

Opinion No. 32-502

August 19, 1932

BY: E. K. Neumann, Attorney General

TO: Mr. Surry Roberts, County Clerk, Clayton, New Mexico.

{*174} We have received your letter of August 17th, in which you make certain inquiries in regard to the formation of a Herd Law District under Chapter 4 of the 1929 Compilation.

Your first question is "who has the right to place this land in the Herd Law District and can the land owners put their land in such district if such land is leased to other parties and against the will of the lessees?"

By referring to Section 4-402, we find that the law prescribes that those signing the petition for the formation of such district shall be "persons who own or hold under lease or contract of purchase a majority of the acres of continuous tracts of land aggregate not less than 3,840 acres;" also, in other parts of the same section and in other sections of this chapter, we find reference to owners, lessees and contract holders.

In our opinion, the proper construction of the words "owners, lessees and contract holders," as used in this Act, would be those owners, lessees and contract holders who have the present right to possession of the lands. In other words, a lessee with the present right to possession would have the control of the property and it would be his prerogative to sign such petition rather than the person who actually was the owner and had the title to such property, and we seriously doubt if the owners of leased property would have the right to petition for inclusion in a Herd Law District without the will and consent of their lessees.

You also mention another instance wherein a Herd Law District has already been formed and a petition has been presented which does not contain the amount of acreage as specified by law, said petition, we gather from your letter, asking annexation to such previously formed district.

As we construe the law, the district in the first instance must be formed of contiguous tracts of land which aggregate not less than 3,840 acres. If the district, as formed, contains this amount of acreage apparently, under the act, smaller contiguous tracts may be included therein upon proper petition to the Board of County Commissioners and signed by the proper parties, as outlined hereinabove.

You also wish our interpretation of the words "majority of the acres of contiguous tracts of land," and you desire particularly our interpretation of the word "contiguous." We have made an examination of definitions in the various dictionaries and have also examined certain legal interpretations which we have found in Words and Phrases, and it is

commonly held in these authorities that the word "contiguous" means to touch and if there is any separation of the lands by intervening parts or parcels of land then the property would not be contiguous, under the meaning of the law.

Trusting the foregoing will sufficiently advise you upon the matters at hand, I am