

Opinion No. 98.**Grass Conservation Act—Grazing Permit—Administrative Rulings—Appeals.**

HELD: Persons holding grazing permits under the Grass Conservation Act can, under the provisions of Section 46-2308, R. C. M., 1947, as amended, appeal from any adverse ruling within 60 days after the permit is first issued, or within 60 days after the annual reissuance of such permit.

October 8, 1954.

Mr. Mons L. Teigen, Secretary
Grass Conservation Commission
Miles City, Montana

Dear Mr. Teigen:

You have requested my opinion upon the following question:

“May a grazing permit holder under the provisions of the Grass Conservation Act appeal within sixty days an adverse ruling made by a state district in reissuing to him his previously established grazing permit, or must his appeal be filed within sixty days after the permit was originally established?”

Section 46-2308, R. C. M., 1947, as amended, sets forth the procedure for appeals from state district rulings and, as pertinent to your question, provides in part as follows:

“ * * * * *

“Anyone affected by the decision of the state district may take an appeal therefrom to the commission which shall have jurisdiction to hear and decide all such appeals. An appeal from the decision of such district to the commission may be taken by filing written notice of such appeal with the secretary of the commission and by filing a copy of such notice of appeal

with the secretary of said district and by serving a copy of such notice of appeal by registered mail upon the interested parties who have appeared, or their attorneys within sixty (60) days after receiving written notice of the decision of the said district . . .”

In the instant case a grazing permit holder filed a written protest with a state district on April 9, 1953. The state district advised the permit holder of their decision on April 16, 1953, at which time they described his allotted range within that district. On March 5, 1954, the same permit holder asked for additional lands; his request was denied, and on April 15, 1954, his annual grazing permit was issued to him giving him the same range allotment he had had during the previous year. On April 30, 1954, fifteen days later, the permit holder filed written notice of appeal with the Montana Grass Conservation Commission, presumably under the provisions of Section 46-2308, *supra*.

Section 46-2312, R. C. M., 1947, lists the powers of state districts. Subsection 4 of that section provides in part that the state district powers, “. . . shall also include the power to allot range to members or non-members, and to decrease or increase the size of permits if the range carrying capacity changes.” In applying this power, the state districts annually issued grazing permits for the applicable land within the appropriate district. Page five of the Handbook for the Operation of Montana’s Cooperative State Grazing Districts, published in 1953 by the Montana Grass Conservation Commission, provides that, “. . . permits are evidence of grazing privileges granted by the district and are issued each year, usually after the permittee has made satisfactory arrangement for payment of fees.” (Emphasis supplied.)

The provisions of Section 46-2308, *supra*, would be defeated in most cases if permit holders were only allowed to make appeals when permits were originally issued. Section 46-2312, subsection 4, *supra*, anticipates the necessity of making changes in grazing allotments and provides that the state districts may increase or decrease the permits according to range carrying capacity changes. In order to provide

for such changes the state districts re-issue all grazing permits each year. Permit holders can present information which they believe make it necessary to change such permits, prior to the annual reissuance of grazing permits. Under Section 46-2308, *supra*, an appeal can be filed from an adverse ruling. To hold otherwise would defeat the obvious purposes of this provision.

It is, therefore, my opinion that, under the provisions of Section 46-2308, R. C. M., 1947, permit holders can appeal from state district rulings on grazing permits within sixty days after the permit is first issued, or within sixty days after the annual reissuance of such permits.