

26 March 1946

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Mr. H. L. Anderson, Assistant
State Soil Conservation Commissioner
Office of State Land Department
Capitol Annex
Phoenix, A r i z o n a

Re: Soil Conservation Districts

Dear Mr. Anderson:

We wish to acknowledge receipt of your letter in which you ask the following questions:

- "1. The extent of liability of (a) the Supervisors of a soil conservation district in the event of a judgment of whatsoever nature against the district (b) of land owners within the district in the event of a judgment of whatsoever nature against the district.
2. Are soil conservation districts included under the terms of the District Enabling Act (Art. 11, Sec.s 75-1101 to 1116, ACA 1939)?
3. In view of the powers of soil conservation districts (Art. 17, Sec. 75-1709, subsection 5, ACA 1939) are such districts empowered to engage in agriculture, viz: to produce grass seed or nursery stock or other agricultural crops for sale and distribution to land owners within the district and to general market outlets, i.e., to be agricultural producers?
4. If so, may districts be members of Agricultural Marketing Cooperatives?
5. Would incorporation of one or more districts into such a cooperative abrogate or limit in any way, the rights or privileges to which it or they, as the case may be, are entitled as individual districts?"

These questions were answered by us in conference with you, at which time we stated we would later place our conclusions in writing.

Please be advised, in regards to question no. 1, that the Soil Conservation Districts Act provides that upon the taking of the necessary steps the district is declared to be organized and

46-40

to be a body corporate. Under the general rules relating to corporations, the stockholders and officers of the corporation are not personally liable for judgments against the corporations and we believe that this exemption from liability extends to the land owners and officers of soil conservation districts. However, it must be borne in mind that there are situations in which some liability could arise. In the event the supervisors of the districts acted in excess of the powers given them under the statute, or violated in some manner their duties, they might be held personally liable.

We also wish to invite your attention to Chapter 62, Article 2, of the Arizona Code Annotated, 1939, pertaining to mechanics' and materialmen's liens, and also to Article 6 of the same chapter pertaining to agricultural liens. Work actually performed on the land of members of the districts renders that land subject to a lien in the event payment is not made, and in the same manner, any person furnishing labor or machinery and equipment in improving or preparing agricultural lands for the planting of crops, and who is unpaid, would have a lien against the crops. We believe we may say generally that in ordinary cases of liability arising out of torts or breach of contract there is no liability on the land owner or the supervisor of the district, but there may be special circumstances which would give rise to some liability.

We answer your second question in the affirmative. Section 75-1101, A.C.A. 1939, defines the word "district", as used in the Enabling Act, as follows:

***75-1101. Definitions.--* * * * ***

(a) The term 'district' shall include any irrigation district, drainage district, flood control district, agricultural improvement district, electrical district, power district, and in addition thereto any district, political subdivision, governmental agency, corporation or instrumentality of the state of Arizona, having territorial boundaries and heretofore or hereafter created or organized for the purpose of benefiting or performing services for lands in the state of Arizona; * * *."

We believe that soil conservation districts are clearly within this definition.

In answer to your third question, we are of the opinion that under the powers conferred upon conservation districts by Section 75-1709, supra, they may do the things that you set out in your question for the conservation of the soil resources and for the prevention and control of soil erosion. However, we are of the further opinion, which we wish to stress, that any sales to general market outlets must be incidental; that should any surplus develop that may be salable to such outlets, it must be a surplus that arose incident to the efficient production of products primarily intended to be

46.110

26 March 1946

used within and sold to land owners in the district. In no event should a district engage in the production of commodities intended primarily for consumption by the general public.

The fourth question asked is if soil conservation districts may be members of agricultural marketing cooperatives. We are of the opinion that they may not. Agricultural marketing cooperatives are organized under Chapter 49, Article 7, A.C.A. 1939, and their primary purpose is to engage in any activity in connection with the marketing, harvesting, processing, storing, handling or utilization of any agricultural product or by-products delivered to it, or providing labor, or in connection with the purchase, hiring or use by its patrons of supplies, machinery or equipment. Section 49-702, A.C.A. 1939. They have the power to execute marketing contracts and are organized chiefly for a commercial purpose, i.e., the sale of farming products. Soil conservation districts' primary purpose is expressed in Section 75-1702, A.C.A. 1939, quoted ante. Inasmuch as their purposes are so different, we are of the opinion that soil conservation districts as such cannot be members of agricultural marketing cooperatives. Of course, the individual members may act as they please.

We see no reason why the various soil conservation districts cannot pool their efforts in the production of seeds and other commodities, in fact, prevention of duplication of effort is stressed in the Act. Section 75-1709, supra, provides in part:

" * * * In order to avoid duplication of research activities, no district shall initiate any research program except in cooperation with the government of the state * * * or with the United States * * *."

We also acknowledge receipt of your letter of 22 March 1946, in which you ask the following additional questions.

- "1. Whether lands within electrical districts, upon which assessments have been paid for the purpose of providing power for pumping, are agricultural lands?
2. Are lands upon which the land owner has expressed determination to drill a well, install a pump, subjugate the land and provide water to irrigate it, to be considered agricultural lands under the Act?
3. Are lands, upon which the land owner has drilled a well and installed equipment, but has not subjugated said lands, to be considered agricultural lands under the law?"

The term "agricultural lands" is defined by Section 75-1703, A.C.A. 1939, as irrigated farming lands or dry farming lands devoted to the purpose of agriculture. Webster's New International Dictionary (2d Ed.), Vol. I, defines "devoted" as meaning "consecrated to a purpose."

46-410

Mr. H. L. Anderson

(4)

26 March 1946

We find that electrical districts may be formed for the purpose of securing power for the pumping of water for irrigation. A duly formed electrical district must be presumed to be legally formed, and, therefore, since the primary purpose is the pumping of water for electricity, the lands within the district must now be or are in the process of becoming farming lands and therefore come within the definition of agricultural lands, as they are irrigated lands consecrated to a purpose, i.e., farming by irrigation. Thus, the answer to your first question is "yes".

In answer to your second question, we invite your attention to Section 75-1705, A.C.A. 1939, which is quoted as follows:

"Districts to include only agricultural lands.--
Only agricultural lands, as defined in this act, shall be included within the boundaries of soil conservation districts organized under this act."

From this we believe that only agricultural lands presently existing may be considered agricultural lands under the Act. This seems to be a clear declaration of the legislative intention and it would be difficult for us to hold otherwise in the face of the law. Therefore, we answer your second question in the negative.

In answer to your third question, we believe that the land owner must couple some declaration of intention with his act of digging a well. He may merely intend to use the well to fill a swimming pool, which is a purpose not within the Act. Therefore, we answer that question in the negative.

Very truly yours,

JOHN L. SULLIVAN
Attorney General

JOHN W. ROOD
Assistant Attorney
General

JWR:s

46-40