

Opinion No. 66-48

April 18, 1966

BY: OPINION OF BOSTON E. WITT, Attorney General George Richard Schmitt,
Assistant Attorney General

TO: New Mexico Contractors' License Board, Att'n: Mr. David McNeill, Registrar, P. O.
Box 580, Santa Fe, New Mexico

QUESTION

FACTS

Soil Conservation Districts throughout the State purchase machinery and equipment in order to do excavations, build earthen dams, as well as land leveling, ditching, trenching and fencing. It has come to the attention of the Contractor's License Board that certain of these Districts have bid and performed the jobs above mentioned for private individuals who have not joined the district. The bids for these jobs are made in competition with duly licensed New Mexico contractors, often at a lesser price because of lack of overhead expense and tax exempt status.

QUESTION

Under the facts as outlined above, is a Soil Conservation District required to obtain a contractor's license in order to bid and perform work which is included in the classifications covered by the rules and regulations of the Contractors' License Board?

CONCLUSION

No.

OPINION

{*57} ANALYSIS

The Soil and Water Conservation District Act was passed in 1965, and is contained in Sections 45-5-42 through 45-5-64, N.M.S.A., 1953 Compilation (P.S.). Section 45-5-44 (A) expressly defines a soil and water conservation district as a "governmental {*58} subdivision of the State, a public body corporate and politic". Further, Section 45-5-50 of the Act provides that from the time the Secretary of State issues a Certificate of Organization to the District "the district shall be an agency and subdivision of the state".

Under Section 67-16-3, of the Contractors' License Law, N.M.S.A., 1953 Compilation, as amended, an agency or political subdivision of the State is not required to have a contractor's license for any classification as set forth in the rules and regulations of the

Contractors' License Law. Section 67-16-3, supra, confines the necessity for securing licenses to "any person, firm, co-partnership, corporation, association, or other organization, or any combination thereof". Neither the State, its agencies or political subdivisions are mentioned in this list of business entities. Furthermore, the State could not be included in any of the business entities set forth in Section 67-16-3, supra, because the State is a body politic and not an association, society or corporation within the meaning of the Contractors' License Law. (See State v. Taylor, 7 S.D. 533, 64 N.W. 548, 550.)

A water or soil conservation district located anywhere in the State may undertake any type of construction work which is authorized under the Soil and Water Conservation District Act, supra. In this connection, we invite your attention to Section 45-5-59, which sets forth the general powers of the District, and in particular to Paragraphs 'E' and 'J' of this Section which authorize a District to

"E. Make available to district landowners, on such terms as the supervisors may prescribe, tools, machinery, equipment, fertilizer, seeds and other materials to assist the landowners in initiating and developing natural resource conservation and development projects;

"J. Construct, improve, operate or maintain physical projects and structures necessary or convenient for the performance of any authorized district function."

In closing, we also note that the benefits of the District are available to all the owners of land located within the District. As we view the Act, a landowner does not join a district. A soil or water conservation district is created by a petition of twenty-five (25) landowners in a specific geographical area, within the exterior boundaries of a proposed district, under the conditions set forth in Sections 45-5-48 and 45-5-49. All owners of land lying within the proposed district are eligible to vote and upon a majority of votes cast in a referendum, the district is formed and receives a certificate of organization pursuant to Section 45-5-50, supra. Therefore, the benefits of the district are available to all the owners of land located within the boundaries of the district, whether such owners have joined said district or not.

Thus, under the analysis above, the Contractor's License Board has no authority to license a Water or Soil Conservation District in New Mexico.

Finally, this Office expressly notes that it is aware of the Savings Clause, Section 25 of Ch. 137, **Laws 1965** of the Soil and Water Conservation District Act. The clause provides, in applicable part, that the Act "shall not change, modify, repeal or impinge upon any other legislative enactment unless specifically by the Act provided". We do not believe the Savings Clause affects our opinion in any manner. Since the Contractors' License Board has no power to license a State agency, in the first place, there obviously is no change or impairment in the Contractors' License law by virtue of the Soil and Water Conservation District Act of 1965.

As the facts so clearly establish, this opinion does not resolve the problem of what might be considered unfair competition which a State agency has over a private contractor bidding on the same job. However, as has been said countless times by courts throughout the land, this problem is one that must be solved by the Legislature.