

May 26, 1950

Mr. H. L. Anderson
Assistant State Soil
Conservation Commissioner
State Land Department
Capitol Annex
Phoenix, Arizona

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ARIZONA ATTORNEY GENERAL

Dear Mr. Anderson:

We have before us your letter of April 24, 1950, in which you ask our opinion as to whether an entryman on U. S. Government land is an owner of such land for purposes of signing and voting on a petition for the creation of a soil conservation district.

The definition of "land owner" as used in the Soil Conservation Districts Law is stated by the legislature as:

" 'Land owner' or 'owner of land' means any person, firm, or corporation, including the State of Arizona, holding title to any irrigated or dry farming lands used for agricultural purposes lying within a district organized or proposed to be organized under the provisions of this act, and includes a buyer on contract who is the occupant of land; * * *"
Section 75-1703, ACA 1939 (Supp)
Laws of 1941, ch. 43, sec. 3; Laws of 1945, ch. 31, sec. 1

The word "title" is commonly and legally used to signify "ownership" in real property and, though it is sometimes used to designate less than actual ownership, it never means more.

Restatement of Property, sec. 10, note Horney
v. Price, 189 N.C. 820, 128 S.E. 321; Holland
v. Cofield 27 Okla. 469, 112 P. 1032

It follows that the legislative definition of "land owner" is a limitation upon the meaning of "land" and not upon the meaning of "owner".

An entryman under the Federal Homestead Law is not a holder of legal title prior to the issuance of a patent. However, he does have the undisputed right to the possession and occupancy of such land, and this right is sufficient upon which to base actions at law or in equity concerning such land.

Knapp v. Alexander-Edgar Lumber Co.,
237 U.S. 162, 59 L.Ed 894

Wormouth v. Gardner, 105 Cal. 149, 38 P. 646

Kelsey v. Lake Childs Co., 93 Fla. 743,
112 S. 887

50 C.J., pp. 935 and 936

The meaning of "owner of land" is dependent upon the purpose which its use is designed to serve. The extent of interest which an "owner" must have must be determined from various considerations surrounding its use. Our Supreme Court has stated this proposition as follows:

"The word 'owner' has no technical meaning, but its definition will contract or expand according to the subject matter to which it is applied. As used in statutes it is given the widest variety of construction, usually guided in some measure by the object sought to be accomplished in the particular instance. It has lead some courts to declare that the word has no precise legal signification and may be applied to any defined interest in real estate." City of Phoenix v. State of Arizona, 60 Ariz. 369, 137 Pac. 2d 783

Where the term is used to define a qualification of a juror or a voter, it has been held that one in exclusive possession and control satisfies such requirements.

Territory v. Young, 2 N.M. 93

18 Am. Jur. 266, Elections, sec. 71

The rights of an entryman have been held in Louisiana to constitute an inchoate title which is equivalent to "ownership" for certain purposes.

Mott v. Hopper, 116 La. 629, 40 S. 921

Our state legislature has indicated its intention as to the construction of terms which may on their face be of doubtful meaning. Section 1-101, ACA 1939, so far as applicable, states:

"* * * Statutes shall be liberally construed, to effect their objects and to promote justice. * * *"

We now look to the purpose behind the Soil Conservation Districts Law, which is stated by the legislature as follows:

"Declaration of policy.-- It is declared to be the policy of the legislature to provide for the restoration and conservation of agricultural lands and soil resources of the state and the control and prevention of soil erosion, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, preserve wildlife, protect the tax base, protect public lands, and in such manner to protect and promote the public health, safety, and general welfare of the people." Section 70-1702, ACA 1939 Supp. (Laws 1941, ch. 43, sec. 2)

It would seem from this stated purpose ⁵⁰⁻¹³⁶ that the legislature intended to make a soil conservation district possible if the people directly interested in conserving the lands therein so desired. It is therefore our opinion that an entryman of land

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under the Federal Homestead Laws has a sufficient interest in such land so that he may be a land owner for purposes of signing and voting on a petition for the creation of a soil conservation district. Trusting the foregoing satisfactorily answers your inquiry, we are

Very truly yours,

FRED O. WILSON
Attorney General

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