

VOLUME NO. 37

OPINION NO. 76

STATE CONSERVATION DISTRICTS - Legal status; STATE CONSERVATION DISTRICTS - Legal representation; STATE CONSERVATION DISTRICTS - Taxation; STATE CONSERVATION DISTRICTS - Employees, private counsel; ATTORNEY GENERAL - Duty to represent conservation district; ATTORNEY GENERAL - Supervisory powers; COUNTY ATTORNEY - No duty to represent conservation district; TAXATION - Definition of "real property." REVISED CODES OF MONTANA, 1947 - Sections - 16-1301(9), 67-206, 67-207, 76-103(1), 76-104, 76-105(4), 76-105(9), 76-107(5), 76-108(14), 76-108A, 76-208, 82-401(5), 84-101.

- HELD: 1. The Flathead Conservation District is a governmental subdivision of the State of Montana and a public body corporate and politic.
2. Conservation Districts are separate and distinct from any city, town, and county, and as separate legal entities may independently exercise the power granted them by statute.
3. The Attorney General is responsible for their civil legal representation upon request from the supervisors of such District, but the supervisors may instead hire private counsel and such counsel may be empowered to act as Special Assistant Attorneys General. Should the supervisors hire private counsel, they may determine their compensation and such compensation is an obligation of the district. County attorneys' duty to represent conservation districts extends only to giving

their opinion in writing to the officers of the district on matters pertaining to their offices.

4. "Real property" as used in R.C.M. 1947, section 76-208 means both real estate and improvements as those terms are defined in R.C.M. 1947, section 84-101.

14 October 1977

Patrick M. Springer, Esq.  
Flathead County Attorney  
Flathead County Courthouse  
Kalispell, Montana 59901

Dear Mr. Springer:

You have requested my opinion on the following questions, all of which relate to the Flathead Conservation District:

1. What is the legal existence of the Flathead Conservation District?
2. What is the relationship of the District to the state, county, and other governmental entities?
3. Who is responsible for legal representation of the District, excluding criminal prosecution?
4. What is the definition of "real property" as used in section 76-208, R.C.M. 1947?

Your first two questions are closely related since the district's legal status determines its relationship to other state governmental entities. The Flathead Conservation District is a "governmental subdivision of this state, and a public body corporate and politic...", section 76-103(1), R.C.M. 1947 "exercising public powers...." Section 76-108A, R.C.M. 1947. A conservation district attains this status upon compliance with various provisions of the State Conservation District Law (located at section 76-101 to 117, R.C.M. 1947; see especially section 76-105(9)).

Conservation districts are "separate and distinct from any city, town or county and...may overlap county boundaries." 37 OP. ATT'Y GEN. NO. 20 (1977). The Districts, as subdivisions of the state, are creatures of the Legislature with no inherent or common law powers. As such, they have

only those powers expressly conferred by statute or by necessary implication from express statutory grants. 36 OP. ATT'Y GEN. NO. 97 (1976).

The responsibility for their civil legal representation is determined by statute. Section 76-107(5), R.C.M. 1947 provides that the supervisors of a conservation district "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."

The application of this section was discussed in 26 OP. ATT'Y GEN. NO. 43 (1955). The Attorney General determined that the supervisors "may call upon the Attorney General for legal services and the Attorney General may...direct county attorneys to furnish such assistance." Id. He also determined that the supervisors could hire private counsel and that he, as Attorney General, could empower such counsel to act as Special Assistant Attorneys General. Id. The Attorney General also cited section 16-3101(6), R.C.M. 1947, which provides that a county attorney must "[g]ive when required, and without fee, his opinion in writing to the... district... officers, on matters relating to the duties of their... offices." Id. The power to direct county attorneys to furnish legal assistance is justified in the opinion by section 16-3101(9) and 82-401(5), R.C.M. 1947, pertaining to the Attorney General's supervisory powers. Id.

I reaffirm the opinion except to the extent it relates to my supervisory powers. I believe that such powers were interpreted overbroadly in the opinion. Section 16-3101(8), R.C.M. 1947 provides that the Attorney General may direct a county attorney to bring an action in the name of the state. Conservation districts are separate and distinct legal entities and may sue and be sued in their own name. Section 76-108(10), R.C.M. 1947. Also, section 16-3101(9), R.C.M. 1947 relates to the Attorney General's power to "order and direct...county attorneys in all matters pertaining to the duties of their office." Section 82-401(5), R.C.M. 1947 likewise defines the supervisory power in terms of the duties of the office of county attorney. The duty to represent the conservation districts is placed upon the office of Attorney General by section 76-107(5), not upon the office of county attorney. Therefore, a county attorney's duty to represent conservation districts extends only to giving his opinion in writing to the district officers on matters relating to their offices as provided in section 16-3101(6), R.C.M. 1947. A county attorney has no

other statutory obligation to represent the district in civil matters and will not be ordered to do so under my supervisory powers. This is not to say that a county attorney or other public agency or attorney may not, in their discretion, represent a district. The district may request and such agency or attorney may provide such services unless prohibited by law.

If the supervisors hire private counsel, they may determine their compensation and such compensation is an obligation of the district. See section 76-106(5).

You request the definition of "real property" for tax purposes in order to establish the proper tax base for funding the District. Section 76-108(14), R.C.M. 1947, empowers the supervisors "[t]o cause taxes to be levied in the same manner provided for in Title 76, chapter 2, R.C.M. 1947, for the purpose of paying any obligation of the district...." Section 76-108, R.C.M. 1947 provides for a regular annual assessment "not to exceed one and one-half (1½) mills on the dollar of the total taxable valuation of real property within the district...(such) valuation... determined according to the last assessment roll" (emphasis added).

"Real property" is not defined in either chapter 1 or 2 of Title 76. Section 84-101, R.C.M. 1947, a tax statute of general application, uses the terms "real estate" and "improvements." Resolution of your question therefore involves determining whether "real property" encompasses both real estate and improvements as those terms are used in assessing property and levying taxes.

In determining the intention of the Legislature, "[a] primary rule of statutory construction is that the Legislature must be assumed to have meant precisely what the words of the law, as commonly understood, import." Northern Pacific Railway v. Sanders County, 66 Mont. 608, 614, 214 P. 596, 599 (1923). Historically, "real property" has meant all but "personal property," and this distinction is made by section 67-206, R.C.M. 1947. Section 67-207, R.C.M. 1947 specifically defines real property:

Real or immovable property consists of:

1. Land;
2. That which is affixed to land;
3. That which is incidental or appurtenant to land;
4. That which is immovable by law.

Therefore, real property, by common legal definition, includes both real estate or land and improvements as defined by section 84-101, R.C.M. 1947.

Both the Departments of Natural Resources and Conservation and Revenue concur in interpreting "real property" to include both real estate and improvements. The Department of Natural Resources assists the supervisors in carrying out projects instituted under the State Conservation District Law. Section 76-104, R.C.M. 1947. The Board of Natural Resources is responsible for determining that proposed programs are administratively practicable and feasible. Section 76-105(4), R.C.M. 1947. In making this determination the board has interpreted "real property" to mean, and advises district petitioners, that the tax levy will be made on both real estate and improvements. The Department of Revenue has made a similar determination. Such agency determinations are entitled to weight in construing ambiguous statutes. See In re. Fligman's Estate, 113 Mont. 505, 129 P.2d 627 (1942).

THEREFORE, IT IS MY OPINION THAT:

1. The Flathead Conservation District is a governmental subdivision of the State of Montana and a public body corporate and politic.
2. Conservation Districts are separate and distinct from any city, town, and county, and as separate legal entities may independently exercise the power granted them by statute.
3. The Attorney General is responsible for their civil legal representation upon request from the supervisors of such District, but the supervisors may instead hire private counsel and such counsel may be empowered to act as Special Assistant Attorneys General. Should the supervisors hire private counsel, they may determine their compensation and such compensation is an obligation of the district. County attorneys' statutory duty to represent conservation districts extends only to giving their opinion in writing to the officers of the districts on matters pertaining to their officers.

4. "Real property" as used in section 76-208, R.C.M. 1947, means both real estate and improvements as those terms are defined in section 84-101, R.C.M. 1947.

Very truly yours,

MIKE GREELY  
Attorney General