

Opinion No. 46-4926

July 17, 1946

BY: C. C. McCULLOH, Attorney General

TO: Leonard R. Appleton Administrative Officer State Soil Conservation Committee
State College, New Mexico

{*250} We are in receipt of your letter of July 15, 1946 wherein our opinion was sought as to the following questions:

1. Is it possible, under the law, to transfer land from one soil conservation district to another?
2. What steps may be taken by the State Committee to bring about such a transfer?

After careful consideration of the Soil Conservation District Law, we are of the opinion that as the law now stands it is not permissible to transfer land from one soil conservation district to another. At no place in the Act has the Legislature given the State Soil Conservation Committee or anyone else authority to transfer land from one soil conservation district to another. As a matter of fact, parts of certain sections of this Act would seem to oppose such action. For instance, a part of Section 48-505 of the 1941 Compilation, which provides for the creation of soil conservation districts, states:

"The boundaries of such districts shall include the territory as determined by the State Soil Conservation Committee, but in no event shall they include any area included within the boundaries of another soil conservation district organized under the provisions of this Act."

When a conservation district is proposed, the land owners within certain defined boundaries vote upon the proposition and two-thirds {*251} of those voting must have voted in favor of the creating of such a district before the State Committee has authority to determine that the creation of same is administratively practical and feasible. If such a favorable vote is polled, then all land owners in that territory are members of such a district and are bound by the action taken in accordance with statutory provisions.

Section 48-515 of the 1941 Compilation furnishes the only authority for the discontinuance of a conservation district and no action under it can be taken until the district has been in existence for a period of at least five years. At no place in the Act is authority granted for any individual member to withdraw from said district. As a practical matter, it is quite possible one district might be in much better shape financially than another. It would be unfair to the remaining members of a district to allow a party to leave a conservation district that was heavily in debt and join another, thus throwing a greater burden on the remaining members. Likewise, it would be unjust to allow such

party to enjoy the fruits of a new district in view of the fact he had made no previous contribution to the same.

Although we appreciate the hardships encountered in individual cases, we cannot rule otherwise under the law, as it now stands. It behooves the State Soil Conservation Committee and parties affected to prevail upon the Legislature to enact such legislation as would provide an adequate remedy in such cases.

In view of the foregoing, there is nothing necessary to be said regarding question two.

Trusting this answers your inquiry, I am

By ROBERT V. WOLLARD,

Asst. Atty. General