

Opinion No. 63-161

December 3, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: Mr. G. Jennings Jarvis Administrative Officer State Soil Conservation Committee P. O. Box 786 University Park, New Mexico

QUESTION

QUESTIONS

1. Does the reference in Section 45-5-26, N.M.S.A., (Supp. 1963), to "absentee landowner" mean one who resides outside the boundary of the proposed watershed district or outside the state?
2. Does the reference in Section 45-5-3 (11), N.M.S.A., (1953), to "nonresident" mean one who resides outside the boundary of the proposed soil conservation district or one who resides outside the state?

CONCLUSIONS

1. Outside the boundary of the proposed watershed district.
2. Outside the boundary of the proposed soil conservation district.

OPINION

{*378} ANALYSIS

The pertinent portion of the statutory section applicable to your first question reads as follows:

"A. Within thirty (30) days after the petition has been filed with the board of supervisors, it shall cause **due notice** to be given by publication for three (3) consecutive weeks, once a week on the same day of each week, immediately prior to the action in a **newspaper of general circulation in the area**, and if no newspaper of general circulation exists shall post in not less than eight (8) public places within the area, notice of a hearing upon the practicability and feasibility of creating the district. **In addition to the publication provided for in this subsection, absentee landowners** shall be notified by certified mail if their whereabouts can be ascertained by reasonably diligent search. . .

B. If it appears upon the hearing that it may be desirable to include within the proposed district, territory outside of the **area within which due notice** of the hearing has been

given, the hearing shall be adjourned and **due notice of a further hearing shall be given throughout the entire area considered for inclusion in the district** and a further hearing shall be held. . . ." (Emphasis supplied).

The question with which we are faced requires a determination of what constitutes notice of hearing within the meaning of this particular statute. We have no doubt that the notice by publication, as provided in both subsections, constitutes constructive notice to landowners actually living in the proposed watershed district. The publication requirement of these sections specifies that publication should appear in a paper of general circulation in the area of the proposed watershed district. The opportunity to read the notice is afforded only to those in the general area of publication of the newspaper. The only area mentioned in these statutory sections is the proposed watershed area. In view of these circumstances we are of the opinion that the word {*379} "absentee" in the statute refers to an absentee from the proposed watershed district. "Absentee" is an adjective modifying and descriptive of the word "landowner". We therefore conclude that under the statute all landowners who do not reside on their land within the proposed district but reside outside the district are entitled to notice by registered mail of the hearing and referendum on the proposed watershed district.

The statutory section applicable to your second question reads in pertinent part as follows:

"Due notice" means notice published at least twice, with an interval of at least ten (10) days or other publication of **general circulation within the appropriate area..** . When any landowner is a **nonresident** and his residence is known or can be readily ascertained, a copy of such notice shall be mailed by registered mail to each **nonresident owner**, Section 45-5-3 (11), N.M.S.A., 1953 Compilation." (Emphasis supplied).

Although the terminology varies, this quoted section is similar to Section 45-5-26, N.M.S.A., (Supp. 1963), which was involved in your first question. Because of the same considerations that we mentioned in answer to your first question, we are of the opinion that "nonresident owner" means any person residing outside the proposed district who owns land in the proposed district. Likewise "nonresident" means nonresident in the proposed district who would not have the opportunity to notice a publication of general circulation in the proposed district.

We also feel that it is appropriate to stress that notice by registered mail need only be sent to those absentees or nonresidents whose address is known or can be readily ascertained. The requirements of both sections are similar in this respect, and qualify the notice by mail requirement accordingly.

By: Wayne C. Wolf

Assistant Attorney General