-108, Revised Codes of Montana, 1947, which is set out below, it is possible that one might reach the conclusion that the supervisors of a district have the power to assess and levy.

"76-108. Powers of Districts and Supervisors. (11) As a condition to the extending of any benefits under this act to, or the performance of work upon, any lands not owned or controlled by this State or any of its agencies, the supervisors may require contributions in money, services, materials, or otherwise to any operations conferring such benefits, and may require land occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion thereon;"

Although the supervisors may require contributions from the land occupiers as a condition to extending benefits under this act, this statute does not give the supervisors power to levy and assess a tax.

It is my opinion that neither the State Soil Conservation Committee nor the supervisors of a soil conservation district have the power to levy and assess a soil conservation district.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.