

**LAW LIBRARY**  
**ARIZONA ATTORNEY GENERAL**

Finn  
White  
Mirkin

July 29, 1955  
Opinion No. 55-167

REQUESTED BY: Roger Ernst, State Land Commissioner  
Capitol Annex, Phoenix, Arizona

OPINION BY: ROBERT MORRISON, The Attorney General  
Herbert Finn, Special Assistant  
Attorney General

QUESTIONS:

1. Do Agricultural Improvement Districts organized in Arizona have the authority under their Enabling Act to carry out, operate, and maintain works of improvement under the "Watershed Protection and Flood Prevention Act?"
2. Do Agricultural Improvement Districts have the authority to expend their own district funds, or to use funds that are made available to them from any other source for these purposes?
3. Do Agricultural Improvement Districts have the power of assessment to acquire funds to carry out, operate and maintain works of improvement located on lands outside the districts, but which works benefit district lands?
4. Do Agricultural Improvement Districts have the power of condemnation in order to carry out, operate and maintain works of improvement on lands located outside the districts, but which improvements would benefit district lands?
5. Do Agricultural Improvement Districts have the authority to acquire such needed land, easements, and rights-of-way for works of improvement that may be located outside the legal bounds of the districts?
6. Do Agricultural Improvement Districts have the authority to enter into contracts involving the carrying out, operating and maintaining works of improvement, which works lie outside the districts?

CONCLUSIONS:

1. Yes.
2. Yes.
3. Yes.
4. No, except as provided in Section 16-602, ACA, 1939.

5. Yes.

6. Yes.

Agricultural Improvement Districts comply with the requirements for local agencies set up in Public Law 566, 83rd Congress, Second Session, Chapter 656, known as the "Watershed Protection and Flood Prevention Act" of August 4, 1954. The requirements of the Act are such that the powers given the districts in Section 75-701 through 75-714, ACA, 1939, provide sufficient authority for the district to enter into the program set up by Public Law 566. These sections provide that the district may require any work for the storage, regulation, control, development and distribution of water for the irrigation of lands within districts or for the use, control and disposal of any and all drainage water within the district, or for the construction, extension, enlargement, operation, control, maintenance and management of any works or other property of the district over which it may have control or which may be used or useful for the irrigation or drainage of land within the district; and further provides that such works shall constitute a part of the general system of irrigation works and general system of irrigation works is defined to mean irrigation works of whatever character, combination or construction by whatever means operated and whether located within or without the boundaries of any such agricultural improvement district. The districts have the further power to enter into and perform all contracts and agreements as they may find to the best interests of the district with any person, firm, corporation or with the United States or the State of Arizona, or any department or agency thereof, or with any other political subdivision of the state, for the benefit of the district lands.

In order to undertake the program contemplated by Public Law 566, the districts can clearly utilize their own funds, or any other funds made available from outside sources.

The districts clearly have the power of assessment and taxation for the purpose of securing funds to carry out, operate and maintain works of improvement located on lands outside the district, provided that they benefit the district.

The districts do not have the power of eminent domain outside their boundaries except as provided in Section 16-602, ACA, 1939. Under our statutes, districts are construed to be in the nature of municipal corporations. Article 2, Section 17, Constitution of the State of Arizona. Section 75-744, ACA, 1939.

The general rule with respect to eminent domain is that, statutes conferring the right of eminent domain must be strictly

construed. See I Nichols Iminent Domain, 238. In order for the district to obtain the power to condemn property outside its boundaries, there would have to be an explicit statutory authorization. McQuillen Municipal Corporations, Section 32.66. Lewis Eminent Domain, 3rd Edition, Section 371. One case involving Arizona law on the subject approves an explicit statutory authorization to condemn property outside of the city limits. City of Tucson vs. Tucson Gas, Electric Light & Power Co., 152 F.2d 552. There is a substantial number of cases holding that the Legislature must expressly grant the right of eminent domain outside of the boundaries of a district or municipal corporation. See Birmingham vs. Brown, 2 So.2d 305, (Alabama); Houck vs. Land River Drainage District, 119 S.W.2d 826 (Mo.)

However, the districts may acquire land, easements, and rights-of-way for works improvement by other means, even if they are located outside of the boundaries of the district. See Sections 75-701 and 75-714, ACA, 1939

The districts clearly have the power and authority to enter into contracts involving the carrying out, operating and maintaining works of improvement, whether such works lie within or without the boundaries of the district.

ROBERT MORRISON  
The Attorney General

*Herbert B. Finn*

HERBERT B. FINN  
Special Assistant  
Attorney General

llm

55-167