

Opinion No. 57-116

May 31, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Fred M. Calkins, Jr.,
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TO: Mr. R. L. Guice, Administrative Officer, Soil Conservation Committee of New
Mexico, P. O. Box 786, State College, New Mexico

QUESTIONS

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Chapter 210 of the 1957 Sessions Laws of New Mexico provides for the creation of watershed districts. In implementing this Act, the following questions have arisen:

1. Is a person owning a residence in a city or town within the watershed district eligible to be a director of the district?
2. Section 12(e) of Chapter 210, supra, provides for the nomination and election of directors. What happens if more candidates are nominated than there are positions available; and can an election be held, if so, what kind?
3. Must a levy to be assessed, as provided by section 16 of Chapter 210, be uniform over the entire watershed district?

CONCLUSIONS

1. Yes
2. An election should be held. For procedures see opinion.
3. Yes.

OPINION

ANALYSIS

A careful reading of the above Act does not clearly indicate that the creation of watersheds is for the exclusive use of agricultural land owners, and does not specifically exclude incorporated cities or towns within the watershed district. Section 5 of the Act, in describing the area to be contained within the watershed district, states:

"The land area embraced in districts must be contiguous and must lie within a well-defined watersheded area or subwatershed areas. The districts may embrace lands

lying in one or more soil conservation districts, or lands lying partly within and partly outside a soil conservation district."

The Act further provides that land owners within a proposed watershed district shall be entitled to signed petitions, and to vote for the directors who will control the operation of the watershed. The Act has as its purpose the conservation, development, utilization, flood prevention, and disposal of water to protect New Mexico's land and water resources. It is the opinion of this office that people residing in cities or towns could certainly be effected by any program instituted, and that any regulations which would relate thereto should represent the interests of all land owners who own property within the district.

In answer to question 2, Section 12 (e) provides for the nomination and election of directors. This Section provides in part:

"If the candidates nominated do not exceed the positions available, they shall be declared elected."

The above section, however, does not provide for the possibility that more candidates could be nominated than there are positions available. Under the Act the Board of Supervisors of the Soil Conservation District (or districts) involved has the authority to cause an election to be held for the election of a board of directors of the watershed district. It is our opinion that the above Board of Supervisors must comply with the procedure set up by the Act in all cases where there is a specific provision which can be followed. In cases where there is no procedure specifically stated, we believe that the board may adopt and make any necessary regulations regarding elections necessary to effectively implement the Act. In the instant case we believe the obvious solution would be an election.

Assuming that nominations for the above election should result in more candidates than positions available, a run-off should be held to elect the necessary number of directors. Due notice should be given prior to the election, and the election could be held by the means of a written ballot by mail, or by the selection of polling places within the district for the casting of election ballots, or by calling a meeting in the form of a general assembly and an election being conducted at that time. It is our feeling that the Board of Supervisors should be allowed to determine the most expeditious manner in bringing about the election.

In answer to question 3, Section 16 provides that after the Board of Directors have prepared an itemized budget they shall issue an order or resolution directing a levy or assessment sufficient to meet such budget. The Act does not provide for anything other than a uniform assessment, and states that the assessment shall be levied against all real property within the district. Inasmuch as no authority is contained within the Act for assessing at different rates, depending on the location of the property involved, we feel that the assessment must be uniform, and not based on benefits received from the works of improvement.