

Opinion No. [30-29]

May 23, 1930

BY: M. A. OTERO, JR., Attorney General

TO: Ruth L. Aber, County Clerk, Tucumcari, New Mexico.

HERD LAW DISTRICT

OPINION

Receipt of yours of the 21st inst. is hereby acknowledged. In your letter you advise that petitions for the dissolution of two Herd Law Districts have been filed with the County Commissioners and notices of hearing on such petitions have been published, the date set for the hearing being June 2, 1930.

You submit several questions to be answered.

1. "Is it possible for the Board to pass a Resolution calling for the dissolution of a Herd Law District, when said District was voted a Herd Law, or will an election for that purpose be necessary?"

You state also that these Herd Law Districts were voted in during 1910 and 1911.

I do not quite understand the statement last made that these districts were voted in in the years designated since the act providing for the Herd Law Districts was not passed until 1923, being chapter 68 of the Session Laws of that year, now sections 4-401, 4-412, inclusive, Codification of 1929. This was new legislation and not an amendment of any thing preceding and it makes no provision for an election in the formation of a district.

The requirements for the forming of a district and the procedure are set forth in section 4-402, which I shall not quote here at length, it being available to you in the Codification. You will note, however, that whenever persons who own or hold, under lease or contract of purchase, a majority of the acres, etc., shall file with the Board of County Commissioners a petition in writing signed and acknowledged as deeds of conveyance of real estate are required to be signed and acknowledged and which petitions accurately define the tracts of land to be included in the districts, it becomes the duty of the Board of County Commissioners to set a day for a hearing on the petition and to publish notice of such setting.

"At the time and place fixed for said hearing, said Board of County Commissioners shall hear said petition and if it finds the same is duly signed and acknowledged as herein provided by persons who are owners, lessees, or contract purchase holders . . . it (the

Board of Commissioners) shall enter an order declaring that all of said tracts of lands embraced in said proposed district . . . shall be a Herd Law District."

You will note that the duty of the Board of Commissioners and the purpose of the hearing is simply to ascertain the sufficiency of the petition as to the accuracy of description, the sufficiency of the signing and acknowledgment and the right of the petitioners to sign, that is as to whether or not they are the persons who own or hold under lease or contract of purchase. It apparently was the intent of the legislature that persons who were entitled to the occupancy and use of the lands whether they were absolute owners or merely lease holders, or in possession under a contract of purchase, might decide for themselves whether or not they desired such lands to be within a Herd Law District. The hearing was to furnish opportunity for those who might oppose to show that these signers were not qualified to speak for the lands or that the petition is insufficient otherwise. Having ascertained the legality of the petition and the signing as well as the qualification of signers to be within the requirements of the statute, the commission has no discretion other than to declare the lands described a Herd Law District.

Section 4-407 provides for the dissolution of a district. The dissolution is affected in the same way as that provided for the formation of the district, that is, upon petition, notice and hearing and findings by the County Commissioners as in the case of a petition for the formation of the district. That is, if the commissioners upon a hearing and opportunity for objections shall find that those who have signed the petition were qualified to sign as owners or occupants under lease or contract of purchase, that they represent a majority of the acres within the district and that the petition is regular in other respects, there is nothing more for the board to do than to enter an order dissolving such district.

You speak of protest petitions being filed. As already explained, any objections to be considered by the Board of Commissioners must go to the sufficiency of the petition or of the signing or acknowledgment or the right of a petitioner to sign, as well as to the number of acres represented.

You say also that the minority land owners hold a majority of the acreage, etc. and ask what effect that will have. It appears that this question has already been answered in what precedes since it is the majority of acreage which controls. You ask also this, "In a few cases parties have signed both petitions, will this invalidate the petitioners?" I take it by this you mean that some parties have signed the petition for the dissolution and later have signed a protest. In such case I believe the Board of County Commissioners should disregard the protest of such double signer and consider the petition on its merits and as to the points hereinbefore mentioned.

You ask this question also, "If both the owner and lessor sign, but on different petitions, which has preference?" I assume by this you really meant to ask concerning a case in which the owner and **lessee** sign. If an owner has put another in possession under a

lease, the one in possession and entitled to the use and control of the land at the time is the one and only one qualified to sign a petition.

Of course, from the foregoing it is apparent that no election is provided for and none can be held. The Board of County Commissioners at the hearing will determine as to the sufficiency of the petition in all respects and desolve or refuse to desolve the district in keeping with such finding.