

Opinion No. 75-54

October 6, 1975

BY: OPINION OF TONEY ANAYA, Attorney General

TO: Graciela Olivares State Planning Office Executive Legislative Building Santa Fe, New Mexico 87503

QUESTIONS

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Must Indian communities applying for state supplemental land and water conservation funds be sponsored by a county in order to be eligible for funding?

CONCLUSION

Yes.

OPINION

{*146} ANALYSIS

The "state supplemental land and water conservation fund" was established by the "Outdoor Recreation Act," Sections 4-9B-1 to 4-9B-3, NMSA, 1953 Comp., as the state matching fund for federal money made available under the Land and Water Conservation Fund Act of 1965, 16 U.S.C.A. 460L-4 to 460L-11. The federal government supplies fifty per cent [50%] of the project cost.

Section 4-9B-3, **supra**, allocates the non-federal share of the costs of the projects. It allocates a maximum of twenty-five per cent [25%] funding responsibility to the State and the remainder of funding responsibility to eligible political subdivisions. The State Planning Office administers the "state supplemental land and water conservation fund" and it processes all grant applications made for the funds.

Finally, Section 4-9B-3, **supra**, limits eligibility for state supplemental land and water conservation funds in the following fashion:

"Incorporated municipalities with a population of less than fifteen thousand [15,000] persons according to the latest federal decennial census, or counties sponsoring projects of unincorporated communities, including but not limited to Indian communities, shall be entitled to receive funds from the state supplemental land and water conservation fund as prescribed and approved by the recreation priorities committee. . .

.

State funds shall be made available for expenditure by the applicant political subdivision once the project is approved by the United States department of the interior and the applicant demonstrates the availability and source of funds required for its share in the total project cost."

Accordingly, as the statute clearly contemplates, the only eligible applicants for these funds are incorporated municipalities with a population of less than fifteen thousand [15,000] persons or counties sponsoring projects of unincorporated communities. Indian communities are specifically identified as a type of unincorporated community which may be sponsored by a county, and thus such communities are eligible for state supplemental land and water conservation funds when their application is sponsored by a county.

The use of the terminology "applicant political subdivision" in Section 4-9B-3, supra, does not {^{*147}} serve to enlarge the category of eligible applicants. This phrase has reference solely to the political subdivisions otherwise identified in the statute as eligible to apply for the funds. The express identification of such eligible applicants necessarily excludes all those which cannot be so identified. See **Fancher v. Board of Commissioners of Grant County**, 28 N.M. 179, 210 Pac. 237 (1922).

Accordingly, any applicant for state supplemental land and water conservation funds including an Indian community, must qualify therefor as either an incorporated municipality with a population of less than fifteen thousand persons or as an unincorporated community having county sponsorship.

By: Charles E. Roybal

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