

Opinion No. 45-4744

July 3, 1945

BY: C. C. McCULLOH, Attorney General

TO: Mr. Howard K. Ball Administrative Officer State Soil Conservation Committee State College, New Mexico

{*97} We are in receipt of your letter of June 29, 1945, in which you ask various questions concerning elections for the formation of soil conservation districts.

Your first question is as follows:

"1. Is the Cubero Grant, in Valencia County, considered to be a corporation?"

I am very sorry, but we have no information whatsoever concerning the formation of this grant. I would suggest that you take this question up with your local District Attorney, who might have access to the records of this grant, or obtain for us, from a local abstractor, information as to whether it is a community or individual grant, and also whether it was organized under the 1907 or 1917 law.

Your second question is as follows:

"2. Would the heirs and individual owners of common lands in the Cubero Land Grant be eligible to vote in a referendum on a proposed soil conservation district; provided, a portion of the Grant was included in the proposed district?"

If the grant is a grant to individuals, as such, and the individuals, or their heirs, being the owners of the land involved, would be entitled to vote. If the grant is a community grant, then the legal title becomes vested in the governing body which, pursuant to Opinion No. 4497, would have the vote.

Your third question is as follows:

"3. If an individual owns a block of land within the Cubero Grant, can he include this land in a district?"

If the individual owns land within the proposed district, then he is entitled to vote. The fact that his title arose through a land grant does not affect his ownership, and so does not affect his right to vote.

Your fourth question is as follows:

"Also, can the individual referred to in number 3, above, include in a district, land adjacent to his own property which he has leased from the Grant?"

As to your last question, I am not certain as to the purpose you have in mind. Under the statute, the individual owners of land within a proposed district do not either include or exclude land owned by them. Pursuant to Section 48-505 of the 1941 Compilation, a petition, executed by 25 owners of land within a proposed district, if filed, setting forth the description of the proposed grant. A referendum is held and ballots cast to determine whether the district should be formed.

Thus, it does not appear that any individual owner either excludes or includes his land. In any event, the right of signing the petition and balloting is determined by the ownership {⁹⁸} of land, so that a lessee would not have these rights.

By ROBERT W. WARD,

Asst. Atty. General