



Attorney General of New Mexico

GARY K. KING
Attorney General

ALBERT J. LAMA
Chief Deputy Attorney General

March 17, 2011

The Honorable Carroll H. Leavell
New Mexico State Senator
Room 415C, State Capitol
Santa Fe, NM 87501

Re: Opinion Request – Authority of Soil and Water Conservation District to Administer Statewide TSP Program

Dear Senator Leavell:

You requested our advice regarding extent of a soil and water conservation district's authority outside its district. In particular, you asked whether a soil and water conservation district had legal authority to administer and implement the Farm Bill Specialist (Technical Service Provider) ("TSP") Program statewide. As discussed below, we were unable to find statutory authority for a district to administer the TSP Program outside its district.

Under federal law, the U.S. Department of Agriculture, Natural Resources Conservation Service ("NRCS") provides technical assistance to eligible participants directly or through an agreement with a TSP. 16 U.S.C.S. § 3842(c); 7 C.F.R. § 652.3(a) (2010). The purpose of the technical assistance "is to provide ... consistent, science-based, site-specific practices designed to achieve conservation objectives on land active in agricultural, forestry, or related uses." 16 U.S.C.S. § 3842(b).

According to your request, the state legislature and the NRCS have provided funding for the TSP Program for the past eight years through the New Mexico State University, New Mexico Department of Agriculture ("NMDA"). The New Mexico Association of Conservation Districts administered the Program under a contract with NMDA. Recently, the NMDA began encouraging soil and water conservation districts to submit proposals for a new contract to administer the Program statewide across individual district boundaries. The NRCS office in New Mexico and the U.S. Department of Agriculture, Office of General Counsel have concluded that the districts do not have legal authority to administer or implement the TSP Program statewide under NRCS' agreement with NMDA.

Senator Carroll H. Leavell
March 17, 2011
Page 2

A soil and water conservation district is a "governmental subdivision of the state." NMSA 1978, § 73-20-44 (2003). A governmental subdivision "possesses only such powers as are expressly granted to it by the Legislature, together with those necessarily implied to implement those express powers." El Dorado at Santa Fe, Inc. v. Board of County Comm'rs, 89 N.M. 313, 317, 551 P.2d 1360 (1976).

The legislature has set forth the powers of soil and water conservations districts in the Soil and Water Conservation District Act, NMSA 1978, §§ 73-20-25 to -48 (1965, as amended through 2009). The Act generally confines the authority of a district to land and landowners within the district. See id. § 73-20-44 (2003). Under the provision most pertinent to your question, a district is authorized, through its board of supervisors, to "act as agent for any instrumentality or agency of the state or of the federal government in the acquisition, construction, operation or administration of a natural resource conservation, utilization or development project or program within the district." Id. § 73-20-44(I) (emphasis added).

Section 73-20-44(I) would permit a soil and water conservation district to enter into a contract to administer the TCP Program as agent for NRCS only within the district. We did not find any statutory authority for a district to administer the TCP Program or other conservation program statewide. Accordingly, we agree with the conclusion reached by the NRCS and the U.S. Department of Agriculture, Office General Counsel that a soil and water conservation district does not have sufficient authority to act as an agent administering the TCP Program beyond the district's borders.

If we may be of further assistance, please let us know. Your request to us was for a formal Attorney General's Opinion on the matters discussed above. Such an opinion would be a public document available to the general public. Although we are providing you our legal advice in the form of a letter instead of an Attorney General's Opinion, we believe this letter is also a public document, not subject to the attorney-client privilege. Therefore, we may provide copies of this letter to the public.

Sincerely,


Elizabeth A. Glenn
Deputy Attorney General