

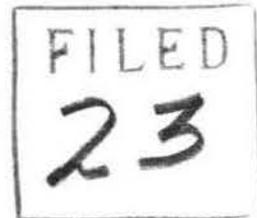
APPROPRIATIONS:
CONSERVATION COMMISSION
OUTDOOR RECREATION:
SOIL AND WATER DISTRICTS:

(1) Soil and water districts, so long as they are acting within their powers granted them by state statute may be eligible to receive funds from Public Law 88-578 where federal requirements are met; (2) however, an appropriation would be needed to transmit these funds from the State to local government units; and (3) the designation of the Inter-Agency Council for Outdoor Recreation as the state agency in Missouri would be in conformity to Public Law 88-578.

February 10, 1965

OPINION NO. 23 (1965)
372 (1964)

Mr. William E. Towell, Director
Missouri Conservation Commission
Highway 50 West
Jefferson City, Missouri



Dear Mr. Towell:

This is in answer to your recent request for an official opinion of this office on three questions relating to the Federal Land and Water Conservation Fund Act of 1965.

In effect, your first question asks whether funds may be transferred under this act to Missouri Soil and Water Districts.

Section 5 (f) of Public Law 88-578 (the Federal Land and Water Conservation Fund Act of 1965, effective January 1, 1965) provides in part as follows:

"If consistent with an approved project, funds may be transferred by the State to a political subdivision or other appropriate public agency."

Clearly a soil and water district is a "public agency" within the meaning of the above-quoted federal act, and the question becomes whether it is an "appropriate" public agency. It is our view that a soil and water district may properly participate in the federal program so long as the project in question is one which is within the authority conferred upon soil and water districts by Sections 278.060 through 278.155, RSMo Cum. Supp. 1963. Obviously, a soil

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and water district is not empowered by these sections to embark upon such ventures as the creation of a system of parks. On the other hand, these districts are created for the purpose of soil and water conservation. Consistent with this purpose, such districts often engage in the construction of lakes. If the construction of such a lake is also consistent with the recreational aims of the federal act, the district would be an appropriate public agency under the federal act insofar as this particular project is concerned.

In this regard, it is to be noted that Section 278.080, RSMo 1963 Supp., states, in part, that the State Soil and Water Districts Commission " . . . shall receive and properly convey to the soil and water districts any other form of aid extended to such districts by any other agency of this state"

Your second question asks whether "an appropriation must be made to permit the state to transmit these funds to the local government units".

The federal act in question, Public Law 88-578, supra, is entitled, "AN ACT to establish a land and water conservation fund to assist the States and Federal agencies in meeting present and future outdoor recreation demands and needs of the American people, and for other purposes" [Federal acquisition of certain areas].

This act allocates the appropriations "on the ratio of 60 per centum for State purposes and 40 per centum for Federal purposes". Throughout the portion of the act dealing with "Financial Assistance to States", there are numerous expressions of the Federal intent that these appropriations are made to the States.

Section 5 (a) of the Act reads, in part, as follows: "The Secretary of the Interior (hereinafter referred to as the "Secretary") is authorized to provide financial assistance to the States from money available for State purposes".

Section 5 (f) of the Act provides in part that: "If consistent with an approved project, funds may be transferred by the State to a political subdivision or other appropriate public agency". This determination that any transfer of funds, to lesser political units in the State, is within the discretion of the State, further substantiates the view that this allocation of money from the Federal government is appropriated to the State, and not merely

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given through the State to other political subdivisions.

The receipt of money by the State is controlled by Article IV, Section 15, of the Constitution of Missouri, which states in part as follows:

"All revenue collected and moneys received by the state from any source whatsoever shall go promptly into the state treasury, and all interest, income and returns therefrom shall belong to the state . . ."

It is clear then that money once received by the State for state purposes is state money.

Article IV, Section 28, of the Constitution of Missouri, describes the manner in which withdrawals may be made from the state treasury, and reads in part as follows:

"No money shall be withdrawn from the state treasury except by warrant drawn in accordance with an appropriation made by law, nor shall any obligation for the payment of money be incurred unless the comptroller certifies it for payment and certifies that the expenditure is within the purpose of the appropriation and that there is in the appropriation an unencumbered balance sufficient to pay it . . ."

Thus, an appropriation would be required to permit the state to transmit these funds to local government units.

Your third question asks, "Would the proposed legislation to create an Inter-Agency Council for Outdoor Recreation give Missouri the necessary authority to meet the Act requirement?"

Section 5 of this proposed act reads as follows:

"The state inter-agency council for outdoor recreation shall be:

"(1) the official state agency for liaison with the federal bureau of outdoor recreation; and

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"(2) the official state agency to receive and disburse federal funds available to this state for overall outdoor recreation planning; and

"(3) the official state agency to receive and allocate to the appropriate state agencies, political subdivisions, or other public agencies, federal funds available from the Land and Water Conservation Fund, P.L. 88-578, for outdoor recreation programs

"(4) a forum for consideration of outdoor recreation problems affecting member agencies and an advisory and planning agency for overall outdoor recreational programs. The council may provide information and advisory services for any political subdivision requesting its services."

(It is suggested that the following: "; and" be added at the end of Subdivision 3 of Section 5 of the proposed Act. In addition, it is suggested that Section 2 and Section 3 should each consist of one paragraph, or that the other paragraphs now included therein be numbered.)

Thus, by state law, Subdivision 3 of Section 5 of the proposed Act, the Inter-Agency Council for Outdoor Recreation would be designated "the official state agency to receive and allocate to the appropriate state agencies, political subdivisions, or other public agencies, federal funds available from the Land and Water Conservation Fund, P.L. 88-578, for outdoor recreation programs".

This would be in conformity to the federal requirements of Section 5 (f) of Public Law 88-578 which states, in part, as follows:

"Payments for all projects shall be made by the Secretary to the Governor of the State or to a State official or agency designated by the Governor or by State law having authority and responsibility to accept and to administer funds paid hereunder for approved projects."

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CONCLUSION

Therefore, it is the opinion of this office that (1) soil and water districts, so long as they are acting within the powers granted them by state statute, may be eligible to receive funds from Public Law 88-578 where federal requirements are met; (2) however, an appropriation would be needed to transmit these funds from the State to local government units; and (3) the designation by state law of the Inter-Agency Council for Outdoor Recreation as the state agency in Missouri would be in conformity to Public Law 88-578.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Thomas E. Eichhorst.


NORMAN H. ANDERSON
Attorney General