

Opinion No. 67-09

January 19, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Bud F. A. Svalberg Executive Secretary State Soil Conservation Committee of New Mexico P. O. Box 786 University Park, New Mexico 88070

QUESTION

QUESTIONS

1. Under the provisions of Section 45-5-19, N.M.S.A., 1953 Compilation (P.S.) (Watershed District Act), what supervisory powers would be exercised by the board of supervisors?
2. Under the provisions of the same Act what approvals of the board of supervisors are required and how are they exercised?
3. What would be the effect on existing watershed districts of a repeal of the Watershed District Act with an assignment of watershed district functions, duties and powers to one or more soil and water conservation districts within which the watershed districts are located?

CONCLUSIONS

1. See analysis.
2. See analysis.
3. See analysis.

OPINION

{*13} ANALYSIS

The legislature provided for watershed districts in 1957 in order to secure Federal assistance under Public Law 566 of the 83rd Congress and Acts amendatory thereto. Watershed districts are geographical divisions of one or more soil conservation districts in the watershed area. The watershed area must be contiguous and within a well-defined watershed area or subwatershed area. It may be wholly or partly within one or more soil conservation districts. It has its own board of directors. But the directors of the soil conservation district, or districts if it be wholly or partly in more than one soil conservation district, serve as a board of supervisors of such district. The board of supervisors has the initial duty of handling the formation of such watershed district

including a determination of the area to be included; the desirability of formation of the district; and holding of hearings in connection therewith. It also has the duty to conduct the referendum election, certify the results, if favorable, and cause the election of directors of the district to be held. After formation of such district and the election of the board of directors, the board or boards of the concerned soil conservation districts act in a supervisory capacity. Section 45-5-30 N.M.S.A., 1953 Compilation (P.S.) reads in part as follows:

". . . . This board of directors shall, **under the supervision of the board of supervisors**, be the governing body of the watershed district." (Emphasis added.)

Additionally, it continues to supervise elections for members of the board of directors, Opinion No. 57-116, Report of the Attorney General, 1957-58 and No. 63-161, Report of the Attorney General 1963-64, and must approve certain acts of the board of special directors.

The term "supervise" is defined in **Black's Law Dictionary**, 3rd Ed., as follows:

"To oversee, to superintend; to inspect with authority."

This authority would give to the board of supervisors the duty of overseeing all of the operations of the board of directors. This would not necessarily authorize the board of supervisors to determine or propose policy, except as to the legality of proposed policy, or require it to inspect the multitudinous details of operation of the directors or their employees and agents save as to legality. For example, the board of supervisors would have the duty to ascertain that a member of the board of directors was a land owner of the district in which he sought election; that proper bond issue elections, where authorized, are conducted; that money of the district is spent for legal purposes with proper authorization; and that proper assessment procedures are followed.

Your second question is concerned with approvals required of the board of supervisors under Section 45-5-31, N.M.S.A., 1953 Compilation (P.S.)

The approval of the board of supervisors is an affirmative act and not a negative act such as a veto. Its approval must be obtained as a condition precedent to the validity of any of the enumerated acts. It is preferable that the approval be contained in writing in the records of the board of directors, but not essential if the minutes **of the board of supervisors**, as approved, disclose such **prior**, affirmative action.

Your third and fourth questions will be answered jointly. Public Law 566 of the 83rd Congress as amended in 1965 does not require a special watershed district to be {*14} created, but a soil conservation district is authorized to act thereunder to the same extent as is a watershed district. A repeal of the Watershed District Act would not affect Federal participation in projects under the Federal Act. This is particularly true because the original act providing for soil conservation districts was amended in 1965 to make

them soil and **water conservation** districts and to give such districts all of the powers and duties of a water conservation district.

In view of this, it is improbable that any new water conservation districts will be formed since the directors of the soil and water conservation district or districts involved must find that it is in the interest of the public health, safety and welfare for such a district to be created.

Any repeal of the Watershed District Act should provide for a transfer of assets of existing districts and an assumption of its obligations by a successor, such as the soil and watershed district or districts involved. Assessments levied for the purpose of paying said obligations would have to be continued until the obligations were paid.

By: James V. Noble

Assistant Attorney General