

Opinion No. 56-6373

January 27, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Robert L. Guice, Administrative Officer, State Soil Conservation, Committee of New Mexico, P. O. Box 786, State College, New Mexico

We have your letter of December 17, 1955, in which you request an opinion from this office concerning the construction of § 45-5-6(e), N.M.S.A., 1953 Compilation, Pocket Supplement. This particular section reads as follows:

"(e) The committee shall publish the result of such referendum and shall thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the committee shall determine that the operation of such district is not administratively practicable and feasible, it shall record such determination and deny the petition. If the committee shall determine that the operation of such district is administratively practicable and feasible, it shall record such determination and shall proceed with the organization of the district in the manner hereinafter provided. In making such determination the committee shall give due regard and weight to the attitudes of the owners of lands lying within the defined boundaries, the number of landowners eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the landowners of the proposed district, the probable expense of carrying on erosion-control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative determinations set forth in section 2 (45-5-2) of this act; Provided, however, that the committee shall not have authority to determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible unless at least two-thirds of the votes cast in the referendum upon the proposition of creation of the district shall have been cast in favor of the creation of such district."

The first question relates to the meaning of "publish" as used in subsection (e). We are of the opinion that the Legislature intended by the use of the word "publish" in this particular section that the Committee was to put a notice in a newspaper having general circulation within the proposed district, if such newspaper was available. In case the newspaper was not available the Committee should post notices in conspicuous places throughout the district showing the result of said election.

You next ask what is the relationship, if any, between the word "publish" and the term "due notice." We note that the term "due notice" is used in § 45-5-6 (b) and (c) and in each case has reference to the giving of information as to a proposed course of action so that interested parties may be informed and take appropriate action. Neither of these sections provide as to the method by which due notice is to be given. However, section

(d) does require that the Committee shall pay the expenses of issuing such notices. Generally, "publish" has to do with the method by which notice is given and usually the requirement is that due notice be given by publication in a newspaper having general circulation in the area in which the proposed action is to be taken, and if such newspaper be not available, then by posting notices in conspicuous places so that each person interested at least has an opportunity to receive notice of the proposed action.

Your third question asks whether or not it would be possible to include one third of the voters who voted against the creation of such District or an addition thereto within such District? We are of the opinion under section (e) above quoted that the only course of action open to the Committee is either to reject the proposed District as being not administratively practical or feasible or if it is practical or feasible to create the same. The Committee is not authorized to make a division of the proposed District on the basis of the vote cast for or against said District.

Trusting we have answered your question, we remain

By: Paul L. Billhymer

Assistant Attorney General