

Opinion No. 72-54

October 6, 1972

BY: OPINION OF DAVID L. NORVELL, Attorney General James H. Russell, Jr.,
Assistant Attorney General

TO: Mr. S.E. Reynolds, Secretary, Interstate Stream Commission, Bataan Memorial
Building, Santa Fe, New Mexico 87501

QUESTIONS

QUESTIONS

1. Is the Interstate Stream Commission authorized by Section 75-34-28, N.M.S.A., 1953 Comp. to lend moneys of the irrigation works construction fund to a Soil and Water Conservation District for water conservation purposes?
2. Is a Soil and Water conservation District authorized by Section 45-5-59, N.M.S.A., 1953 Comp., Section 45-5-60, N.M.S.A., 1953 Comp., or otherwise, to borrow funds from the Interstate Stream Commission for water conservation purposes, and to lend the same to its members?
3. If your answers to the previous questions are in the affirmative, is a Soil and Water Conservation District authorized by Section 45-5-61, N.M.S.A., 1953 Comp. (1971 P.S.), or otherwise, to approve a levy of its statutory 1 mill tax for the purpose of promising by contract to levy and collect that tax in the event of a future default in its repayments to the Interstate Stream Commission, and, if so, will the approval by referendum of a resolution of the Board of Directors of a Soil and Water Conservation District promising so to levy this tax in the event of a future default serve to bind the district and its members?

CONCLUSIONS

1. Yes.
2. Yes.
3. Yes.

OPINION

{*85} ANALYSIS

In our opinion the answer to your first question is "yes." Section 45-5-59, **supra**, provides in pertinent part as follows:

"A soil and water conservation district organized under, or perpetuated by the provisions of the Soil and Water Conservation District Act [45-5-42 to 45-5-64], is a governmental subdivision of the state, a public body politic and corporate. . . ."

Section 75-34-28, N.M.S.A., 1953 Comp. provides that the Interstate Stream Commission can lend unpledged funds in the New Mexico irrigation works construction fund to irrigation and similar districts organized under the laws of this state and to municipalities and political subdivisions of this state. Since soil and water conservation districts are political subdivisions of this state they qualify as entities to which the Interstate Stream Commission can lend money. We draw your attention to Opinion of the Attorney General No. 58-169, issued July 12, 1957, addressed to you as Secretary of the Interstate Stream Commission. That opinion discusses the necessity of lending money derived from the Permanent Reservoirs for Irrigation Purposes Income Fund for use on irrigation projects only.

Subsection D of Section 45-5-60, **supra**, specifically grants a soil and water conservation district the power to borrow money and contract indebtedness for the purposes of the district. The general powers of a soil and water conservation district are enumerated in Subsections A through J of Section 45-5-59, **supra**. The authority of the Interstate Stream Commission to lend as set forth in Section 75-34-28, **supra**, is limited to:

"A. Doing all engineering and design work necessary for a project:

"B. Construction of a project:

C. Rehabilitation of any existing project."

{*86} Constitutionality of this statute was upheld in **State v. Reynolds**, 71 N.M. 389, 378 P.2d 622 (1963). A "project" is defined in Section 75-34-32, N.M.S.A., 1953 Comp. as follows:

"'Project' is defined to include and embrace all means of conserving and distributing water, including, without limiting the generality of the foregoing, reservoirs, dams, diversion canals, distributing canals, lateral ditches, pumping units, wells, mains, pipelines and waterworks systems and shall include all such works for the conservation, development, storage, distribution and utilization of water including, without limiting the generality of the foregoing projects for the purpose of irrigation, development of power, watering of stock, supplying of water for public, domestic, industrial and other uses and for fire protection."

In our opinion the activities described in the definition of "project" are clearly within the general powers of a soil and water conservation district. Therefore, it is our opinion that a soil and water conservation district is authorized to borrow funds from the Interstate Stream Commission.

Subsection D of Section 45-5-59, **supra**, provides in part as follows:

"Assist, contract with, and render financial aid to, district landowners . . . which are engaged in . . . the conservation, development, utilization and disposal of water within the district."

The quoted language is authority for a soil and water conservation district to lend funds borrowed from the Interstate Stream Commission to its members.

Section 45-5-61, N.M.S.A., 1953 Comp. provides that a soil and water conservation district may levy an assessment not to exceed one (1) mill per dollar of total taxable valuation of real property to meet or bear the expense of the duties imposed upon the district by the Soil and Water Conservation Act. In order to make this levy the supervisors of the district must adopt a resolution which is subject to a referendum to be conducted in substantially the same manner as a referendum adopting and approving the creation of a proposed district. The resolution must be approved by a majority of the district landowners voting at the referendum. This section also provides that once a resolution is approved by referendum the supervisors of the district shall certify to the county assessor of each county in which there is land subject to the assessment the items called for in the statute.

We have concluded above that a Soil and Water Conservation District has the power to enter into the contracts you described because the activities you described fall within a district's powers and duties. Therefore, it is our opinion that the supervisors of a district could adopt a resolution calling for the assessment of a one (1) mill tax to be levied in the event the district is unable to repay the Interstate Stream Commission money the district has borrowed. We would caution that the resolution should spell out very carefully the details of the contractual obligation to the Interstate Stream Commission in order that the landowners can see precisely what they are being asked to approve. There is no requirement in Section 45-5-61, **supra**, that the supervisors submit an approved assessment for collection in the same year it is approved. We find no statute or constitutional provision that would prevent district landowners from approving a possible future levy upon their land. We conclude, therefore, that the landowners of the district can bind their lands to pay a possible future levy by approving a resolution that specifies the circumstances under which that future levy will be applicable.