

5020

SOIL CONSERVATION DISTRICT—AUTHORITY TO CONDUCT SURVEYS, INVESTIGATIONS AND RESEARCH—SOIL EROSION—PREVENTIVE AND CONTROL MEASURES—PARTICULAR PROJECT—“FLOOD PREVENTIVE MEASURES”—AGRICULTURAL PHASE OF CONSERVATION, DEVELOPMENT, UTILIZATION AND DISPOSAL OF WATER—SOIL CONSERVATION DISTRICT—AUTHORIZED UNDER OHIO LAW TO ACT AS “LOCAL ORGANIZATION”—FEDERAL WATERSHED PROTECTION AND FLOOD PREVENTION ACT—PUBLIC LAW 566, 83 CONGRESS, 68 STAT., 666—FUNDS RAISED BY TAXATION MAY LAWFULLY BE EXPENDED BY SUCH SOIL CONSERVATION DISTRICT TO FURTHER THE PROJECT—CHAPTER 1515., SECTION 1515.10 RC.

SYLLABUS:

A soil conservation district organized under the provisions of Chapter 1515, Revised Code, has authority under the provisions of such chapter to conduct surveys, investigations and research relating to soil erosion and preventive and control measures in connection therewith, to develop plans for the conservation of soil resources and the prevention of soil erosion, and to carry out preventive and control measures in connection with soil conservation and soil erosion; and with respect to a particular project in this field which is such as to constitute a “flood prevention measure” or an undertaking in connection with the agricultural phase of the conservation, development, utilization and disposal of water, such soil conservation district is authorized, under Ohio law, to act as a “local organization” under the provisions of the Federal Watershed Protection and Flood Prevention Act, Public Law 566, 83rd Congress; 68 Stat., 666. Funds raised by taxation under the provisions of Section 1515.10, Revised Code, may lawfully be expended by such soil conservation district in the furtherance of any such project.

Columbus, Ohio, March 29, 1955

Hon. Floyd E. Heft, Executive Secretary
Ohio Soil Conservation Committee
Ohio State University, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Reference is made to the Watershed Protection and Flood Prevention Act, Public Law 566-83 Congress. A mimeographed

copy of this act is attached. In administering this act, questions as to the authority of Soil Conservation Districts are being raised, consequently the Ohio Soil Conservation Committee is hereby requesting opinions on the following two specific questions:

“1. Do Soil Conservation Districts organized under the law (Revised Code 1515.01) of Ohio have the authority to ‘carry out, operate, and maintain works of improvement and to otherwise act as a ‘local organization’’ under the Watershed Protection and Flood Prevention Act?

“2. Do Soil Conservation Districts also have authority to ‘expend their own funds or to use funds that are available from any other sources for these purposes?’ ”

In Chapter 1515., Revised Code, there is provision for the organization of “the Ohio soil conservation committee” and for the organization of local “soil conservation districts.” In Section 1515.02, Revised Code, the Ohio soil conservation committee is authorized:

“(C) To seek the co-operation and assistance of the federal government or any of its agencies, and of agencies of this state, in the work of such districts, but this section does not authorize the transfer or control of authority over such districts to any federal agency or the transfer of title of land or control to the federal government or any of its agencies;”

Provision for the organization of soil conservation districts is provided for in Section 1515.03, et seq., Revised Code, and the government of such organization is lodged in a body known as the “supervisors” of the district. Such supervisors under the provision of Section 1515.08, Revised Code, are given certain powers as follows:

“(B) To develop plans for the conservation of soil resources and for the control and prevention of soil erosion within the district, and to publish such plans and information;

“(C) To carry out preventive and control measures within the district on lands owned or controlled by this state or any of its agencies, with the consent and co-operation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the occupier of such lands;”

The reference in sub-paragraph (C) above to “preventive and control measures within the district” quite evidently refers to measures for the conservation of soil resources and the prevention of soil erosion, para-

graphs (B) and (C) being of necessity read in relation each to the other in this connection.

In Section 1515.09, Revised Code, the supervisors of a soil conservation district are authorized to employ assistants and other employees as they deem necessary and may provide for the payment of reasonable compensation to such employees and may provide for the payment of expenses incurred "by them in the discharge of their duties." I conclude without difficulty that the reference in this section to "the discharge of their duties" has reference to duties in connection with the carrying out of "preventive and control measures within the district" as this language is used in Section 1515.08, *supra*.

In Section 1515.10, Revised Code, the board of county commissioners in each county in which there is a soil conservation district is authorized to levy a tax within the ten mill limitation and to appropriate the proceeds thereof for expenditure "for the purposes prescribed in Section 1515.09 of the Revised Code upon the written order of a majority of the supervisors of the district."

From these provisions it may readily be concluded that such funds as are made available from county tax levies to the supervisors of a local soil conservation district may be expended not only in the development of plans for the conservation of soil resources and for the control and prevention of soil erosion, but may be expended in carrying such plans into execution by carrying out preventive and control measures within the district.

Turning now to the federal Watershed Protection and Flood Prevention Act, Public Law 566, 83rd Congress, 68 Stat., 666, we may first note the definition of "local organization" as set out in Section 2 of the Act. This definition is as follows:

"'Local organization'—any State, political subdivision thereof, soil or water conservation district, flood prevention or control district, or combinations thereof, or any other agency having authority under State law to carry out, maintain and operate the works of improvement."

In order to appreciate the meaning of this definition it becomes necessary to note the definition in the federal statute of the expression "works of improvement." This term is defined in Section 2 of the Act as follows:

"'Works of improvement'—any undertaking for—

“(1) flood prevention (including structural and land-treatment measures) or

“(2) agricultural phases of the conservation, development, utilization, and disposal of water in watershed or subwatershed areas not exceeding two hundred and fifty thousand acres and not including any single structure which provides more than five thousand acre-feet of total capacity. No appropriation shall be made for any plan for works of improvement which includes any structure which provides more than twenty-five hundred acre-feet of total capacity unless such plan has been approved by resolutions adopted by the Committee on Agriculture and Forestry of the Senate and the Committee on Agriculture of the House of Representatives, respectively. A number of such subwatersheds when they are component parts of a larger watershed may be planned together when the local sponsoring organizations so desire.”

I entertain little doubt that under the provisions of Section 1515.08, Revised Code, the supervisors of the soil conservation district are authorized to carry out such preventive and control measures relating to the conservation of soil resources and the control and preservation of soil erosion as would fall within the definition of “works of improvement” as this term is used in the federal statute. This is not to say, of course, that under the provisions of the Ohio statute such supervisors would be authorized to undertake *all* or *any* of the “works of improvement” contemplated by the federal act; but certainly such supervisors would be authorized under the state statutes to undertake *some* projects contemplated by the federal statute.

In this connection it would seem that a determination of whether a soil conservation district constitutes a “local organization” within the meaning of the federal statute is one to be made by the federal authorities concerned in the interpretation of the federal statute. For the purpose of this opinion, I assume that such determination will be in the affirmative and that your question is concerned solely with the authority of the supervisors of these local districts, under the Ohio law, to carry out projects which the federal authorities would regard as being within the terms “works of improvement” as used in the federal act. As I have already indicated, it is my opinion that the carrying out of preventive and control measures within the district “in connection with the conservation of soil resources and control and prevention of soil erosion” would be regarded as works of improvement under the terms of the federal statute; and so long as the

district's plans and projects are limited to those authorized under the provisions of Section 1515.08, Revised Code, I would anticipate no difficulty in the execution of a plan whereby the district concerned undertook to act as a "local organization" under the federal act for the purpose of qualifying for a grant of federal funds in connection therewith.

It should be observed, however, that these grants are subject to the following conditions as set out in Section 4 of the federal statute :

"The Secretary shall require a condition to providing Federal assistance for the installation of works of improvement that local organizations shall—

"(1) acquire without cost to the Federal Government such land, easements, or rights-of-way as will be needed in connection with works of improvement installed with Federal assistance ;

"(2) assume such proportionate share of the cost of installing any works of improvement involving Federal assistance as may be determined by the Secretary to be equitable in consideration of anticipated benefits from such improvements: Provided, That no part of the construction cost for providing any capacity in structures for purposes other than flood prevention and features related thereto shall be borne by the Federal Government under the provisions of this Act ;

"(3) make arrangements satisfactory to the Secretary for defraying costs of operating and maintaining such works of improvement, in accordance with regulations presented by the Secretary of Agriculture ;

"(4) acquire, or provide assurance that landowners have acquired, such water rights, pursuant to State law, as may be needed in the installation and operation of the work of improvement ; and

"(5) obtain agreements to carry out recommended soil conservation measures and proper farm plans from owners of not less than 50 per centum of the lands situated in the drainage area above each retention reservoir to be installed with Federal assistance."

Here it will be noted that a local organization is required to conform with regulations to be prescribed by the Secretary of Agriculture. What, if any, regulations have presently been promulgated by the secretary does not appear from your inquiry. In general it may be said, however, that so long as such regulations do not require the district supervisors to pursue a course of action beyond their powers under the state law, nor forbid them

to pursue a course of action made mandatory on them by the state law, I should anticipate no difficulty in this connection.

As already noted, the state committee is authorized "to seek the cooperation and assistance of the federal government * * * in the work of such districts * * *"; and that the supervisors of a local soil conservation district are authorized "to accept donations, gifts, and contributions in money, materials, or otherwise, and to use or expend any of such contributions in carrying on its operations." This would indicate that the General Assembly has given its consent to cooperation with the federal government, in connection with such projects as are such that they may be said to be authorized under both the state and federal law. Accordingly, it becomes necessary as to each such contemplated project to examine it with a view to its authorization under the laws both of the state and of the United States; and if it be found that such project is so authorized, then the soil conservation district concerned would be authorized to participate therein.

Coming now to your second specific question, I have already indicated herein that funds raised by taxation under the provisions of Section 1515.10, Revised Code, may lawfully be expended for the employment of assistants and the purchase of materials and equipment as authorized under the terms of Section 1515.09, Revised Code. It seems plain to me that the only purpose of employing such assistants and the purchasing of such materials, equipment and supplies is to carry out the powers granted to the supervisors of soil conservation districts under the terms of Section 1515.08, Revised Code; that is to say, to conduct surveys, investigations, etc., to develop plans for the conservation of soil resources and prevention of soil erosion and *to carry out preventive and control measures* in connection therewith. Accordingly, it must be concluded that the funds thus raised by taxation may be expended in connection with the furtherance of any project which the district is authorized to carry on under the provisions of the state law even though a federal grant of funds has been made in connection with such project as provided in the federal Watershed Protection and Flood Prevention Act, Public Law 566, 83rd Congress, 68 Stat., 666.

Accordingly, and in specific answer to your inquiry, it is my opinion that a soil conservation district organized under the provisions of Chapter 1515., Revised Code, has authority under the provisions of such chapter to conduct surveys, investigations and research relating to soil erosion and preventive and control measures in connection therewith, to develop

plans for the conservation of soil resources and the prevention of soil erosion, and to carry out preventive and control measures in connection with soil conservation and soil erosion; and with respect to a particular project in this field which is such as to constitute a "flood prevention measure" or an undertaking in connection with the agricultural phase of the conservation, development, utilization and disposal of water, such soil conservation district is authorized, under Ohio law, to act as a "local organization" under the provisions of the Federal Watershed Protection and Flood Prevention Act, Public Law 566, 83rd Congress; 68 Stat., 666. Funds raised by taxation under the provisions of Section 1515.10, Revised Code, may lawfully be expended by such soil conservation district in the furtherance of any such project.

Respectfully,

C. WILLIAM O'NEILL

Attorney General