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SOIL CONSERVATION DISTRICT—CHAPTER 1515, RC.—PROJECT INCLUDES SOIL CONSERVATION OR SOIL EROSION PREVENTION AND FLOOD PREVENTION OR AGRICULTURAL WATER MANAGEMENT—MAY ACT AS “LOCAL ORGANIZATION” WITHIN FEDERAL WATERSHED PROTECTION AND FLOOD PREVENTION ACT (PUBLIC LAW 566, 83RD CONGRESS; 68 STAT., 666) (OPINION NO. 5020, O. A. G. FOR 1955, MODIFIED.)

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 which is designed not only to effect soil conservation or soil erosion prevention, but which involves also benefits in flood prevention or agricultural water management, 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). (Opinion No. 5020, Opinions of the Attorney General for 1955, dated March 29, 1955, modified.)

Columbus, Ohio, July 6, 1956

Hon. F. E. Heft, Executive Secretary
Ohio Soil Conservation Committee, Ohio State University
Columbus 10, Ohio

Dear Sir:

I have for consideration your request for my opinion in which the following question is presented:

“Can your opinion of March 29, 1955, with respect to the authority of soil conservation districts in Ohio, be interpreted as holding that such districts are authorized to act as local organizations under the Watershed Protection and Flood Prevention Act (Public Law 566, 83rd Congress) in planning and carrying out watershed projects that include particular works designed not only to effect soil conservation or soil erosion prevention, but which involve also benefits in flood prevention or agricultural water management?”

The opinion to which you evidently refer is my Opinion No. 5020, dated March 29, 1955, the syllabus in which reads:

"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."

(Emphasis added.)

It is understood that the use of the expression "in this field," as emphasized above, has led the federal authorities concerned to question whether the authority of an Ohio soil conservation district was not interpreted in that opinion as being limited to those projects which are *primarily* aimed at soil conservation and prevention of soil erosion, and which only *incidentally* involve "flood prevention."

It was not my intention so to interpret the authority of these districts.

My purpose in using this limiting language can perhaps best be explained by a brief outline of my concept of the relation of (1) soil conservation and prevention of soil erosion to (2) flood prevention measures.

In the first place, "soil conservation" appears to me to be a term of somewhat broader scope than "prevention of soil erosion," the latter being thought of as measures designed primarily to avoid loss of topsoil through the action of wind and of a too rapid drainage of surface water, while the former may include as well all those measures designed to avoid the loss of the fertility of soil by continued cultivation without adequate restoration of the elements removed in the process of plant growth and harvesting that growth.

Flood *prevention*, in turn, should be distinguished from flood *control*. Measures designed to *control* floods are necessarily based upon the premise that a flood exists, or will exist; and such measures are primarily designed to minimize property damage along water streams generally, but more especially in the lower reaches of the watershed. It is generally recognized that floods are brought into existence by a too rapid run-off of surface waters in the upper areas of a particular watershed, so that it would appear that when a flood condition is found in the main rivers of a watershed the damage to the soil in those upper areas has already occurred. Hence, flood *control* measures, far down stream, can have only a negligible beneficial effect, if any, on the prevention of soil erosion through surface water drainage in such upper areas.

However, I understand that in projects of the sort authorized under Public Law 566 we are concerned with flood *prevention* rather than flood control.

It seems now to be a commonly accepted proposition among soil experts and flood prevention engineers that flood prevention measures must necessarily have regard to prevention of a too rapid drainage of surface water throughout the entire watershed involved, particularly in the upper areas. Accordingly, it is supposed that to the extent that that can be done on those comparatively level upper areas under cultivation, the less will be the need of flood prevention measures in the smaller tributaries, such as water impounding structures to control run-off to the main rivers, and the less will be the need of flood *control* measures much farther down the main rivers.

Accepting, as I do, the accuracy of this thinking, it seems quite clearly to follow that there is a most vital relationship between (1) flood prevention and (2) soil conservation and prevention of soil erosion. Nor is this relation limited necessarily to those measures designed to prevent soil erosion due solely to too rapid surface water drainage. Wind erosion, for example, commonly occurs only when the soil is denuded of vegetation. Hence, cover crops are designed to prevent wind erosion, but such cover has a vital effect also in preventing too rapid run-off of surface water. Moreover, measures designed to restore soil fertility have a very real effect in making such cover crops adequate.

It seems, therefore, that all flood *prevention* measures, if they are adequate, must necessarily include measures designed to effect soil con-

servation and to prevent soil erosion; but measures of the latter sort, although they will have a definite effect in the field of flood prevention, do not *necessarily* include measures designed to prevent floods in the smaller tributaries solely through the erection of structures designed to control water run-off to the main rivers.

It was with this thought in mind, therefore, that I used the expression "in this field" in the syllabus of the earlier opinion, and made the following statement in the opinion proper:

"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."

The definition of "works of improvement" includes, however, "land-treatment measures," and "agricultural phases of the conservation, development, utilization, and disposal of water in watershed or subwatershed areas." Quite clearly projects of this sort could be undertaken by Ohio soil conservation districts.

You expressly inquire, however, whether a project could be undertaken which has the dual purpose and effect of (1) soil conservation and prevention of soil erosion, and (2) the achievement of benefits in flood prevention or agricultural water management as well.

Because of the direct and necessary relationship between these dual purposes, as hereinbefore pointed out, it is my conclusion that such dual projects may be undertaken provided each such project as a whole involves substantial benefits in soil conservation and prevention of soil erosion.

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 which is designed not only to effect soil conservation or soil erosion prevention, but which involves also benefits in flood prevention or agricultural water management, 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. Opinion No. 5020, Opinions of the Attorney General for 1955, dated March 29, 1955, modified.

Respectfully,

C. WILLIAM O'NEILL
Attorney General