

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 127

AGRICULTURE - Grazing districts;
GRAZING DISTRICTS - Membership;
NATURAL RESOURCES AND CONSERVATION, DEPARTMENT OF -
Grazing districts;
SOIL AND WATER CONSERVATION - Grazing districts;
MONTANA CODE ANNOTATED - Sections 76-16-103, 76-16-201
to 76-16-204, 76-16-207 to 76-16-209, 76-16-302,
76-16-304, 76-16-320, 76-16-322, 76-16-323, 76-16-411.

- HELD: 1. A member of a grazing district is no longer eligible and must withdraw from membership in the district if he ceases to be engaged in the livestock business or no longer owns or leases forage-producing land. The rights and interest involved should be determined by the directors of the state district with the approval of the Department of Natural Resources and Conservation.
2. A member of a grazing district may withdraw from membership in the district if the district's articles of incorporation or by-laws provide conditions and procedures for voluntary withdrawal.
3. If a member of a district continues to be engaged in the livestock business and owns or leases forage-producing land, and the district's articles of incorporation and by-laws do not provide for voluntary withdrawal,

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a member may not unilaterally withdraw from the district.

13 December 1988

Larry Fasbender, Director
Department of Natural Resources
and Conservation
1520 East Sixth Avenue
Helena MT 59620

Dear Mr. Fasbender:

You have requested my opinion regarding the following questions:

1. May an individual withdraw from a grazing district?
2. If an individual may withdraw, what is the proper procedure for doing so?
3. If a permittee member may withdraw, would that be considered a loss of preference entitling the ex-member to his proportionate share of excess reserves and assets of the district pursuant to section 76-16-414(2), MCA?
4. If a permittee member may withdraw, do the leases of private and public land revert to the district that has handled the leases and in whose name they are held, or would they revert to the individual who owns the dependent property?

Grazing districts are governed by the Grass Conservation Act (Act), Tit. 76, ch. 16, pts. 1 to 4, MCA. Establishment of the districts is provided for in sections 76-16-201 to 208, MCA.

Three or more persons may propose creation of a state district by submitting a written statement and plat showing the proposed boundaries of the district to the Department of Natural Resources and Conservation (Department). § 76-16-201(1), MCA. Those persons making the proposal must own or control commensurate property, i.e., property which is not "range" as defined in the Act, and they must be livestock operators within the area proposed to be created into a district.

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§§ 76-16-103(4), 76-16-201(1), MCA. After receiving the statement and plat and any additional information, the Department conducts a hearing concerning creation of the grazing district. §§ 76-16-201(3), 76-16-202, MCA. The record of the hearing and a report prepared by the Department are then submitted to the Board of Natural Resources and Conservation (Board). § 76-16-202(2), MCA. If those who own or control over 50 percent of the lands to be included in the district approve formation of the district, the Board may issue a certificate of approval. § 76-16-203, MCA.

Upon issuance of that certificate, three or more qualified persons may prepare and file articles of incorporation, along with the certificate of approval, with the office of the Secretary of State. § 76-16-204(1), MCA. The articles of incorporation must include, among other things, the membership fee to be charged for each member, and the names and residences of the persons who subscribe, together with a statement that each owns or controls commensurate property and is a livestock operator within the proposed district. § 76-16-204(2)(c), (e), MCA.

When organized, a district must file with the county clerk and recorder of each county in which its lands lie a map or plat of the external boundaries of the district and a copy of its articles of incorporation. § 76-16-207, MCA. Within 60 days after its incorporation, the district must adopt by-laws approved by the Department. § 76-16-208, MCA.

The articles of incorporation, by-laws, and boundaries of a grazing district may be amended. §§ 76-16-206(1), 76-16-208, 76-16-209, MCA.

Nothing in the statutes requires all eligible persons to join when a grazing district is established. In fact, the statutes recognize that nonmembers may own or control land within the external boundaries of the district. See §§ 76-16-320, 76-16-322, 76-16-323, 76-16-411, MCA. See also McKee v. Clark, 115 Mont. 438, 144 P.2d 1000 (1944) (plaintiff owned land within external boundaries of state grazing district but was neither a member nor a permittee of district).

However, pursuant to section 76-16-108(2), MCA, "any person who chooses to become a member of any state district is bound by all the provisions of [chapter 16] and is limited to the statutory remedies therein contained." (Emphasis added.) The statutes, by-laws and articles of incorporation, and the application to be a member constitute a contract between the member and

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the corporation. Appeal of Two Crow Ranch, 159 Mont. 16, 23, 494 P.2d 915, 919 (1972). Likewise, the right of a member to withdraw from an agricultural cooperative is generally regulated by statutory or charter provisions, the by-laws of the cooperative, and the contracts with members. 3 C.J.S. Agriculture § 154 at 720 (1973). Thus, a member may withdraw only in circumstances contemplated by the statutes, the articles of incorporation, or the by-laws of the grazing district.

Membership in a state grazing district is statutorily limited to persons, or agents of persons, who meet two conditions: (1) they are engaged in the livestock business, and (2) they own or lease forage-producing lands within or near the district. § 76-16-302, MCA. Conversely, if a person ceases to be engaged in the livestock business or no longer owns or leases forage-producing land, he is no longer eligible to be a member. The rules of statutory construction dictate that legislation be read as a whole to ascertain legislative intent. State v. Magnuson, 210 Mont. 401, 408, 682 P.2d 1365, 1369 (1984). Pursuant to section 76-16-304, MCA, when a member disposes of a part of the lands or leases owned by him so that another person becomes the owner of the lands or leases and acquires the right to membership, then the rights and interests involved are determined by the directors of the state district with the approval of the Department. It follows that the same type of determination of the rights and interests involved should be made by the directors and the Department if a member becomes ineligible for membership by ceasing business or transferring his land or leases. I conclude that an individual must withdraw from a grazing district if he is no longer eligible for membership. The directors of the district should then determine the rights and interests involved with the Department's approval.

As I noted above, a member may generally withdraw from a grazing district in circumstances contemplated by the statutes, the articles of incorporation, or the by-laws. The Act gives the districts broad authority to adopt and amend their articles of incorporation and by-laws with the Department's approval. I conclude that a withdrawal procedure may be provided for in the articles of incorporation or the by-laws of the district.

Therefore, it is my opinion that a member may withdraw from a grazing district if the articles of incorporation or by-laws or amendments thereto allow such a withdrawal. Absent a circumstance where a member becomes ineligible for membership, or the articles of

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incorporation or by-laws provide for withdrawal, a member may not unilaterally withdraw from a district.

It is inappropriate for me to answer your remaining questions concerning the specific procedure and ramifications of a member's withdrawal because they would depend on the circumstances of the withdrawal, the provisions of the articles of incorporation and the by-laws, the terms of the leases at issue, and the discretion exercised by the Department.

THEREFORE, IT IS MY OPINION:

1. A member of a grazing district is no longer eligible and must withdraw from membership in the district if he ceases to be engaged in the livestock business or no longer owns or leases forage-producing land. The rights and interest involved should be determined by the directors of the state district with the approval of the Department of Natural Resources and Conservation.
2. A member of a grazing district may withdraw from membership in the district if the district's articles of incorporation or by-laws provide conditions and procedures for voluntary withdrawal.
3. If a member of a district continues to be engaged in the livestock business and owns or leases forage-producing land, and the district's articles of incorporation and by-laws do not provide for voluntary withdrawal, a member may not unilaterally withdraw from the district.

Very truly yours,

MIKE GREELY
Attorney General