

Opinion No. 42-4176

October 26, 1942

BY: EDWARD P. CHASE, Attorney General

TO: Mr. J. V. Taylor State Conservationist U. S. Department of Agriculture Box 1354
Albuquerque, New Mexico

{*270} We have your letter of October 7, 1942. You have submitted the following two questions to us and request an opinion concerning same:

"The first question raised on this subsection is whether the State Committee has the power to deny a petition for the organization of a soil conservation districts (if petition in in proper form) or is obliged to proceed with the holding of hearings."

"The next question raised was if the hearings indicate the desirability and necessity of the creation of a district, is the Committee obliged to proceed with the referendum."

In answer to the first question, Section 5, Subsection (b), Chapter 219, Session Laws of 1937, provides that after a petition has been filed, it shall cause due notice to be given of a proposed hearing upon the question of the desirability and necessity of the creation of such district, etc.

In view of this section, a hearing {*271} must be held.

As to the further question whether, under certain conditions, you must proceed with a referendum, I submit the following: You must determine whether or not there is a need for such district and in doing so, it is proper for you to consider the funds at your disposal to carry out the various functions of this Act. If the funds are insufficient to perform the functions of other organized acts and at the same time to organize new districts, you would be justified in finding that the need is not sufficient to make a finding in favor of the formation of such a district. This question is up to the discretion of the Board and you should only order a district formed when, in your judgment, it is the proper thing to do in considering all questions that are connected with the formation of a district. If you do find that a district should be formed under this subsection, you must proceed with a referendum.

By HARRY L. BIGBEE,

Asst. Atty. General