

supervisors may, under Section 76-107, R.C.M., 1947, call upon the Attorney General for legal services and the Attorney General may, under Sections 82-401 and 16-3101, R.C.M., 1947, direct county attorneys to furnish such assistance. Soil conservation district supervisors can hire private counsel, which counsel can be empowered by the Attorney General to act as special Assistant Attorneys General.

December 15, 1955.

Mr. Don L. Hunter, Secretary
Roosevelt County Soil Conservation
District
Culbertson, Montana

Dear Mr. Hunter:

You have submitted the following question for my attention:

“Must a County Attorney furnish free legal counsel for Soil Conservation Districts?”

In answering this question we must first look at the pertinent provisions of the State Soil Conservation Districts' laws which are found in Title 76, Chapter 1, R.C.M. Section 76-104, R.C.M., 1947, referring to the State Soil Conservation committee provides in part as follows:

“ . . . The committee may call upon the state for such legal services as it may require, or may employ its own counsel and legal staff . . . ”

Section 76-107, R.C.M., 1947, in referring to the supervisors of the various soil conservation districts provides, as applicable, that:

“ . . . The supervisors may call upon the attorney general of the state for such legal services as they may require, or may employ their own counsel and legal staff . . . ”

Article VII, Section 1 of the Constitution of Montana provides in part that the Attorney General shall: “ . . . perform such duties as are prescribed in this constitution and by the laws of the state . . . ” Article VIII, Section 19 of the Montana Constitution, states that the County

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Districts, Legal Counsel for—
Attorney General

HELD: Soil conservation district

Attorneys must: "... perform such duties as may be required by law ..." The duties of the County Attorney are further defined in Section 16-3101, R.C.M., 1947, and sub-sections six and eight of that section state that the County Attorney must: "... perform such duties as may be required by law ..." The duties of the County Attorney are further defined in Section 16-3101, R.C.M., 1947, and sub-sections six and eight of that section state that the County Attorney must:

"(6) Give when required, and without fee, his opinion in writing to the county, district, and township officers, on matters relating to the duties of their respective offices;

(8) When ordered or directed by the attorney general so to do, to promptly institute and diligently prosecute in the proper court, and in the name of the state of Montana, any criminal or civil action or special proceeding, it being hereby declared that the supervisory powers granted to the attorney general by section 82-401(5), include the power to order and direct said county attorneys in all matters pertaining to the duties of their office."

Title 76, Chapter 1, R.C.M., 1947, does not contain specific language concerning the responsibility of a County Attorney to furnish legal services to soil conservation district supervisors. It does, however, specifically state that such supervisors may call upon the Attorney General for legal advice and assistance and under Sections 82-401, sub-section 5, and 16-3101, supra, the Attorney General may direct the County Attorney to assist soil conservation district supervisors.

22 Reports and Official Opinions of the Attorney General 66, No. 28, states that:

"The Board of Supervisors of a soil conservation district has authority to employ legal counsel to represent the district in litigation."

As a practical matter many state boards and commissions employ counsel with the approval of the Attorney General to conduct litigation,

Such action is necessary in view of the ever-increasing tendency of the state legislature to enact provisions stating that the state, the Attorney General, or the County Attorneys are to furnish legal services for a new board or commission without increasing the appropriation to permit hiring additional attorneys to assist in performing this work.

It is therefore my opinion that soil conservation district supervisors may, under Section 76-107, R.C.M., 1947, call upon the Attorney General for legal services and the Attorney General may, under Sections 82-401, R.C.M., 1947, and 16-3101, R.C.M., 1947, direct county attorneys to furnish such assistance. It is further my opinion that soil conservation district supervisors can hire private counsel which counsel can be empowered by the Attorney General to act as Special Assistant Attorneys General.

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