

OFFICIAL OPINION NO. 78-5, Continual contract approval by voters in conservancy subdistrict

January 9, 1978

The Honorable Robert K. Williams  
State Senator  
1601 South Second  
Aberdeen, South Dakota 57401

Official Opinion No. 78-5

**Continual contract approval by voters in conservancy subdistrict**

Dear Senator Williams:

You have requested an official opinion based on the following question:

QUESTION:

Assuming a conservancy subdistrict has been granted contracting authority by a majority vote of the electors pursuant to SDCL 46-18-34 through 46-18-38, must such a subdistrict submit any future contracts to a vote of the electorate?

The following background facts are relevant and may be helpful to discussion of your question. Conservancy subdistricts are political subdivisions of the State which are meant to aid in meeting the objectives of water resource development as expressed in Chapters 46-17 and 46-18 of the South Dakota Codified Laws. See SDCL 46-18-1 and 46-18-9. Conservancy subdistricts have been given the power to contract with the United States, the State of South Dakota or its agencies, South Dakota public entities, private corporations or persons for the performance of contracts for construction, operation or maintenance of water resources projects to accomplish the intents of SDCL 46-17 and 46-18. However, this contracting authority is limited by a requirement that approval of the subdistrict electorate be obtained after notice. See SDCL 46-18-34 through 46-18-36. Originally state law required that each long term contract negotiated by a subdistrict had to be preceded by notice, hearings and sixty percent approval of the subdistrict's electorate in an election. See Session Laws of 1959, Chapter 453 and Attorney General's Opinions 1961-

1962, page 100. Chapter 453, Section 24, reads in part as follows:

Section 24. When the Board of Directors of the subdistrict *determines, through negotiations* with the United States that it is desirable for the subdistrict to *enter into a contract* as principal and guarantor or either, for the payment of any part of the cost incurred, or to be incurred, in the acquisition of land, construction, operation and maintenance of water resources development works, the subdistrict board shall give notice of public hearings on such proposed contract as herein provided . . . (Emphasis added.)

Chapter 435, Section 24, as codified, was amended in 1966 to state what is now required under SDCL 46-18-34 through 46-18-38, inclusive. See Session Laws of 1966, Chapter 261. SDCL 46-18-34 reads as follows:

When the board of directors of the subdistrict *determines, through or as a precedent to negotiations* with the United States, with public entities of South Dakota or other states or with persons, that it is or will be desirable for the subdistrict to secure the *authority to enter into contracts* as principal and guarantor or either, for the payment of any part of the cost incurred, or to be incurred, in the acquisition of land, construction, operation and maintenance of water resource development projects, the subdistrict board shall give notice of public hearings on the question of granting the subdistrict board contracting authority to enter into such contracts. (Emphasis added.)

There are a number of apparent differences between the quoted portion of Chapter 453 and SDCL 46-18-34. Under Chapter 453, notice of public hearings is given after a specific contract has been negotiated while under 46-18-34 negotiations on a specific contract need not have been held when public notice is given. Also, the language of Chapter 453, Section 24, refers to "a contract" while 46-18-34 speaks of "authority to enter into contracts."

Obviously, the subdistrict board which is given contracting authority can enter into more than one specific contract. However, such authority is not without limit. SDCL 46-18-34 makes it clear that the contracting authority was referenced to a specific water project or projects which the subdistrict had negotiated or desired to negotiate.

Both Chapter 453 as quoted and 46-18-34 speak of contract negotiations on either water resource development works or projects. Clearly the term "negotiations" contemplates a particular subject matter being involved. SDCL 46-18-34 allows the board more flexibility in

its negotiations and relieves the board of obtaining voter approval for all the details, but 46-18-34 still gives the electorate a voice in the broader policy decision of whether to enter into certain project ventures. The public hearings are to give interested persons the opportunity to be heard and to give support or objections to such contracting authority. If after holding public hearings the subdistrict board deems it advisable to seek contracting authority, and it receives the approval of the South Dakota conservancy district board, the subdistrict board shall submit the question to a vote of its electorate in an election. The subdistrict board shall be given such contracting authority upon receiving majority approval in such election. See SDCL 46-18-35 through 46-18-38. The subdistrict board, which has reached the stage in the planning of a water development project or projects where it needs contracting authority, must gain the approval of its electorate. The procedure for this is to have notice and public hearings before such an election. If this notice and the hearings are to have much meaning they must be referenced to a specific project or projects. Otherwise, the electorate would not have any ideas as to the scope of the contracting authority which the subdistrict board desired. Therefore, the subdistrict's contracting authority is limited to the scope of the public hearing notices' description of the contemplated projects. In answer to your question, further contracts *need not* be submitted to the electorate if such contracts are within the scope of the projects described in the notice of public hearings on giving the subdistrict board contracting authority.

Respectfully submitted,

William J. Janklow  
Attorney General

WJJ:LK:jo