

Opinion No. 54-6047

December 3, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. L. C. Brown Administrative Officer State Soil Conservation Committee of New Mexico Post Office Box 786 State College, New Mexico

{*518} We are in receipt of your recent letter, in which you enclosed a copy of Public Law 566, passed by the 83rd Congress, known as the "Watershed Protection and Flood Prevention Act."

You request the opinion of this office upon three questions relating to that Act.

First, does a Soil Conservation District organized under the New Mexico Soil Conservation District Law qualify as a "local organization" under the above Act?

{*519} The Act defines "local organization" as "any State, political subdivision thereof, soil or water conservation district, flood prevention or control district, or combinations thereof, or any other agency having authority under State law to carry out, maintain and operate the work of improvement."

The definitions of Soil Conservation Districts contained in § 48-508, N.M.S.A., 1941, appear to meet all of the requirements for a "local organization" set forth in Public Law 566. That provision of our statutes provides, in part:

"A soil conservation district organized under the provisions of this act shall constitute a governmental subdivision of this state, and a public body corporate and politic, exercising public powers, and such district, and the supervisors thereof, shall have the following powers, in addition to others granted in other sections of this act: . . ."
(Thereafter follows an enumeration of the powers of such district, which powers would appear to authorize such district ". . . to carry out, maintain and operate the works of improvement," as required by the Federal Statute.)

Second, you ask whether a Soil Conservation District so organized has the authority to carry out, maintain and operate "works of improvement" under the Federal Act, and, specifically whether or not such a District can act as the contracting agency in carrying out the works of improvement under the Act.

It appears to us to be clear that, under our Soil Conservation District law, a District is empowered to construct, maintain and operate "works of improvement". § 48-508 (7) empowers a Soil Conservation District: "To construct, improve and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this Act."

Thus, such a District would be empowered under New Mexico law to act as the contracting agency in carrying out works of improvement contemplated by the Federal Act. We find nothing in the Federal Act which would prevent our Soil Conservation Districts from acting as such contracting agencies.

Third, you ask whether or not a Soil Conservation District has the authority to expend its own funds, or to use funds that are made available from any other source to carry out the purposes of the Federal Act.

§ 48-508 (4) empowers a District:

"To cooperate, or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to, any agency, governmental or otherwise, or any owner of lands within the district, in the carrying on of erosion-control and prevention operations within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of the Federal Act."

§ 48-508 (9) provides:

"Upon the request of the federal government to take over, by purchase, lease, or otherwise, and to administer, any soil-conservation, erosion-control, or erosion-prevention project located within its boundaries undertaken by the United States or any of its agencies, or by this state or any of its agencies; to manage, as agent of the United States or any of its agencies, or of this state or any of its agencies, any {^{*520}} soil-conservation, erosion-control, or erosion-prevention project within its boundaries; to act as agent for the United States, or any agency, governmental or state or any of its agencies, in connection with the acquisition, construction, operation, or administration of any soil-conservation, erosion-control, or erosion-prevention project within its boundaries; to accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this state or any of its agencies, and to use or expend such moneys, services, materials, or other contributions in carrying on its operations; . . ."

The provision of this section empowering a district "to accept donations, gifts and contributions in money, services, materials, or otherwise from the United States or any of its agencies, and to use or expend such moneys, services, materials, or other contributions in carrying on its operations; "would, we believe, empower a district to expend funds made available from other sources for the purpose of carrying out the purposes of the Federal Act.

Trusting that the foregoing will answer your questions satisfactorily, I am

By: Henry A. Kiker, Jr.

Assist. Attorney General