SOIL & WATER CONSERVATION DISTRICTS & SUBDISTRICTS ...AN ANALYSIS OF THEIR FUNCTION UNDER ILLINOIS LAW

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Soil and water conservation districts have been functioning in Illinois since July 1938, when the Shiloh-O'Fallon district was organized in St. Clair County. Directors of these districts and other interested persons have raised many questions concerning the power, authority, obligations, and general legal status of districts and subdistricts. This circular attempts to answer the most important of these questions.

How Did Soil and Water Conservation Districts Come About?

The Act of Congress of April 27, 1935 (16 U.S.C. 590a), creating the Soil Conservation Service as an agency of the United States Department of Agriculture and describing its powers and functions, gave legislative recognition to the cumulative findings about soil erosion and soil losses in this language: "It is recognized that the wastage of soil and forest lands of the nation, resulting from soil erosion, is a menace to the national welfare and that it is declared to be the policy of Congress to provide permanently for the control and prevention of soil erosion and thereby to preserve natural resources . . . , and the Secretary of Agriculture, from now on, shall coordinate and direct all activities with relation to soil erosion. . . ."

The Soil Conservation Service is authorized, among other things, to ". . . cooperate or enter into agreements with, or to furnish financial or other aid to any agency, governmental or otherwise, . . . subject to such conditions as (may be deemed) necessary. . . ." In furtherance of this authorization is the following provision:

As a condition to the extending of any benefits under this chapter to any lands not owned or controlled by the United States or any of its agencies, the Secretary of Agriculture may, insofar as he may deem necessary for the purposes of this chapter, require —

(1) The enactment and reasonable safeguard for the enforcement of state and local laws imposing suitable permanent restrictions on the use of such lands and otherwise providing for the prevention of soil erosion;

(2) Agreements or covenants as to the permanent use of such lands; and

(3) Contributions in money, services, materials, or otherwise, to any operations conferring such benefits.

In 1936, the U.S. Department of Agriculture issued a pamphlet entitled *A Standard State Soil Conservation Districts Law.* This publication was to inform the states about the kind of state law that would be acceptable to the Department as a basis for further assistance from the Soil Conservation Service. It was prepared at the suggestion of representatives of a number of states. In the foreword signed by the Secretary of Agriculture is the statement: "While it is anticipated that the Standard Act will be appropriate to the needs of most of the states in its present form, it is true, of course, that changes may have to be made in some of the provisions to adapt the legislation to the requirements of particular states."

This Standard Act was studied by members of the Cooperative Extension Service of the University of Illinois, the State Department of Agriculture, and interested farm organizations. As a result, several changes were made in the law for Illinois, the principal ones being to require land ownership as a qualification for voting on organization, to require a favorable majority of all qualified voters for organization, and to increase the necessary favorable vote for the adoption of a land-use regulation to three-fourths of all landowners. In 1937, a districts law was adopted in Illinois.

How Did Subdistricts Come About?

The Illinois Soil and Water Conservation Districts Law was amended in 1955 to enable the people within a watershed area to organize a subdistrict for the specific purpose of developing, maintaining, and operating works of improvement according to the Watershed Protection and Flood Prevention Act of 1954. The subdistrict was granted the power to levy a tax not in excess of .125 percent (12½¢ per $100 valuation). In 1963, the law was further amended to permit subdistricts to levy special assessments through the procedure outlined in the Local Improvements Law of the Illinois Municipal Code, in addition to the tax of .125 percent. Subdistricts can make assessments for the construction, operation, and maintenance of flood-control structures and other works of improvement.

A subdistrict may be organized in one or more soil and water conservation districts but must be contiguous (in one piece) and in the same watershed. Organization is by the hearing and referendum procedure, following a petition signed by a majority of the landowners owning a majority of the land in the proposed subdistrict and directed to the directors of the main district or districts.

What Is the Legal Nature of a District and How Does It Fit Into Our Governmental Scheme?

There are many mistaken notions about the nature of a soil and water conservation district. Perhaps a statement of some of the things a district is not will prove as helpful as a definition of what it is.

It *is not* an agency of or a political subdivision of the federal government.

It *is not* subject to legal control by any federal agency.

It *is not* a political subdivision of the state of Illinois.

It *is not* subject to the control of any state agency in the determination and execution of its program.

It *is not* in any sense a county governmental agency or in any way subject to control by the county board of supervisors, though it may be organized along county lines. It is interesting to note that drainage districts in Illinois cannot be legally organized to correspond to a political unit such as a township or county. Soil and water conservation districts would

probably be subject to the same limitation if they had the power to levy assessments.

In the language of the law itself, a soil and water conservation district *is* ". . . a public body corporate and politic, organized in accordance with the provisions of this Act." It is answerable only to its electorate and so long as it operates within the scope of its authority has complete autonomy.

What Duties Are Owed by a District to the Public?

It is doubtful if any very clear-cut and direct responsibility to do anything can be forced upon a district since Illinois districts have no fund-raising power through taxation or assessments. A district probably cannot be compelled to enter into agreements or accept aid and assistance. However, the petition for organization must state the need for a soil and water conservation district and the State Department of Agriculture, as the organizing agency, must determine if the need for the district is real. This implies some duty for the directors.

Since soil conservation legislation and the agencies established by such legislation are founded on the idea that soil is a national resource and its conservation a problem affecting the public welfare, the district board should feel morally obligated to provide these services to the public:

The district will work out a sound program for the whole district calculated to achieve maximum conservation and will make a conscientious effort to carry it out.

Any work done on an individual farm will be based on sound research and adequate farm planning.

The district will establish standards for the types of work to be done and will insist on reasonable compliance with such standards.

The district will prevent the deterioration of work accomplished and will assure relative permanence of structures built.

The fact that Soil Conservation Service personnel actually do the planning and furnish assistance does not excuse the district from any of its duties. When the district enters an agreement with the Soil Conservation Service or any other agency, it is obligated to enter only agreements coordinate with its duties to the public. If the directors find that these duties cannot be fully discharged under an existing agreement, they must attempt to revise the agreement in consultation with the agency or, failing revision, withdraw from the agreement.

What Are Districts and Subdistricts Legally Empowered to Do?

The Illinois law (similar in this respect to the Standard Act) sets out in detail nine powers of the districts.[1] They are briefly stated as follows:

(1) . . . to develop comprehensive plans for the conservation of soil and water resources and for the control and prevention of soil erosion. . . .

(2) To carry out preventive and control measures within the district. . . .

[1] ILL. REV. STAT. ch. 5 § 127.1-§ 127.9 (1963).

(3) To cooperate, or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to, any agency, governmental or otherwise, or any owner or occupier of lands within the district, in the carrying on of erosion-control and flood prevention operations within the district, subject to such conditions as the directors may deem necessary to advance the purposes of this Act.

(4) To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise or through condemnation, any property, real or personal, or rights or interests therein necessary for the purpose of the district. . . .

(5) To make available, on such terms as it shall prescribe, to landowners or occupiers within the district, the use of agricultural and engineering machinery and equipment, and such other material or equipment as will assist such landowners or occupiers to carry on operations upon their lands for the conservation of soil and water resources and for the prevention and control of soil erosion. . . .

(6) To construct, improve, operate and maintain such structures as may be necessary for the performance of any of the operations authorized in this Act.

(7) To take over, by purchase, lease or by voluntary agreement, and to administer, any soil-conservation, water-conservation, flood-prevention, erosion-control or erosion-prevention project located within its boundaries, . . . to accept donations, gifts and contributions in money, services, materials, or otherwise, from the United States, or from this State or any of its agencies, and from any other source, and to use or expend such district moneys, services, materials, or other contributions in carrying on its operations.

(8) To sue and be sued in the name of the district; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments, necessary or convenient to the exercise of its powers; to make, and from time to time amend and repeal, rules and regulations not inconsistent with this Act, to carry into effect its purposes and powers.

(9) . . . may require contributions in money, services, materials, or otherwise to any operations conferring such benefits, and may require land owners to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion thereon. . . . The directors shall maintain a uniform schedule for any charges that may be made against land owners for benefits rendered by the district. . . .

It is presumed that subdistricts have the same powers, in addition to the following special provisions:

1. Develop plans for flood prevention and flood control.

2. Levy a tax not in excess of .125 percent.

3. Cooperate with the federal government in carrying out the Watershed and Flood Prevention Act.

4. Make assessments for works of improvement, using the assessment procedure in the Local Improvements Law of the Illinois Municipal Code.

5. Pay subdistrict directors a maximum of $10.00 a day for services performed concerning subdistrict business.

The 1963 amendment provides that either five or seven directors of the subdistrict shall be elected from the subdistrict — five if the subdistrict is wholly in one soil and water conservation district, seven if in more than one.

Districts have another very important power — they can adopt and enforce land-use regulations. This raises the question of what role soil and water conservation districts may come to play in view of their power to adopt land-use regulations. First, there is the problem of constitutionality. Would land-use regulations adopted in accordance with the law, which provides for publication of proposed ordinances, hearings, referenda, and a favorable vote of three-fourths of all landowners in the district, stand the test of constitutionality? They probably would. But they would have to be well drafted and backed by necessary technical findings. It can be assumed that conserving soil resources is within the police power of the state and that soil and water conservation districts are properly constituted public corporations. It cannot, however, be assumed that any particular land-use regulation will stand the test of reasonableness unless it is definitive in its terms, certain in its application, productive of a result which benefits the public, and based on findings which are scientifically sound. Ideally, land-use regulations should be a means of protecting the conservation accomplishments that a district is able to make and of coercing the few.

What Is the Legal Relation of a Soil and Water Conservation District to the Soil Conservation Service of the United States Department of Agriculture?

Federal and state law does not impose, establish, or compel the establishment of any legal relation between a district and the Soil Conservation Service. As a matter of practice, however, there is a relationship established voluntarily by contract. But a district can establish such a relationship with any other agency — State Department of Agriculture, State Department of Conservation, or the Cooperative Extension Service, for example. Districts usually enter into a basic agreement or memorandum of understanding with the U.S. Department of Agriculture. Since districts are the agencies through which the Soil Conservation Service works, a memorandum of understanding that sets forth the duties and undertakings of each is executed by both parties. This becomes the guide by which soil conservation assistance may be supplied to and used by the district.

A district may be invited to sit as an equal on a county council of agencies (including federal, state, and local), but whether or not it participates is entirely up to the directors.

Although directors have no legal right to direct or control Soil Conservation Service personnel, they are concerned with Service personnel policy, with the ability and training of farm planners and technicians, and with the standards under which employees operate. Directors should offer constructive opinions about any of these matters and should feel free to express their views to appropriate persons in the Soil Conservation Service or the U.S. Department of Agriculture, or even to their congressman.

Although a district may contract with public agencies, it cannot transfer or bargain away to some other agency the authority to make decisions or determine policies, which was given by law only to the directors.

What Is the Legal Relation of a District to the State Department of Agriculture?

The State Department of Agriculture may insist upon any particular activity in a district only insofar as it has funds to distribute. A district is still free to contract. The law, however, presupposes or assumes a working relation between a district and the Department, as evidenced by the following provisions in the Act:[1]

In addition to the powers and duties hereinbefore or hereinafter conferred upon the Department, it shall have the following powers and duties:

(1) To offer such assistance as may be appropriate to the directors of soil and water conservation districts, organized as provided hereinafter, in the carrying out of any of the powers and programs.

(2) To keep the directors of each of said several districts informed of the activities and experiences of other such districts, and to facilitate an interchange of advice and experience between such districts and cooperation between them.

(3) To coordinate the programs of the several districts so far as this may be done by advice and consultation.

(4) To seek the cooperation and assistance of the United States and of agencies of this State, in the work of such districts.

(5) To disseminate information throughout the State concerning the formation of such districts, and to assist in the formation of such districts in areas where their organization is desirable.

(6) To consider, review, and express its opinion concerning any rules, regulations, ordinances or other action of the board of directors of any district and to advise such board of directors accordingly.

(7) To prepare and submit to the Director of Finance a biennial budget.[2]

What Is the Legal Relation of a District to a Cooperator?

When district directors accept an application for assistance, a contractual relation is created — whether evidenced by a written memorandum or not. The contractual relation is between the cooperator and the district, not between the cooperator and the Soil Conservation Service. In such a contract the district cannot legally agree to something beyond its authority or financial resources, nor can it give one cooperator better terms than another for the same service. There must be uniformity and nonpartiality when rendering services and scheduling charges. Furthermore, since the district has contracted with the Soil Conservation Service, it cannot make a contract with a cooperator that contradicts its relation with the Service. Otherwise the Service may rightfully refuse to perform. In general, district policy has been to make agreements which are acceptable

[1] ILL. REV. STAT. ch. 5 § 111.6 (1963).
[2] This budget includes funds to be used by the districts.

to the cooperator and which will encourage — not discourage — his participation in the district's program.

What Can a Citizen Do When He Feels That His District Is Not Meeting Its Responsibility?

If anyone feels that his district is not functioning properly, he should first consult the directors. A constructive discussion may lead to improvement or explain why a situation must exist. If discussion fails to satisfy, there are many ways of bringing pressure to bear, including publicity, appeals to farm organizations, and an appeal to the electorate of the district or subdistrict. If extreme measures seem justified, writs of injunction or mandamus are always available. An injunction prevents the directors from doing something; mandamus makes them do something.

Summary

The substance of the answers to the questions may be briefly restated as follows:

Soil and water conservation districts, though organized by landowners in the districts, came about as a result of federal legislation. Their creation within the states was made a necessary condition for securing further assistance from the Soil Conservation Service.

A district is a public body, autonomous and free from direct governmental control, both federal and state.

Once a district is organized, there is a presumption that the directors will do whatever they can to achieve the purposes of the district, operating within the rather broad range of powers enumerated in the law. The law does not, however, give a district power to raise funds through taxation.

In carrying on its work, the district may enter cooperative agreements with the United States Department of Agriculture, the Soil Conservation Service, or any other agency, but in so doing cannot legally bargain away any of its powers.

The district's relation to the cooperator is contractual. It owes a duty to the public in entering such contracts to see that effective means are employed to achieve the conservation plan on the individual cooperator's land and to further see that the completion of individual plans fulfills an over-all conservation plan for the district.

The directors cannot delegate the above responsibilities to anyone.

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