SOIL CONSERVATION DISTRICTS AND SUBDISTRICTS: TAXATION: (1) Federal, state and county lands are not to be considered in calculating the percentage of agreements necessary to carry out recommended soil conservation measures and proper farm plans from owners of not less than sixty-five percent of the lands situated in the subdistrict required by Section 278.250, Cum. Supp. 1963; (2) The subdistrict levy under Section 278.250, supra, is to be assessed only upon real estate; (3) Under Section 278.170, Cum. Supp. 1963, the real estate in incorporated towns and cities may be included in a subdistrict and taxed; (4) For a city resident to vote in the referendum provided by Section 278.200, RSMo 1959, he must qualify as a land representative which is defined in Section 278.070, Cum. Supp. 1963; and (5) Incorporated towns and cities are not included in watershed subdistricts organized prior to October 13, 1963.

February 17, 1964

OPINION NO. 15

Mr. Harold Owens, Executive Secretary
Missouri Soil and Water Districts Commission
T-9 Building, University of Missouri
Columbia, Missouri

FILED
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Dear Mr. Owens:

This refers to your letter in which you requested advice from this office concerning certain legal questions in connection with the revision of your commission's instructions concerning the organization and operation of subdistricts of soil and water conservation districts in the light of amendments to the applicable statutes contained in Senate Bills No. 206 and 220, 72nd General Assembly, effective as of October 13, 1963.

Your first question relates to a requirement of Section 278.250, Cum. Supp. 1963, that as a condition to the levying of a subdistrict tax there be "obtained agreements to carry out recommended soil conservation measures and proper farm plans from owners of not less than sixty-five percent of the lands situated in the subdistrict." Your question is as follows:

> "Are U. S. Forest Lands, state and county lands considered when calculating the percentage?"

Section 278.250, which was amended in certain respects by Senate Bill No. 220, expressly requires that agreements be obtained from the owners of not less than sixty-five per cent of the lands situated in a subdistrict and it makes no distinction whatsoever between lands upon the basis of the nature of their ownership.

This is similar to the situation considered in an opinion of this office under date of July 21, 1961, addressed to the Honorable Morran D. Harris, which is enclosed.

In that opinion this office held that: "Land owned by the State Conservation Commission does not count in the total acreage of an area for the purposes of determining whether landowners petitioning for the creation or dissolution of a special road district own at least 50 percent of the acreage as required by law."

The reasons given for such conclusion were based on the considerations of fairness by the state to the other property owners in the area. It would be unfair for a state agency not subject to taxation to control the disposition of the property taxes and the roads of the area's landowners.

The opinion further based its conclusion on the general rule of statutory construction stated at 59 C. J. Statutes, §653, p. 1103:

> "The state and its agencies are not to be considered as within the purview of a statute, however general and comprehensive the language of such act may be, unless an intention to include them is clearly manifest, as where they are expressly named therein, as included by necessary implication. . . ."

It is the opinion of this office that such reasoning also applies to the situation at hand and we conclude that federal, state and county lands are not to be considered in calculating the percentage of agreements necessary "to carry out recommended soil conservation measures and proper farm plans from owners of not less than sixty-five percent of the lands situated in the subdistrict as required by Section 278.250.

In question no. 3 of your letter, you request our opinion concerning the interpretation to be given to paragraph 4 of Section 278.250, which provides:

> "4. The governing body of each soil and water conservation district containing a subdistrict or a portion thereof shall make the necessary millage levy on the assessed valuation of all real estate within the

> boundaries of the subdistrict lying within their respective district to raise the needed amounts, but in no event shall the levy exceed four mills on each one dollar of assessed valuation per annum and, on or before the first day of September of each year, shall certify the rate of levy to the county court of the county within which the district is located with directions that at the time and in the manner required by law for the levy of taxes for county purposes the county court shall levy a tax at the rate so fixed and determined upon the assessed valuation of all the taxable property within the subdistrict, in addition to such other taxes as are levied by the county court."

Your question concerning such section may be restated as follows:

> Is it the correct interpretation of Section 278.250(4) that the assessment of the subdistrict levy is to be on real estate only?

It is a general rule of law that tax laws must be strictly construed in favor of the taxpayer and against the state and if the right to tax is not plainly conferred by statute it is not to be extended by implication. Osterloh's Estate v. Carpenter, 337 SW2d 942; in Re Gerling's Estate, 303 SW2d 915.

Keeping this rule in mind, it follows of necessity that the only property that the governing body of the board can have the county court levy taxes on is real estate.

When the statute says the county court shall levy a tax on "all the taxable property in the subdistrict," it necessarily means, "all the real estate," as this is the only property on which the governing body of the soil and water conservation district may levy under Section 278.250. The phrase "all the taxable property" refers back to "all the real estate" which for all extents and purposes <u>is all</u> the taxable property which the governing body may levy upon.

In No. 2 of your letter you have raised three questions concerning Section 278.170 as amended by Senate Bill No. 206, 72nd General Assembly. The statute provides the method by which land representatives in a proposed subdistrict may petition the board for a hearing and a referendum thereon. The statute sets up certain requirements as to the number signing the petition and the area to be encompassed. The 1963

revision of the statute removed from the requirements as to area that it be:

> ". . . in the same watershed but in no event shall it include any area located within the boundaries of an incorporated city or town."

The only requirement as to area which remains is that it be contiguous.

The first question you raise with respect to this statute is as follows:

> "Are lands and property (homes, lots and businesses) in incorporated towns included in the subdistrict and subject to the tax and can they vote in referendum?"

It is clear from the revision that the legislature intended to include real estate in incorporated areas in the proposed subdistrict, for without repeal of this exclusionary provision they could not have been so included and inclusion of incorporated areas and property in other watersheds is the only reasonable purpose for the repeal.

It is a general rule of construction that the legislature intended the necessary results of its acts. The necessary result of such repeal is to include otherwise excluded areas; thereby, making it possible for a soil and water conservation subdistrict to include an incorporated city or town.

The real estate located in such incorporated cities or towns included in a soil and water conservation subdistrict is subject to taxation under Section 278.250. The tax is to be levied on "all real estate within the subdistrict," thus, including real estate in incorporated towns and cities if such are included in the subdistrict.

The owners of the real estate in such included incorporated city or town cannot vote in the referendum unless they meet the qualification of land representatives, for Section 278.200, RSMo 1959, calls for a referendum by land representatives.

This brings us to point 2.B. of your letter which reads as follows:

> "What is the definition of a 'land representative' under these amendments?"

A land representative under these revisions is the same as before the revisions, i.e., what they are defined as in Section 278.070, Cum. Supp. 1963, which provides:

> "(2) 'Land representative' means the owner or representative authorized by power of attorney of any farm lying within an area proposed to be established, and subsequently established, as a soil and water district under the provisions of this law, and for the purposes of this law each such farm shall be entitled to representation by a land representative; provided, however, that any land representative must be a taxpayer of the county within which the soil and water district is located;"

Therefore, he must be the owner or representative authorized by power of attorney of any farm and a taxpayer in the county within which the soil district is located. If any real estate within an incorporated city or town is a farm then the land representative of that tract of real estate is entitled to vote in the referendum. The owners or occupants of other real estate in the incorporated city or town, as well as the owners or occupants of real estate other than farms in other parts of the subdistrict, are not entitled to vote at the referendum although their property is subject to taxation by the subdistrict.

In No. 2.C. of your letter you ask:

> "Will incorporated towns be included in previously organized watersheds' subdistricts? Is this inclusion retroactive?"

Section 278.170, RSMo, requires that the boundaries of the proposed subdistrict shall be set forth in the petition by legal description and prior to Senate Bill No. 220, the proposed subdistrict was to exclude "any area located within the boundaries of an incorporated city or town." Hence, the boundaries of existing subdistricts do not include such incorporated towns or cities. Therefore, incorporated towns and cities will not be automatically included in watershed subdistricts organized prior to October 13, 1963.

Mr. Harold Owens, Executive Secy

CONCLUSION

Therefore, it is the opinion of this office that: (1) Federal, state and county lands are not to be considered in calculating the percentage of agreements necessary to carry out recommended soil conservation measures and proper farm plans from owners of not less than sixty-five percent of the lands situated in the subdistrict required by Section 278.250, Cum. Supp. 1963; (2) The subdistrict levy under Section 278.250, supra, is to be assessed only upon real estate; (3) Under Section 278.170, Cum. Supp. 1963, the real estate in incorporated towns and cities may be included in a subdistrict and taxed; (4) For a city resident to vote in the referendum provided by Section 278.200, RSMo 1959, he must qualify as a land representative which is defined in Section 278.070, Cum. Supp. 1963; and (5) Incorporated towns and cities are not included in watershed subdistricts organized prior to October 13, 1963.

The foregoing opinion which I hereby approve, was prepared by my assistant, Jeremiah D. Finnegan.

Very truly yours,

Thomas F. Eagleton

Thomas F. Eagleton
Attorney General

Enc.