United States
Department of
Agriculture

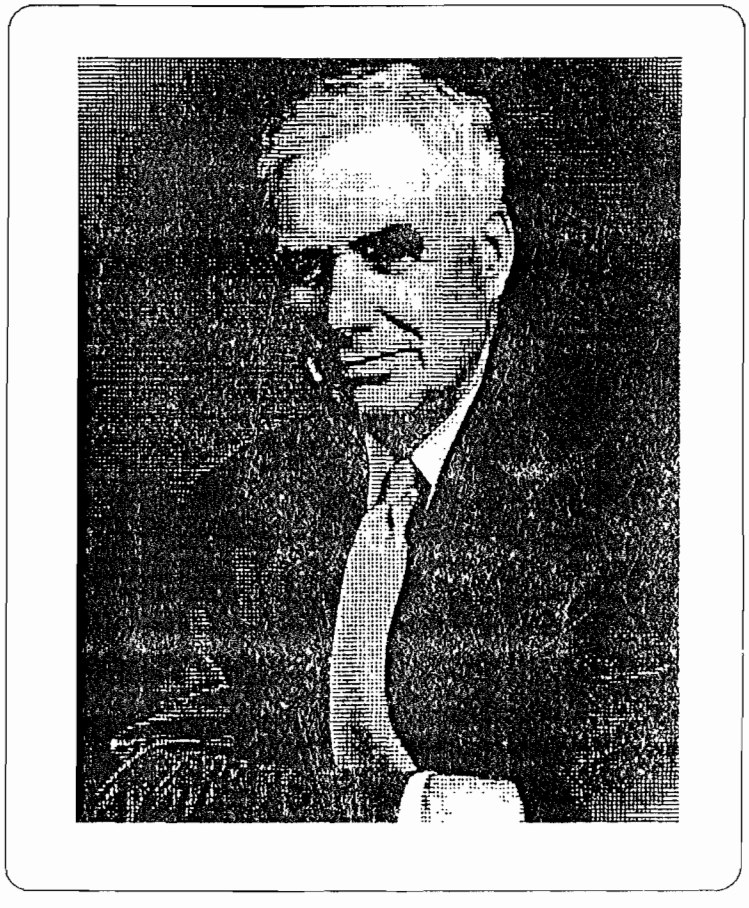
Soil
Conservation
Service

Economics and
Social Sciences
Division, NHQ

February 1990

The Preparation of the Standard State Soil Conservation Districts Law

An Interview with Philip M. Glick



M.L. Wilson

Assistant Secretary of Agriculture
1934 -1937
Under Secretary of Agriculture
1937-1940

THE PREPARATION

of the

STANDARD STATE SOIL CONSERVATION DISTRICTS LAW:

An Interview with Philip M. Glick

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INTRODUCTION

During several sessions in May and June 1983, Philip M. Glick explained to me the rationale for the various provisions of the Standard State Soil Conservation Districts Law. No one other than Glick knows the law in such detail, for he was there at the creation. As a young lawyer in the Department of Agriculture, he was called in by M. L. (Milburn Lincoln) Wilson, Assistant Secretary of Agriculture, to work on a new method whereby the Federal government might persuade and assist landowners, primarily farmers and ranchers, to utilize soil conserving methods. As Wilson and Glick discussed matters, the Soil Conservation Service was being transformed from a fairly small operation, restricted to demonstration projects, to a nationwide program under the Soil Conservation Act of April 27, 1935. Wilson provided the ideas on how local people should be involved and help direct this new cooperative activity. Glick provided the legal research and the transformation of ideas into a legal framework for cooperation between soil conservation districts and state and Federal governments. After President Franklin D. Roosevelt sent the proposed standard state statute to the state governors advising legislative authorization, the conservation districts became the conduit for assistance in soil and water conservation from the Department of Agriculture to farmers and ranchers.

Philip Glick has revised and edited the following transcripts of these conversations, which took place at his home in Chevy Chase, Maryland. His explanations are invaluable for an understanding of the history of the soil and water conservation movement. But we have another reason for making them widely available in this form. The discussion of the framing of the standard law can instruct district directors and supervisors, not only in the responsibilities of their positions, but also in the vast potential that the state conservation district laws bestow to deal effectively with conservation problems and issues. In this manner, we hope the interviews will serve to further the effectiveness and good work of the nation's soil conservation districts.

Douglas Helms
National Historian
Soil Conservation Service
Washington, D.C.

PHILIP MILTON GLICK

Philip M. Glick was born in Kiev, Russia, on December 9, 1905. After the family immigrated to Chicago, Illinois, Glick graduated from Crane Junior College, 1924-1926; the University of Chicago, cum laude, 1928; and also the University of Chicago Law School, cum laude, 1930. He married Rose Deborah Rosenfield on May 13, 1933. In 1933, he began his career with the Federal Government as General Counsel of the Subsistence Homesteads Corporation, Department of the Interior. From 1933 to 1942 he was Chief, Land Policy Division, and later, Assistant Solicitor, Office of the Solicitor, U.S. Department of Agriculture. Other jobs in the Federal Government included Solicitor (1942-1944); later Deputy Director of the War Relocation Authority (1945-1946); General Counsel of the Federal Public Housing Authority (1946-1948); General Counsel of the Institute of Inter-American Affairs (1948-1953); and Legal Counsel of the Technical Cooperation Administration, U.S. Department of State (1951-1953).

Glick was Visiting Professor of Economic Development and Cultural Change at the University of Chicago, 1953-1955, and thereafter entered private practice as a partner in the law firm of Dorfman & Glick, 1955-1967. Later he served as Legal Advisor of the Federal Water Resources Council, 1967-1969, and Legal Counsel of the National Water Commission, 1969-1973. He lives in Chevy Chase, Maryland.

May 12, 1983

HELMS: Mr. Glick, as we start out, could you give us your date and place of birth, where you grew up, something about your education, where you went to college, degrees.

GLICK: I was born in a village just outside of Kiev, in Russia. My parents brought me to the United States before I was seven years old. I discovered that when there is a change in residence and in environment so shortly after you are born, you forget very quickly many of the things that otherwise you would carry forward from your earliest years. I don't, for example, remember one single word of Russian or the sound of the Russian language. I must have heard it often enough so that I would have learned the language as a child of almost 7 would normally have learned the language spoken where he lived. Often, when I've tried to look back into my early life, I come up against that sudden solid blank wall. It's been a great obstacle to my development of memory.

Well, my parents brought me to Chicago and I registered in the elementary school in Chicago, the Thomas Jefferson Elementary School. Because I was already 7 by the time I entered first grade, I was always about a year behind my classmates and it really wasn't until I got into high school that I caught up with that class. After I graduated from the Jefferson Elementary School, I went to the William McKinley High School. I remember, people on the faculty and student body at McKinley used to like to refer to it as the high school that was typical of the ghetto in Chicago. It was a melting pot if ever there was one. Most of the European nations had former citizens in William McKinley High School. William McKinley High School was on the west side of Chicago and it drew from all those groups. It made the William McKinley High School an exceedingly interesting high school to go to. I wasn't aware of any of this at the time, except occasionally. I remember one high school commencement class, not my own, but one I attended. A member of the class made what I thought then was the most brilliant and eloquent speech I had ever heard in my life. This was being delivered by a senior in high school. He closed with, "My McKinley, the best school in the world." That was his peroration. At the beginning he described with great affection and respect the camaraderie between faculty and students, the eagerness to learn that most of the students showed, and that even students that came from families that weren't bookish obtained from their fellow students, a stimulus to study and a respect for the educational system and for what education can do to the individual and for society.

When I graduated from William McKinley High School, I wanted very much to go to the University of Chicago. I had grown up knowing that I wanted to go to the University of Chicago and that I wanted to be a lawyer. I'm guessing that both attitudes were due to what I kept hearing from family friends and visitors to the house. They would frequently, after talking to the children in the family for awhile, say, "That boy is going to be a lawyer." I think I've al-

ways had a certain verbal facility, a certain verbal gift. This is what people assume makes a good lawyer, so they told me I was going to be a lawyer. I accepted that; that seemed to me to be a natural thing. Furthermore, the more I learned about lawyers and law and the United States, the greater respect I had for the profession. So I knew even as a child what I was going to do. I also found when I graduated from high school that Chicago charged $75 a quarter as tuition. The University ran a four quarter year. That meant that it was going to cost me $225 a year for just tuition, not counting fees and books. At that time it seemed a tremendous sum of money.

As a matter of fact, my parents told me they couldn't afford to send me to the University of Chicago. The city of Chicago had a free two year college that didn't award degrees. It was called Crane Junior College. I went to Crane. I do remember, I think it's worth mentioning, that during that summer before the fall semester opened at Crane, I walked around the campus at the University of Chicago. I always did like walking around that campus. I still think the Quadrangles are beautiful and have an academic feel. It feels and looks like a college. I walked around the campus looking at the buildings and the tears were rolling down my cheeks because this is where I wanted to go and register and work. And I couldn't, I couldn't go. I went to Crane Junior College instead. And as a matter of fact, Crane Junior College was a very good college. They had some excellent teachers. It was nowhere near the quality of education offered at the University of Chicago, but it was very good, very adequate. When I graduated from Crane Junior College and wanted to matriculate in the University of Chicago, for example, they required only that I--and this they required of every single freshman, way back then--that I register for a course in English composition. They said every student has to be able to write. He has to know a sentence. So I took that course.

I was infatuated with my first year at the University of Chicago. I think that was and has remained the happiest single year of my life. I took chiefly courses in philosophy and sociology. I decided then that I had a great dilemma, a great problem. Should I go on with my plan to study law or go into philosophy? I remember that. Am I going into too much detail on things that are not relevant?

HELMS: Just go ahead, you're doing fine.

GLICK: I remember that on one occasion I went up to the library to get ready for class. We were doing some collateral reading in a book titled An Introduction to Philosophy, which was the philosophy course that I was then taking. I began to read in the book and I had about 45 minutes before class-time. I started to read and I found the book so fascinating that I forgot about the passage of time. I forgot about where I was. I just kept reading that book, An Introduction to Philosophy. It was translated from the German. I kept on and on and on. When I came to, it was almost two

o'clock and class had begun at one. I think I had begun reading sometime between eleven thirty and twelve. I realized that it was now too late; I couldn't get to class on time. But I mention this as indicative of the kind of teaching, the kind of stimulus, that one got at the University of Chicago and why I said that that one year was really the happiest single year that I had.

We had a course in sociology and the text book had an enormously ambitious title. It was called An Introduction to the Science of Sociology. Now, an introductory book in chemistry doesn't say an introduction to the science of chemistry, or in physics, an introduction to the science of physics. They took it for granted that everybody knew they were a science. Sociology was then still struggling to be recognized as not just a speculative discipline but as a science that was attempting to develop actual predictability and an awareness of what could be called scientific laws about social development and the nature of a human society. I remember, one doctrine that we were introduced to was that human beings living together go through a four-stage development. There's conflict at first. Differences of background, differences of attitudes, differences of interests produce conflicts within this group trying to live together. Out of the conflict grows competition. That is, there's a softening of impulses toward aggression. The situation ceases to be a conflict situation, but there is still competition, a product of the earlier conflict and an awareness that we were competing for teachers, competing for grades, competing for recognition, for status, et-cetera, etcetera. So conflict became competition. As the competition continued and as people learned more about each other, they would enter the third stage, which was accommodation. It almost really explains itself in terms of what I have already said. And from that accommodation, if the process continues, without violent disruptions from the outside, the final stage is assimilation. The differing cultures and attitudes, even the differing languages come into an assimilationist process which produces not a homogeneous society, but a society in which all the varying elements can play their part and live together in peace and harmony. Even that, of course, we all now recognize as a considerably idealized picture of what actually happens.

Furthermore, all this is more true of American society than it is of many other societies. Within the United States it's been national policy to promote accommodation and assimilation. The assimilation phase of course, has always been resisted. The various religious groups were dreadfully afraid that the process of assimilation would wean their children away from their ancestral religion. My father was convinced that the YMCA existed in Chicago for the sole purpose of converting his four sons to Christianity. That part of assimilation he very, very strongly resisted. We were forbidden ever to go to a YMCA and therefore, I never was able to learn to swim as a boy. I was 42 years old when I finally decided that I was going to satisfy this childhood desire and I was going to learn to swim. And I went to the YMCA and took private lessons and

have learned to swim. I still swim three times a week.

I graduated from the University of Chicago, and got very good grades. My degree was awarded cum laude. Then I entered the University of Chicago Law School. I had overcome my hesitancy over the choice between law and philosophy for a variety of reasons that really wouldn't be sufficiently relevant to be worth explaining here. But I do remember one of the things that made it exceedingly difficult for me to make, to stick to my original decision. And that was this. I loved the courses in philosophy. I've already told you how I reacted to the book on the introduction to philosophy. I wrote a paper at one time on the philosophy of Kant, Berkeley, Hegel. This was the period of Romantic Idealism in philosophy coming primarily out of Germany and stemming largely from Immanuel Kant and then going into the post-Kantian idealists. I found that fascinating. This was part of what I was reading that lunch hour in the library. My instructor, Edwin Arthur Burtt, now deceased, an excellent teacher in philosophy, wrote across the top of my paper, "Remarkable mastery of this difficult material. Be sure to go ahead in philosophy." Something I've remembered word for word, because it made such a tremendous emotional impact on me, to read this across the top of my paper. So I had a real dilemma.

I went to see Prof. T.V. Smith, who was then professor of philosophy at Chicago, with my problem. We talked it out. He said, "You are going to find that teaching philosophy in the universities in the United States, will be a very, very difficult row for you to hoe. You are Jewish. Philosophy is the closest to divinity studies of any of the academic disciplines." You remember, of course, this was in the 1920s. He said, "You are going to find advancement difficult. You are going to find it difficult to get a good post in a good philosophy faculty, but it can be done. If you are determined, go ahead and see what happens. But if you were to choose some other discipline, you would find it vastly easier to handle, more rewarding, more promising." Then he suggested this. "You've told me your dilemma is between philosophy and law. Law has a great deal of philosophy in it. And philosophy is very much interested in the development and role of law in human thinking and in human society. Why don't you try one, the first year of law school, as a sort of experiment. If at the end of the year you're happy with law, go ahead and be a lawyer. If you are not, everything you've studied in that first year of law will be relevant for a PhD. in philosophy, and usable as such. In fact, you can study sovereignty as a philosophic principle. You can study jurisprudence as philosophic principles. You won't have wasted an hour." I thought that was a brilliant idea. Furthermore, it resolved the dilemma in the sense that I knew what to do tomorrow, register in a law school. So I did.

By the end of the first year in law school, I realized that I was going to be able to really draw on both fields. I had no dilemma. I graduated from the University of Chicago Law School. I then went into private practice for three

years in Chicago, and then came to the New Deal. In 1933, the New Deal particularly wanted to recruit lawyers and engineers, especially for the Federal Emergency Administration of Public Works, which came to be called the Public Works Administration. Friends of mine were already in Washington, already working in the Public Works Administration. I received a telegram giving me a date by which to report and offering me a salary of $4,600 a year, which was much, much more than I was then earning as a young lawyer in a large law firm in Chicago. I had no problem at all. During the previous presidential campaign I had been much impressed by Walter Lippmann's statement that Franklin Roosevelt was merely "an amiable young man who would like to be president." When I got the telegram of invitation in about September, we all knew that Roosevelt was a different kind of man than Lippmann's description. Walter Lippmann later retracted the description, and the New Deal sounded immensely attractive.

So I came to Washington to work in the Public Works Administration. I hadn't been there more than a month when some of my friends asked me whether I had met M.L. Wilson. He was director of the Federal Subsistence Homesteads Corporation in the Department of the Interior. Of course, the Public Works Administration was almost a part of Interior. They said that he was an exceedingly intelligent, able, attractive administrator, a professor of agricultural economics at Montana State University at Bozeman. I suppose it was the Agricultural A & M College at that time. I went to see M.L. Wilson, ostensibly to talk to him about some of the public works problems that I was at work on. I was enormously taken with the man. He was a solid, thoroughly muscled man. He was the first county agent in Montana as a young man. He looked like a Montana boulder and talked very much like that too. I then learned that there was a vacancy on the legal staff of the Federal Subsistence Homesteads Corporation. I applied for it.

Those were fluid years in the New Deal. You could transfer from one program to another with the greatest of ease. All you had to do was get the consent of the heads of the two departments. When it came to a lawyer way down in the ranks, the heads didn't know anything about them. There wasn't much difficulty about that. Well, M.L. Wilson asked me to come over and join the legal staff of the Federal Subsistence Homesteads Corporation.

He talked with a gentleness, and a humanity, and was explaining that a great many people were underemployed, and therefore had a lot of free time, and were underpaid. Now, he said, "If he could have a one-acre homestead in the country not far from the city, the man could commute. He could work in the city. At the same time, on that one acre, he could have a cow. He could have some chickens. He could raise his own vegetables. He could raise a great deal of his own food." And so this subsistence homestead, which would have such small acreage, less than an acre he argued, a half acre, would be enough for an average family of six to raise a great

deal of the supplemental food they would need. Milk and eggs and vegetables and chickens. What he wanted was to run a program in which the Federal government would help states and localities establish small subsistence homesteads.

This sounded very exciting. It sounded much more important than reviewing applications for loans and grants to build water works and sewage facilities in cities and towns all over the United States. And I liked M.L. I was nowhere near approaching Harold Ickes, who was the Administrator of Public Works. The whole atmosphere sounded awfully good to me and I did transfer. My first real job in the government was in the Federal Subsistence Homesteads Corporation. Within about a year I became general counsel of the corporation. But that sounds much more than it was. We had a total legal staff of three. I had two lawyers on my staff. Since the Corporation was organized as an independent agency reporting directly to the Secretary of the Interior, my title could be general counsel rather than assistant solicitor of the Interior Department, which is otherwise the title assigned to new young lawyers in the Department of Interior at that time.

But I had met M.L. Wilson, and this was to turn out to be one of the seminal events in my life. Well, so much for the educational background.

HELMS: While you were at the Federal Subsistence Homesteads, could you describe your work and maybe some of the climate of the time. The Resettlement Administration eventually became fairly controversial.

GLICK: Yes. One of M.L. Wilson's close friends was an economist by the name of Ralph Borsodi, who was both an economist and an educator. He had built a subsistence homestead for himself in New York State in order to demonstrate the effectiveness of a subsistence homestead. He had had a great deal of influence on M.L. M.L. knew about Borsodi and his works before he ever came to Washington himself. M.L. was a great decentralist. This will come out with great power and strength as soon as we get to talking about soil conservation districts.

M.L. believed that in as large and diverse a nation as the United States, and with a governmental structure that represented a federation of 48 sovereign, independent states, trying to operate nationwide programs wholly out of Washington was a mistake. It couldn't be effective, or would be effective only to the extent that major policy-making and major daily administration was delegated, under supervision, to regional and state and local levels.

And so, the first problem that Frank Fritts, who was then General Counsel of the Subsistence Homesteads Division and I, as then principal legal assistant, were given, was to develop a legal structure that would facilitate delegation of authority to the individual subsistence homesteads projects that we tried to establish. These projects were going to be operating with 100 percent Federal money. Therefore, the Federal Government had to be sure that it had control

over the money, at least to the extent that if it saw any gross inefficiency, or certainly any threat of corruption and abuse, theft, or waste of money and resources to any substantial extent; it could step in. It wanted to retain such potentially complete control, complete where necessary, less complete where possible. At the same time, it wanted to delegate.

M.L. believed in this profoundly. He said, "You cannot fool the people to whom you say you are delegating authority, if you don't in fact delegate authority. If they are not really helping make and carry out policy, if they are not even free to make mistakes, because they think that something is the right thing to do whether Washington thinks so or not, then you won't actually have delegated authority. The pretense will do more harm than good. The newspapers will discover they have not really delegated authority to the Subsistence Homesteads. This is just a lot of talk and palaver. Washington is running the entire show. The homesteaders will discover this. The people running the Subsistence Homestead Project will discover this. You will not only not have achieved delegation, but you will have introduced sources of conflict into the project. The projects will fail."

M.L. was convinced of this. In part, this is what Ralph Borsodi and other decentralists told him. But, more important, this was the essence of M.L.'s philosophy. As a director of agricultural extension work in Montana, he had known and taught this kind of principle. The county agent must work with the farmer and teach him. But he must remember whose farm it is, remember who has to be the real boss in the situation.

We developed a very interesting type of administrative structure--interesting but, of course, not a wholly new idea. At that time the Federal Subsistence Homesteads program was being run by the Subsistence Homesteads Division of the Interior Department. Mr. Fritts and I decided that we should incorporate the division and organize it under the laws of a state. We chose Delaware, which has a very broad incorporation statute. A great many private corporations in the United States are organized under the laws of Delaware. It's the favorite incorporation state as a matter of fact.

We organized a parent corporation. In the charter of the corporation, we gave it explicit authority to organize subsidiary corporations in any state of the Union under the laws of the state. But all of the stock of each subsidiary corporation was to be given to the parent Federal Subsistence Homesteads Corporation as security for a loan that the parent corporation would make to the individual subsistence homesteads corporation for the purchase of land, the building of houses, and the operation of a subsistence homestead project. Therefore, we now had a federal corporation that was organized in Delaware, reporting to the State of Delaware, and giving annual reports, etcetera. We had a number of subsistence homestead projects. I've forgotten now in how many states. At least close to two dozen, I think. Every one of those projects was organized as a local subsistence homestead community.

There was an Alabama Subsistence Homesteads Corporation, a New York Subsistence Homesteads Corporation, and so on, in every state where we set up a project.

First we organized that local corporation. We owned the stock. The Federal, parent corporation owned all of the stock in the local corporation. The Federal Division of Subsistence Homesteads talked to the state extension service and to the people whom it had brought in as public representatives without salary to advise and help organize such a project. People were, in those days of fighting the depression, eager to come in and take unsalaried jobs to just give whatever leisure time they had. The corporation would always meet in the evening so that it wouldn't interfere with farming practices of the directors of the corporation. We had no trouble choosing a board of directors in each particular state.

Furthermore, M.L. used to try to choose one or two people in whom he had confidence to help run the project. As the first county agent in Montana, and as a Director of Extension in Montana, and as a professor of agricultural economics in Montana, he knew agricultural people in almost every state. He was able readily to choose people who would sponsor the project and assume serious responsibility for the project, all without salary. Their salary was that they were elected a member of the board of directors of the local corporation. The press interviewed them and so on.

Then the parent corporation made a loan agreement with the subsidiary corporation. The loan agreement provided that they would make a loan of so much money, which sometimes went as high as two million dollars, as I recall vaguely now. It always had to be enough of a loan to enable them to buy land for building a new community. It had to make available to every family in the community at least an acre of land, and usually more than that, a little more than that. The loan also had to enable the subsidiary corporation to buy machinery and equipment which it would then lend to the subsistence homesteaders whom it brought in.

We then had to draft a model contract which each subsidiary corporation could use as a guide, but was free to develop for itself a loan contract between the subsidiary corporation and individual homesteaders. Then the homesteader would buy a subsistence homestead from the subsidiary corporation and agree to pay back so much a month or so much a quarter or whatever they agreed on. This was the administrative structure of the Federal Subsistence Homesteads Program.

The General Accounting Office found out about it, and said, "Now, what is going on here?" Remember, at that time there was no statute to regulate Federal Government corporations. Corporations had been used to a large extent, but largely where Congress had established a Federal corporation by statute, for example, the Reconstruction Finance Corporation. But this was a case where these were state corporations, organized under state law, and borrowing money from the Federal Government with no more security than

the corporation stock they issued.

What if you foreclosed? There was no power of foreclosure to protect the Federal loan in any of these loan agreements. Because the foreclosure power had to be held by the subsidiary corporation to assure repayment to them. But repayment to them didn't amount to repayment to the Federal corporation. In fact, the Federal corporation didn't really want repayment. It wasn't really making loans. This was clear enough in the structure, and of course, M.L. told this to the Congress all the time. He said, "We are not asking you to appropriate money for loans that will ever be repaid. You are never going to get interest on those loans. We are asking you to make the money available so that the federal government can lend money to subsidiary corporations to build these homesteads and make them available to homesteaders. We want the structure." Then he explained about the delegation and so on. And the Congress approved. The only way they approved it was by appropriating money every year to continue the operation and without questioning it.

But the General Accounting Office continued having questions. Every now and then it would suspend particular payments to the subsidiaries pending submission of long, detailed answers. I began writing a law review article about this whole structure. The purpose of my article was to do two things. One, justify to the public and to the legal community, the use of this kind of a structure for running a federal program. Second, answer the questions that the General Accounting Office was raising so they would stop suspending payments and loans and other activities of the Federal Subsistence Homesteads Corporation. But I wrote it as my own article. Of course I didn't get paid. A lawyer never gets paid for a law review article published in a law journal. The article, called "The Federal Subsistence Homesteads Program," was published in the Yale Law Journal. I can give you a copy of the article for your file. Is that enough on subsistence homesteads?

HELMS: You said M.L. had called all his friends in the agricultural community. I would assume most of those people favored this. They were not opposed to this as some competing program?

GLICK: I don't recall that there were any large areas of opposition to the subsistence homesteads program in any state. That's radically different from the substantial opposition to develop later to soil conservation districts. That we'll get to in due course. But I don't recall that there was any organized or strong opposition from any kind of state group. The land grant colleges didn't oppose this. They didn't see any reason to oppose it. On the contrary, the state directors of extension usually sent out either oral or written instructions to all of their county agents telling them these subsistence homestead farmers were people without farming experience. Of course, many of them had farming background and had then moved to town to work. Most Americans have some sort of farming background, or at least did for many decades. But these people were primarily urban people being moved out into

the country. The county agents were told, "They are going to need your help. They are going to need your help on how to prepare the soil, about seeds and fertilizer, and pesticide control and weed control. They are going to need your help on looking after a cow and pasteurizing the milk." They are going to need a great deal of county agent help."

The general impression that I have now certainly is that the state extension directors, the county agents, did not oppose this at all. They welcomed it and helped along with it. There wasn't much criticism of subsistence homesteads. It never became a major political issue. Somewhere among my yellowing papers, I have a long article that appeared in the **New York Times** on a Sunday, a feature story. Three or four pages long, solid. It talked about the possible introduction of a subsistence homestead subrevolution in the United States. Well, we in Subsistence Homesteads Division at the time laughed when we read the article. We said these reporters are starry eyed and they were deceived. We felt in the Subsistence Homestead Division that this would never really become a national trend. It couldn't. It was too small. American industrial workers didn't want to operate gardens of their own to supplement their income. In the depths of a depression they needed it and wanted it and these projects could succeed. But if they succeeded for a generation that would be splendid, we felt. Therefore, we felt the **New York Times** author was going overboard in predicting a sort of subrevolution in America in agriculture.

HELMS: Wilson looked at it more as a temporary thing.

GLICK: Yes. Yes.

HELMS: Although you were going to have community buildings and community ownership of community property. That would presumably continue....

GLICK: That would presumably continue. Then they would simply operate as a regular farming community in any particular state. Many of the occupants of the homesteads would also be working in industry. At that time, in the Depression, many industrial jobs called for only 6 or 8 hours a day of work. Therefore, since the average farmer works 12 to 16 hours, you could operate a subsistence homestead while having a job in a factory.

HELMS: But Wilson didn't have the idea of a lot of, what term should we use, social engineering going along with it? Just income and supplemental income and a decent place to live.

GLICK: Well, he probably did. He probably did. He valued rural living. He valued a tie to the farm. Thomas Jefferson was one of his ideal philosophers and thinkers. The subsistence homesteads fitted in nicely with that whole pattern of thinking. But he did not believe that he was introducing anything that would, in any major fashion, modify American agriculture or American industrial employment. He did not think that; although, the writers of the **New York Times** article said this was a possibility. I don't recall that they

attributed these ideas to M.L. Wilson. It's a long time since I read that article. I do remember that we laughed at it in the Division, that we thought this was too rosy a picture.

HELMS: You weren't getting into the things that they got into later, such as setting up factories and giving sources of employment within the community?

GLICK: Well, you see....

HELMS: That was up to the individual corporation?

GLICK: I joined the Federal Subsistence Homestead Corporation in November, 1933; November or December, 1933. In August of 1934, less than a year later, M.L. Wilson was persuaded by Secretary of Agriculture Henry Wallace to resign as Director of Subsistence Homesteads and go to the Department of Agriculture to become the Director of the Corn-Hog Program, which was one of the initial programs established by the Agricultural Adjustment Administration. Shortly after that, M.L. was promoted from that program to become Assistant Secretary of Agriculture.

M.L. then asked me to transfer to the Department of Agriculture and become his lawyer. He liked the work that I had done with him as general counsel to the Federal Subsistence Homesteads Corporation. He wanted me to continue working with him. He was a philosopher, philosophically inclined. He could talk philosophy to me. When he told me what he wanted I generally understood pretty well, and was sympathetic with him. He found me a congenial lawyer to work with. Since he was himself not sufficiently articulate except on technical agriculture problems, I could help him articulate what he wanted to say in particular areas. So he wanted me to work with him. I did transfer at a slight reduction in salary. I was so much attracted by the prospect of working with him, continuing as lawyer to the Assistant Secretary of Agriculture.

Jerome Frank was then General Counsel of the Agricultural Adjustment Administration, and so M.L. arranged for me to talk to Jerome Frank. Jerome, after he looked at my background and talked to me, approved my appointment. But he said that he would approve my being earmarked to be available whenever M.L. Wilson wanted a legal problem worked on. At the same time I was to remember that I was a member of the legal staff. My boss was Jerome Frank and I was to keep him fully informed about everything that I did, every new problem that was laid before me. Any memoranda that I issued, copies were to go to Jerome Frank's office for the usual review. In other words, he didn't want a loss of authority within his own office.

It's rare for an Assistant Secretary of Agriculture to ask to have his own lawyer. If he has a legal problem, he just sends a memorandum to the General Counsel and lets it go from there. I saw at once the rightness of his position. I told it to M.L. and M.L. nodded immediately. "Of course," he said, "you work that out with Jerry." He said,

"I'm sure there won't be any problem."

You see the reason I started in on this is that after 1934, which is only a year after I had become General Counsel of Federal Subsistence Homesteads, I ceased to have anything to do with it. Now, all of the later problems that developed became problems with what was called the Farm Security Administration, FSA. When Subsistence Homesteads, in fact, was transferred from Interior to Agriculture, it was transferred to the Farm Security Administration. Although M.L., as Assistant Secretary of Agriculture had, of course, a certain review jurisdiction over FSA, nevertheless he had many more difficult problems to deal with then than subsistence homesteads. I don't recall that any Subsistence Homesteads problems were brought to me after I transferred to the Department of Agriculture, except that every now and then, they'd ask me for some historical information. They were working on a problem and they called me and said, "You did such and such on this particular problem. Why? What did you do? What led you to do it? Did you issue a memo on it? Were there any legal opinions?" Of course, I was able to give them that kind of information. But beyond that, I really had nothing to do with Subsistence Homesteads after I transferred to Agriculture. Except that I brought with me in my mind and my file, the recollection of the General Accounting Office questions about the whole structure that we had established in Subsistence Homesteads.
I wanted to be sure that if later there were any Congressional or GAO audits and questions about this rather unusual structure that we had established for the program, I wanted something more than my memory that I could call upon to justify it. This was an article over 40 pages long in the Yale Law Journal, and I was very happy when the Yale Law Journal agreed to publish it. Because this gave it a considerable stamp of approval by the legal profession.

Actually there were no later questions. I sent copies of the article, reprints, to the legal staff of the General Accounting Office so that they would be informed in advance. I think that helped, the mere fact that the General Counsel of the Federal Subsistence Homesteads had laid it all out on paper, had raised all the questions. I tried to raise every question GAO might raise or a Congressional committee might raise and gave what I thought were the answers. Well, so much on the Subsistence Homesteads unless you have any further questions about it.

HELMS: So now we are in....

GLICK: Now, we are in Agriculture. I'm on Jerome Frank's staff responsible for looking after any legal problem that M.L. Wilson raised. That became true in late in 1934. Almost immediately, as a matter of fact, after I came over, Jerome Frank saw to it that a number of memoranda were sent over to me to prepare legal opinions for Jerome Frank's signature on problems that had nothing whatever to do with M.L.'s areas of supervision.

Jerome Frank was an exceedingly able lawyer-administrator. He knew how to run an office. He also wanted to know

more about me. Inevitably, much would be delegated to me. Inevitably, M.L. would be asking me oral questions and relying on my oral answers. Jerome knew that. He was testing me out, I think. In any event, for the first few months after I came over to Agriculture, although M.L. asked me a number of things, usually easy questions, he was just learning his own job. I was really working entirely on the problems for AAA that Jerome Frank had sent over to me.

Then in the spring of 1935, M.L. Wilson called me in one morning and said, "Philip, I have a number of ideas working around in my mind. I need some answers. I don't know what the answers should be. I don't know what questions to ask you. You are going to have to help me formulate the questions as well as the answers. We have in the Department of Agriculture now, the Soil Conservation Service. It's operating erosion control demonstration projects. It buys or leases or otherwise acquires control over considerable farm acreage on which erosion, soil erosion, is a very serious problem. Then, the Soil Conservation Service, having acquired complete control, by purchase or by contract with the owners over this acreage, develops what it calls a complete conservation plan for that particular acreage. They put in the structures, planting practices, and everything else necessary for complete conservation. Contour cultivation, strip-cropping, stopping the gullies, terracing, and all the other erosion control work necessary for that particular acreage. Then they put up signs on all four corners of this demon-stration project saying this is an erosion control demonstration project of the United States Department of Agriculture. Visiting hours are 24 hours every day. And the county agents will be here on such and such days. You are en-couraged to come and learn how to make a conservation plan for your farm, how to plow and cultivate and harvest both profitably and safely. You have got to be able to make a living on your own farm and a good one. You have got to produce good crops and you have got to conserve the soil. We have exactly these same problems on this demonstration farm. Come, look see."

Then M.L. said, "Well, the farmers come to look see. Then they go home and they've got all they can handle on their own farm. They say to themselves, 'Oh yeah, it's easy for those guys to build terraces. All they've got to do is call out some of these high-paid bureaucrats and have them hold the engineering lines, and lay out the terrace, and then they bring in some of their heavy equipment. Well, where am I going to get the money for that kind of equipment? I don't know how I am going to lay out a terrace. I don't know whether a terrace is well built or not. If one of the terraces washes out or breaks out, what do I do next?'"

So M.L. said, "Come, look see is not enough to spread good conservation planning and operations from the demonstration projects on to the farms of the United States. They've got several dozen of these demonstration projects and they are going to put up some more. Do you know what the cost of the demonstration project for a single year is?" He gave me the figure in a sort of

awe-struck tone. He said, "The farmers are going to learn that this is what it costs to operate a demonstration project, and they are going to say, 'Well, now, they have so many acres and I have so many acres. How can I pay my fractional share of that kind of cost?'" Even though this included salaries in Washington and so on, that the farmer would never have to meet in putting on a conservation plan on his own farm.

M.L. said to me, "I think I could sum it up this way. You will never be able to control erosion on millions of farms in 48 states out of an office in Washington, D.C. How do we get over that? How do we get around it?" And I said, "M.L., you've thought about this obviously a long time. What's your idea?" He said, "You know about the conservancy districts, don't you?" I said, "Yes." He said, "Tell me what a conservancy district is." I said, "A conservancy district is a local unit of government like a county or a city, established by a state statute, and the conservancy district is responsible for building water projects and regulating water flow, and making water available for irrigation, and so on. It deals primarily with water. It's a local unit. It levies taxes on the lands and also gets appropriations from the state legislature as a source of revenue to operate with. It deals with conserving water and helping irrigation."

Said M.L., "Couldn't Congress establish conservancy districts all over the United States?" I said, "No, sir, I don't believe it could. The Federal Government does not have the authority to regulate private land use. The Federal Government has no authority whatever to establish local units of government." He said, "The states can establish local units of government, but the Congress of the United States cannot?" I said, "That's right, sir. This is federalism. You know that there are many, many things the states can do that the Federal Government cannot do. So there is nothing very surprising about their not being able to establish a local unit of government. They cannot abolish it. Congress cannot abolish a county. It cannot consolidate two counties into one. It cannot establish a city or a town or a village. It cannot order a single county or a single city, or a single local unit of government to do anything. It cannot order them not to do anything. In the agricultural adjustment program, that isn't the way you operate as Assistant Secretary of Agriculture. If you feel that the production of certain crops needs to be increased, you can't order the increase. If you think it needs to be reduced, you cannot order the reduction. You cannot plow under little pigs, as you were accused of doing in the triple A. Congress can't do that sort of thing."

He said, "Well, we can't have conservation districts?" I said, "No, no, no, I'm not saying that. I'm saying Congress can't establish them." So he said, "Well, I like conservancy districts. I don't like them to be limited to deal primarily just with water. I want conservancy districts that can operate with erosion problems. I want to be able to do something of the sort of thing that we did in Subsistence Homesteads. I want to delegate authority. I want to

delegate the basic problem of making a conservation plan for a particular acreage and terracing the farm, and changing the crop practices, and building, planting soil holding crops, and dealing with the problem of water runoff, and wind erosion. I want all that to be planned and done by the farmers through these con-servancy districts. You'll have to tell me how we can get them established. But the two things I want are local units of government, and delegation to these local units of government and to the farmers. At the same time you get as much information as you can from the Department of Agriculture, and I'll give you some pamphlets." (He gave me boxes of them.) "See, you're a Chicago boy. You don't know what I mean by erosion control and gullying and terracing." I said, "No, sir, I don't." He said, "Well, you'll have to learn about that. Then let's talk about it together. Draw up questions. Come in and ask me the questions and I'll try to give you the answers and we'll go on from there." I'd like to stop here a few minutes and talk about M.L. Wilson. Is that legitimate?

HELMS: Certainly.

GLICK: The kind of districts program that we have in the United States is a natural child of the mind and background of M.L. Wilson. Milburn Lincoln Wilson. Well, when you are named Milburn Lincoln, you have to do something to your name and he came to be called M.L. M.L. Wilson was a thoroughgoing democrat of the small "d" as well as with a capital "D". He believed in democracy thoroughly. He had great faith in the common man, great faith particularly in the American farmers. He said as a county agent he had learned great respect for the American farmer. He told me about an experience; I wish you could hear M.L. tell this story.

After having been first county agent in Montana, he became a county agent leader. He became director of agricultural extension in Montana. In that capacity, on one occasion, he was invited to go out in Montana and in some of the adjacent western states. He was to be the main speaker at one of these big farm events. Well, it was one of these days where farmers come together, coming in their cars and trucks and wagons from all over. They remain in session for a week or more. They have any number of informal sessions, where, in effect, the farmers are taught how to farm better.

HELMS: A short course.

GLICK: Yeah, sort of a short course. They avoided all academic jargon. The farmer wasn't supposed to be told he was going back to school. He's a farmer and a successful farmer. You can't tell him that he has to be taught. But at the same time, you do have to teach them. He said, "You'd be surprised how much you have to teach them." He got up and talked to them. He had hit on an idea. The point of this story is what happened to that speech and that idea.

He got up and said that in the course of his work in Montana people are frequently coming to see him about their

problems. He remembered a time when two farmers whose farms were adjacent came to see him together and they told him that they weren't getting good crops. They weren't getting good yields. They were suffering from various kinds of pests and weeds and so on. They had listed all of their problems. He said to them, "Of course, in spring, you cleaned out all the roughage from your farm, and sort of were getting ready to plow, weren't you." And the farmer scratched his head. No, he hadn't been able to do that that year. The sows were pregnant, and there were problems in the family and what not, so they hadn't been able to do it. M.L. said the farmers shook their heads and grinned. They'd heard all of these excuses they had used. "They knew all about that," M.L. said. "Then I asked them the next question. At such and such a time, you began to do some plowing?" Well, they hadn't really been able to start at the right time. Furthermore, you saw that you had some hills, so you avoided plowing up and down the hill.

Well, one by one M.L. took them step by step through the whole agriculture series that a farmer has to go through--from the very tail end of winter on into the harvest season. At each step, the farmers said no, they had not been able to do that. No, this interfered with that. He said, "As I kept going, I could see in their faces, they were familiar with every one of these steps. They knew exactly what should be done. They knew why the average farmer didn't do it. They could understand all of the alibis and all of the excuses. "You know, they were laughing, but they were laughing with me. They were laughing at themselves."

Well, this story of course is vastly more effective and funny when you hear the actual steps spelled out. I've never been a good enough farmer to be able to recall what each step was. I can't tell you what each step was and what the farmers had done wrong. But every mistake that a farmer could make between early spring through the harvest season was made ostensibly by these two farmers who were talking to M.L. Now, I can't imagine a better way to entertain a large group of farmers without an outline, without any papers for them to read; actually give them a complete lesson in what every farmer needs to know about agriculture and about farming. He taught them that in the course of that lecture. It was enormously successful.

In his telling me the story, I could see the whole field. I could see the farmers. I could hear them roar with laughter at the various stages, the way everything was done wrong. M.L. drew this lesson. First of all, he was, in effect, teaching me what I must remember when I talk to farmers about erosion control. And about whatever kind of state statute may come out of this. He was teaching me how to go about that kind of a problem. He said, "I mentioned nothing that most of them didn't already know. I could see it in their faces. I mentioned no mistake that a farmer could make, that they weren't already familiar with. I mentioned every alibi that a farmer trots out to excuse himself. I could tell it in their laughter that they could recall themselves." He said, "You know, American farmers are highly intelligent.

They know what they need to do. It's economics. It's farm pressure. It's the fact that there are only 24 hours in a day. It's all of the usual reasons for human inactivity and lethargy and lateness. That explained a great deal of their not doing.

"Furthermore, I could see that every time I mentioned a piece of agricultural equipment that is costly to buy; every time they would have to go to International Harvester and borrow money to buy particular equipment, there would be a hush over a substantial part of the audience. Many of them would shake their heads as though they were saying to themselves, 'Mr. Wilson you don't know. How can a farmer buy that?'" He said, "I learned two things, that American farmers do know intimately the story of farming and erosion control. They are highly intelligent. Second, I learned that much of this they cannot afford to do. Much of this they don't see their way to do. They don't see how as farmers they can manage to do planning on this kind of a scale and terracing on this kind of a scale. How they can retire so much of their farm from cultivation, because it's deeply gullied, or because it runs up a hill. Or because there are no trees to give them shelter from snows and other problems of weather."

He said, "It's within that kind of a context that I think we need something like this. A state statute." He started originally talking about an act of Congress. It took me a great deal of time. "No, Congress couldn't do that either. Congress can't do that." Ultimately, he and I reached agreement. We are not talking about an Act of Congress. We stopped that. Congress is going to be needed to make money available, but we are going to have to work out some other method of making Federal money available. In fact, we practically agreed that all the farmer needs from the Federal government directly is money. Money or a way to get money. In order to get technical help, machinery, equipment, planting materials, that kind of thing. That they are going to need from the Federal government, but that's all.

Furthermore, the Federal government has got to figure out some way of giving that to them without having them sign any papers with the Federal Government or borrow money from the Federal Government or owe the payback payments to the Federal Government. All that we've got to do. But beyond that, we agreed, we want a state statute that will make it possible for the Federal Government to look to the states and to these conservancy districts to do all of this work.

M.L. Wilson had this kind of a background as he started thinking about the problems of SCS and the demonstration projects. He also had the subsistence homesteads experience. He had been chosen to be Director of Subsistence Homesteads, because as a professor of agricultural economics at Montana, he had already been talking about subsistence homesteads in Montana. M.L. Wilson and H.A. Wallace had been personal friends and acquaintances for many, many years. M.L. had worked in the Department of Agriculture briefly in the 1920s when Henry Wallace's father

was Secretary of Agriculture. So they had this close friendship to draw upon. That's one reason Wallace drafted M.L. to come to Agriculture.

But the very same man, M.L. Wilson, who was the father of subsistence homesteads in America was also the father of the giant wheat farm. Tom Campbell of Montana wanted to accumulate gigantic acreages of wheat. He called in M.L. M.L. was the leading agricultural advisor in Montana. Campbell went to M.L. and said, "I believe that if I can figure out how to do it, get the right kind of machinery and handle it properly, I can make a lot of money growing wheat, by growing it in tremendous quantities. I want to be able to control a substantial part of the wheat market through the wheat that I grow. If I have to go out of Montana, into Idaho, or into any other state that you tell me I have to go into, I'll go there too. I believe," said Tom Campbell, "in the giant wheat farm." M.L. said, " I believe in it too, but I haven't preached it very much to my farmers in Montana, because only a few could afford giant wheat farms. The few who could afford it had other things on their minds. They were more interested in yachts than in giant wheat farms." This was the depth of the depression. So M.L., the father of the smallest agriculture unit, the subsistence homestead, had earlier been the father of the largest.

Here was a man, you see, who was very imaginative. Although deeply rooted in American agricultural and rural traditions, he was not bound by them. He knew how to build on them instead of being tied down to them. He didn't revere them as something that couldn't be modified. He revered them for the fact that if they hadn't served useful purposes, they would never have grown deeply into the American culture pattern. He respected them. In that sense, he revered them. His was a very imaginative mind. He was the father of the domestic allotment plan which was the essence of agricultural adjustment. The very fact that it was M.L. who felt called upon to start thinking about soil conservation districts, had a great deal to do with the form that finally came out of them.

May 18, 1983

HELMS: Last time you had given us a portrait of Wilson after describing his calling you into the office to get you to work on this project for some way to carry out conservation. Could we continue with that explanation of the stream of events?

GLICK: Yes. Before going into the actual details of the ideas that M.L. outlined to me on his proposal for moving the nation into establishing local soil conservation districts, I'd like to give the general picture of American federalism that M.L. believed in and which gave birth to his notion of the soil conservation district. I covered the broad outlines of that notion of American federalism in an article that I submitted to the Journal of Soil and Water Conservation. It was published in their March--April, 1967 issue.

I pointed out in that article that the American farmer is a proud producer. He has astonished the world with his capacity to produce an abundance of food and fiber for a continental population and for export. But he is also a proud conservationist. During the last 3 decades he has changed the face of America's farms and ranches with his terraces, strip crops, contour cultivation, grassed waterways, and shelter belts. He has demonstrated that conservation farming can produce both plenty and beauty. But the American farmer would not recognize himself if you told him he was a creative political scientist. As a matter of fact, the American farmer is in the process of building a new device into the structure of American federalism, namely, the conservation district.

The American people are very slow and reluctant in amending the Federal Constitution. But they're very ingenious in solving problems that arise without resorting to formal amendment of the Constitution. Working within the limits of the Federal Constitution they develop devices that will bring the three levels of government; Federal, state, and local, into very close cooperation. Every school boy is taught that the Federal Government can exercise only the powers specifically delegated to it in the Federal Constitution. But the states, every one of the states, as a sovereign state government, has inherent, full legislative power. The local governments are a combination of both certain inherent powers to govern the local area, whether it's a city or a county, and also such powers as the state legislature chooses specifically to give its local units of government.

Saying this creates a picture, generally, of a rigid separation of power among the Federal Government, the state government and the local governments. But that isn't the kind of governmental system that American federalism has become in practice. Actually, instead of a layer-cake form of government, with three layers, Federal, state and local; we have a marble cake form of government in that governmental powers interpenetrate among the Federal, state and local governments. We do far more through cooperative action by the Federal Government, the state government and the local governments, than we do separately--the Federal Government carrying out its powers, the state governments carrying out their powers, and the local governments carrying out their powers.

People accept this in general, but they don't realize specifically how thoroughgoing is this three-level cooperation in the American governmental system. For example, consider even national defense, which you might regard as the most extreme example of the Federal Government's powers. There the Federal Government is supreme. It has exclusive authority if it chooses to make it exclusive. It can carry out and do anything necessary for national defense. One of the first steps in national defense is to establish a draft, a military service system. Then what do we do? We establish local draft boards to do the actual drafting, to accept the military service registration, to organize the records, to summon the individuals

for draft purposes, and to swear them in into the Army or Navy or Coast Guard or Air Force.

Just as the local government has to participate in National Defense, so the Federal and state governments have to participate in the supreme example of local activity, namely the educational system. The system of compulsory, universal, elementary education that we have is entirely in the hands of the local governments. They are the policy-making bodies. They are responsible for carrying it out. But they always want federal government assistance in policy and in various forms of scholarship loans and school aids, and grants to school systems. The states are always called upon by the local units to assist them both in the formulation and execution of education policy and to get state appropriation funds for operating the school system. Without the help of the Federal Government and the state governments, if the local units relied exclusively on the revenue and governmental authority of the local units of government, we wouldn't have anywhere near the powerful, significant, sensitive, local education system that we have, in fact, in the United States.

Going back to the general structure of American federalism, in addition to these examples that I have already cited, American governmental federalism has created ten or twelve devices for promoting intergovernmental cooperation. I'm not wandering from the subject of the soil conservation district. As we talk in detail about the soil conservation districts, we will see how completely this introduction illuminates what came to be the standard state soil conservation districts law and the actual operation of soil and water conservation in American agriculture.

We've developed, as I say, ten or twelve structures through which we can carry out intergovernmental cooperation in the United States. The first is explicitly spelled out in the Federal Constitution. The Federal Constitution provides that whenever two or more states discover that a particular problem overlaps state boundaries and therefore no one state is in position to deal with the problem adequately, two states may, with the consent of Congress, enter into an interstate compact. The device of the interstate compact, obviously, as a method of interstate cooperation, is already departing from the theory of three layers of government, and calling upon a marble cake cooperation between two or more states, with the consent of Congress, says the Constitution. The way that works is this. Any two states can go ahead and draw a complete compact without first asking the Congress; but then that compact must be submitted to the Congress for approval. The Con-gress can require modifications or amendments in that interstate compact if it wishes to before giving approval. The compact isn't lawful, it isn't binding, it isn't effective until the Congress has approved the proposed interstate compact. Therefore, the Constitution itself, way back in 1789, said, "Yes, we may have interstate cooperation, but the Federal Government must have a voice in it too."

Beyond this compact, let's just sort of tick off some of the other major structural systems that we use without adding to or amending the Constitution of the United States, in order to promote intergovernmental cooperation. Abraham Lincoln, way back in 1862, signed the law that established the United States Department of Agriculture. In the same year, he signed the land grant college act providing for the establishment of colleges for the promotion of agriculture, the technical arts, and the mechanical arts. Hence, A&M state land grant colleges were developed. We now call them state land grant universities as their areas of teaching and research have successively been expanded. President Lincoln, incidentally, also signed the Homestead Act.

On the basis of the land grant colleges, the experiment stations, the Extension Service, and the Homestead Act, we have the governmental base for the growth and development of American agriculture over an entire continent. Don K. Price, Dean at Harvard, has called attention to the fact, in a paper that he called the "Scientific Establishment." In that paper he said this. Now I want to quote one or two sentences. He called attention to the Federal grant-in-aid.

The Federal grant-in-aid, of course, is an appropriation of Federal funds to aid the states, or to aid the local governments, or both, in carrying out particular activities. The Federal grant-in-aid, like the interstate compact, is a governmental structure not provided for explicitly in the Federal Constitution, that the American people have developed as a way of promoting and calling upon all three levels of government to work together in making it possible to succeed. In discussing the Federal grant-in-aid, and I quote Dean Price, from that article that I have already referred to. The article, by the way, is entitled "The Coming Transformation of the Soil Conservation District." Dean Price said, "The most influential pattern was set in agriculture. Washington and Jefferson had been interested in fostering scientific improvements in agriculture and in federal support of a national university. They were blocked by the lawyers' scruples about states' rights until the agricultural scientists found the way to get there by a different route, one that evaded constitutional barriers by merging federal and state interests through the device of federal grants to states in either land or money by building a program upon a scientific and educational basis. The foundation, of course, was the Land Grant College. From it grew the Experiment Station, the Extension Program, and the whole system of policy which has let the Federal government play a more effective role in the agriculture economy than the government of any supposedly socialized state."

We discovered that we didn't have to adopt socialism in order to get all of its advantages without losing any of the advantages of the capitalist free market, free enterprise system. The ingenuity of the American farmer and the average American as a creative political scientist, in achieving his goals, his purposes, without precipitating massive philosophical debate about proposed

constitutional amendments--this genius was best expressed in the early decades of American history. It's unfortunate that successive administrations thereafter have fre-quently forgotten about it. We have precipitated totally unnecessary debates about the new federalism, creative federalism. American federalism was new in 1789. It was created in 1789. We don't need to reinvent the wheel. We don't need to redevelop and redefine American federalism. It's already defined in the Federal Constitution, in the 50 state constitutions, and the actual practice of Americans daily.

In addition to the interstate compact, and the grant-in-aid, there were some other things that we have gradually developed. We established a Tennessee Valley Authority. That covers a whole region. A number of states, a large number of counties, all of the cities, and a magnificent, entire regional river system, treated as a unit, funded originally by the Federal Government, funded largely today by the revenue that the TVA receives from the operation of public power projects. The projects that control floods on this river system, the projects that promote navigation on this river system also produce electric power. The TVA is one of the few Federal Government agencies that never needs an appropriation from Congress. On the contrary, annually, it gives us 50 million, 75 million dollars or more, to the American treasury as a dividend on the TVA program. What is the TVA program? It's a structure for enabling the Federal Government, and the state governments, and the local units, to work together to promote the development of the Tennessee Valley.

What's the Public Housing Authority? Here we have an application in the urban area, although it's also possible in suburban and even rural areas. The Public Housing Act calls upon the states to establish local housing authorities. The Federal government then provides a subsidy to the Public Housing Authority by underwriting the difference between the costs of operating the local public housing projects that are paid for through rents, and leaving a deficit, a balance, which is paid for by an annual Federal subsidy. Here we have, again, state legislation to establish local housing authorities that are locally administered, planned, and operated with the Federal Government providing an annual subsidy to make these public housing units come within the financing power of the tenants of the local housing projects.

We have it in the Department of Agriculture and ASCS, (Agricultural Stabilization and Conservation Service) administering the agriculture stabilization and conservation program. What's the first thing this program did? It established county and community committees in every state to help formulate the annual agricultural stabilization and conservation program. That program receives Federal appropriations to help fund the operations. These are partly conservation projects, and therefore, operate very closely in cooperation with the Soil Conservation Service. These are also commodity stabilization programs, to improve farm income. We didn't bother about jurisdictional lines. We just established the agency. It became a Federal agency parallel to SCS.

But it also became an agency operating through state and county committees. The farmers elect the members of the state and county committees. Very intimately, in every step of this governmental process, we have all three units of government collaborating. This is by no means the end.

In the Kennedy and Johnson administrations, we developed new regional commissions, in the Regional Development Act of 1965. The best known of them is the Appalachian Regional Development Commission, but there are half a dozen or more other such regional agencies working in other parts of the government. What do they do? They develop economic development plans and help arrange for the financing through public and private collaboration.

Then we have the river basin commissions that are provided for in the Water Resources Planning Act of 1965. Over every river basin in the United States, that act makes possible the establishment of a river basin commission. Some of the commissioners for each commission are appointed by the Federal Government. The others are appointed by the governors of the particular states. When the commission meets, it is a meeting of Federal and state representatives. And their function is to develop water conservation and water development programs for the particular river basin. The program is then to be carried out by Congress appropriating money for a Federal share, by each state appropriating money for its share. The whole thing is to be administered partly by the Federal Government, partly by the states, partly by local units, in accordance with the plan developed by the regional commission. Unfortunately, the Water Resources Planning Act ran into a great deal of difficulty. It would take us too far afield to go into all of that. The Water Resources Commission is almost a dying agency today, receiving smaller and smaller Federal appropriations. The principal reason, I think, for the failure or virtual failure of the Water Resources Planning Act is the opposition of the Federal bureaucrats. The Corps of Engineers didn't want to see the regional water basin commissions develop. The Bureau of Reclamation was cool about it. Because of this opposition from the major federal water agencies, the river basin commissions never really succeeded in dealing with the hardest problems of water resource planning, among them cost sharing among federal, state and local governments.

This failure, as a matter of fact, also helps illustrate what we are talking about. Let me back up. We mustn't expect that every time the American people succeed in developing a new organizational idea for dealing with one of their problems, it will succeed. Some programs fail for one or another reason. This one is in the process of failing. But it, nevertheless, still demonstrates the very fact that enactment was demanded and supported by the governors of the various states. The Federal, state and local governments did participate and still are formally participating in the river basin commissions in developing water development programs. We have here another illustra-

tion of the marble cake form of our government--interpenetration and cooperation among the three levels of government. Then there were the rural community development agencies, under the consolidated Farmers Home Administration Act of 1961. And community planning agencies under the Housing and Urban Development Act of 1965. Here again, this constant reaching out for structures that will enable the three levels of government to collaborate. The article that I have referred you to actually summarizes and it goes into some detail in describing, these eleven agencies.

M.L. had always played a part in these programs. He knew them intimately. He was always concerned about them, kept in touch with them. He was a father confessor to the federal administrators who were trying to struggle with these problems. He saw the Soil Conservation Service, a new bureau in the Department of Agriculture, trying to control soil erosion over the whole continent, trying to do so through demonstration projects. I have already mentioned some of the characteristics, some of the strengths and some of the weaknesses of the demonstration project. Briefly, farmers could come and look at the demonstration project, but they didn't know how to go on from there. They didn't have the money or the technicians or the self-confidence in administration to go on from there and put upon their farms and ranches the conservation practices that the demonstration project demonstrated. M.L. saw that something was needed beyond that. He encouraged Hugh Bennett, by all means, to go ahead with the SCS program. He kept telling Hugh that this is one of the soundest new governmental developments in agriculture. And he kept conferring with him on how well the states were collaborating. How well were they bringing farmers themselves into the program? Bennett was among the first to confess that this was an unsolved problem within SCS. "We are going to have to continue our research," he said, "we are going to have to continue our demonstration projects, but we need more than that." And he assured M.L., "We are working on that."

M.L. decided that he would do a little private thinking about that too, and help Hugh Bennett. But he decided that the best way he could help was to think it through alone, put down on paper something that would represent the definition of a problem and the structure of a program to deal with the problem, and lay that before Secretary Wallace and Administrator Hugh Bennett, the state extension services, the state experiment station directors, the state agricultural and conservation agencies, and say, "Now, here we've tried to do some of the preliminary think-through before you and with you. Now, let's talk about it. Is this something we can work together to put into effect?"

This is the way M.L.'s mind always worked. And this is the way his mind began to work on the erosion control problem. He called me in and said, "I don't want now to go to Hugh Bennett, and start talking about this. If I do, the first thing that will develop is, the federal bureaucracy within Agriculture." M.L. had great respect for the Federal bureaucracy. He was an outstanding

Federal bureaucrat. But he operated in the most intelligent and sensitive and farsighted method, as all bureaucrats hope to be able to do. Obviously, only the best of them can achieve it. But he said, "The argument of the SCS technicians is likely to be this, to Hugh Bennett. They'll say, 'Look, M.L. Wilson is threatening to destroy what we have built up and what we are going about doing. Where does the best core of American expertise in erosion control now rest? In SCS and its technicians. Where does the power to do something about it rest? Among the SCS technicians. So far we've already built the demonstration projects. Well, give us time. We'll go forward and we will get this job done. But now you want to break it up, turn it back to the states and counties.' They will say, 'The states and the counties have had this problem to wrestle with since 1789. Look how seriously erosion has spread and grown within the United States. Don't break up the only single sound corps of erosion control expertise that we now have in the federal government.' That's what they will say. And they are right. But that's not the whole story."

He said, "We mustn't break up the SCS. We must never lose this central national corps of erosion control expertise that we've got. What we've got to do is to figure out some way in which local units, individual farmers, the counties and the states can come in and feel just as much responsible for the problems of erosion control as do the SCS technicians today."

"That," M.L. said, "is what we want." He said to me, "Now, my thinking is fuzzy. You are a lawyer and you're supposed to know more about these structures of state and local units than I do. Let's work on this together. What I want from you is a sort of draft statute that states might consider, modify, and put into law to establish local units. Local soil conservation districts to be able to be established by a majority vote of approval by the farmers in the proposed boundaries of the district. Let them vote a district in. Let no district come into existence unless the farmers want it and approve it in a formal referendum." Then he said, "Let the district be governed by supervisors whom the farmers themselves will elect. We'll have these districts functioning as local units of government, established by the people, governed by the people through their elected supervisors, and then these districts should be given the complete authority to plan, to develop erosion control plans that are district wide. And carry them out." He said, "The bill should then provide that SCS should cooperate with every single district in the country. SCS should lend engineering and technical assistance to every single district in the country. It should make agricultural equipment, earth moving equipment, terrace building equipment, etcetera, available to every district, at Federal expense."

He said, "In this way we will have local initiative, local action, local responsibility, local planning, and local conservation guided and assisted by the states and by the Federal Government. When we have this kind of a structure on paper, then I'll talk to Secretary Wallace. I'll talk to Hugh Bennett. I'll

talk to the state extension directors. I'll talk to the experiment station directors. We'll organize them in national meetings and in regional meetings and in state meetings. We'll keep pushing away at this idea in the hope that, ultimately, districts will be organized in every single state."

HELMS: Let me interrupt just one minute. Can you give us, within a couple of months, about when this sort of conversation was taking place?

GLICK: Surely. It began in the spring of 1935. M.L. had come to the Department of Agriculture around June or July of 1934. He had brought me over in the fall of 1934. Sometime in the spring of 1935, he called me in. I would say that it must have been around April or May of 1935, when we started these conversations. Typically, M.L. developed his own thinking by talking to people about what he had in mind. During this period he was talking to a great many people in the department, but he never became as explicit with them as he was with me. He wanted to wait until he had something concrete to propose. He didn't want to organize and stiffen up an opposition before they even knew what they were opposing, and before he had figured out how to deal with every type of opposition that he anticipated. He wanted to be able to say to every person who offered criticism, "Yes, of course, I agree with you, I sympathize with you. But look, here's how we propose to deal with that." He wanted to be able to indicate specifically how this danger was to be avoided. For the next two years this kind of a process went on. M.L. was, if I may say so, gradually educating Secretary Wallace in why this kind of an operation would be necessary. He was planting in Hugh Bennett's mind the notion that it is perfectly possible to bring the states and the counties and the farmers into the erosion control planning and operation process, without in the slightest weakening the authority of SCS and the responsibility of SCS to participate in and direct erosion control work all over the nation. He wanted to win over the state extension directors without having them feel that SCS and the districts were planning to take over the responsibility of the county agents.

Having anticipated, having foreseen just exactly who the opponents would be and what kind of arguments they would offer, he was in effect asking himself, "How much soundness is there in their opposition? Let's work that into our plan. Their criticism offers us wisdom and a good many thoughts that we might not have been able to think of ourselves. This will enable us to test our idea against those problems." But he said, "The way to do it is to think it through clearly first and put it down on paper." Putting it down on paper was very important to M.L. "Let's get away from the fuzzy, generalized thinking which promotes so-called philosophic debates. Let's get down to concrete structures. Then we'll know, all of us, what we think the problems are and how we can meet them."

The basic idea that he laid out, I haven't clearly stated. Let me state it a little more fully. First, he wanted locally established soil conservation

districts. He wanted them to have broad power to plan and execute the erosion control projects. He wanted the supervisors of the districts to be elected by the farmers. That idea later was modified into a majority of the supervisors should be elected by the farmers. But assuming a board of five members, two of them should be appointed by the state soil conservation committee. He wanted a blend of democratic representation through elected supervisors and technical expertise so that at least two members of every single district board of supervisors, and of state soil conservation committees, would be people chosen because of their professional knowledge of the erosion control problem, and because of their knowledge of what techniques, machinery, equipment, supplies, practices would be needed to carry out the erosion control plan.

Two more ideas. One, he said, "Effective erosion control operations will require operation over natural boundary areas, more of a watershed approach than a county approach. The district boundaries should be defined so far as possible over natural watersheds, subwatersheds, small watershed areas, because many erosion control problems spill over county lines and spill over state lines. Within the district program itself, at the very least, we ought to be able to have a district that covers a natural land area instead of having jurisdiction end at a county boundary line."

The further idea that he introduced is this. He said, "We need something on the order of conservation ordinances, or land use regulations to be administered by the districts in addition to the establishment of erosion control projects to be operated and financed by the districts. Now, public regulation of private land use is not popular in the United States and least popular among the American farmers. But," he said, "we must not run away from governmental instruments and governmental exercise of authority where it is essential in order to solve the problem effectively. If we don't show courage here, whom can we expect to show courage on problems of this kind.

"These are bound to be specific problem areas where it's essential to use governmental authority to get erosion stopped and erosion control started. This kind of regulatory power will be needed in many cases to supplement the voluntary collaboration of a farmer with the district in controlling erosion. This kind of exercise of public regulation power will be wholly unpalatable unless the technicians take the time and trouble to conduct public education programs. They will have to educate the people on why particular lands have to be brought under erosion control in order to make erosion control effective on any other lands within the district. Furthermore," he said, "some lands will be so severely gullied, so badly eroded and the soil so erodible that parts of it will have to be completely retired from cultivation. The plan will have to provide for public purchase of some of the land and subsidies to make it possible to retire borderline lands from cultivation. "The district law will, therefore, need to authorize the districts to carry on not only project powers but also regulatory

powers."

Another point that he stressed at that time was that the districts must not be financed through the power to levy additional taxes on lands within the district. He said, "American farmlands today are too heavily taxed." You must remember these conversations were being held in the depth of the depression in 1935 and 1936. He said, "The best way to put the kiss of death upon the proposed state legislation is to authorize the districts to impose new taxes upon the lands within the districts. They will need money to finance their operations. But that money will have to come in other ways, not from putting new taxes on the lands." He said, "The supervisors themselves won't want to impose additional taxes even if the statute authorizes them to. They won't want to have anything to do with collecting taxes from their neighbors and other people whom they know within the soil conservation district." From the very beginning he stressed that the sources of revenue must not include taxes upon lands within the district.

These were the broad basic ideas with which he began. He asked me then to outline what could be considered a sort of standard state soil conservation districts law. Then he said, "We can go over that outline and agree, section by section, on what this standard act should say." I began to do work on just exactly that. What I'd like very much to do is to go through what we call a Standard State Soil Conservation Districts Law, section by section, and indicate essentially just what each section says and why and how this relates to the principles and policies that I've been trying to summarize by way of introduction.

Doug, maybe it would be a good idea at this point to stop and start our next section with section 1 of the district law.

May 26, 1983

HELMS: This is May 26th, and we are continuing our interview with Mr. Philip Glick.

GLICK: There is first something to be said about the title that we chose for the act. Practically every state has in its constitution a requirement that every general public law enacted by the state legislature shall open with a title that reveals the major provision of the statute in such a way that the attention of members of the legislature will be directed to the major effect that the new proposed legislation will have on government and the economy in the state. The courts have recognized that this kind of a constitutional provision is an internal safeguard on the work of the legislature and also serves a very important purpose of alerting the press and the public to the political, economic, and other implications of the proposed legislation. This is a sort of fairness to possible opponents of the bill, fairness to interests that may be adversely affected, so that the opposing interests will have time and opportunity to marshal their forces. This would make legislative hearings, when they come up, more penetrating, more suited to their

function.

Not everybody has seen all of these implications in these state constitutional requirements that every piece of legislation be preceded by such a title, but the courts saw it--saw it very clearly. So much so, that we have a long history of statutes that have been declared unconstitutional by the state supreme courts solely on the ground that the title of the act didn't contain these notices, these information flags, even though nothing in the statute violated any provision of the state or federal constitution. That was quite a development. As a matter of fact, lawyers in particular and of course competent political scientists, seem to be the only ones who know this. I've been personally surprised at how frequently I run into evidence in the course of political discussions of one thing or another, evidence that the speaker isn't aware of all of these significances in the title.

I called this to M.L.'s attention. He was intrigued by this. This was not in his area of thought and work, so he didn't really know about this particular thing. He pointed out, "We can use this to our advantage. We can then write a title that will not only be as revealing as the state constitution requires but would also be a very brief, terse summary of the whole act. Whenever we go to testify before a state legislative committee on the bill to enact such a law, we can call their attention to this. Let them look at the title as a quick introduction to what it is that we are about to do." He said, "What we are about to do will be profoundly significant. It will have a great effect, not only on state agriculture policy, but on federal state relations."

I'd like to tick off the points that the title that we wrote for the standard act includes, with this in mind. It starts out by saying that this is an act that will declare the necessity of creating new governmental subdivisions of the state to be known as soil conservation districts. That's obviously a very important point because these are to be governmental subdivisions, parallel to counties. It's not something to be done lightly without consideration of the effect it will have on the whole state governmental structure. That is the first point mentioned in the title, including, of course, the fact that these new political subdivisions will engage in conserving soil resources and preventing and controlling soil erosion. Then, the title calls attention to the fact that there will be established a new state administrative agency, the state soil conservation committee, and define their powers and duties. Then, to provide for the creation of these soil conservation districts--to define the powers and duties of the districts. We then point out that the powers of these new districts will include the power to acquire property by purchase, gift, or otherwise. Various state court decisions had already established the fact that when such a power is given in a statute, special attention needs to be called to it, because it's the kind of thing that will affect both public and private interests. So we called attention to it here.

Then, that the bill will empower the districts to adopt programs and regulations

for the discontinuance of land use practices contributing to erosion and the adoption and carrying out of soil conserving practices and to provide for the enforcement of such programs and regulations. You will notice that the wording there is somewhat indirect. We were very cautious. We were sensitive and nervous actually about this point. I will deal with that more fully when we come to the sections in which we actually deal with what we call both "conservation ordinances" and "land use regulations." But this is the cautious way in which we refer to it in the title.

Then, we point out that the bill would provide for establishing boards of adjustment in connection with land use regulations. That it would provide for financial assistance to the districts and make an appropriation for that purpose, because of the important effect that this could well have on the annual state budget that the legislature has to adopt. Then, to declare an emergency requiring that the act take immediate effect. All of that is in the title and serves the very purposes that I've just now outlined. Section one simply says that the Act may be known and cited as the Soil Conservation Districts Law.

Then comes an interesting and important section. We have here a section on legislative determinations of fact, and a declaration of policy. This is by no means unusual, especially in important new legislation that constitutes an important governmental policy departure. M.L. pointed out to me that this was an excellent opportunity for us to call attention to the basic facts about erosion control. You are not supposed to write an editorial in a statute. Policy declarations, therefore, are usually quite brief, all the more because the enunciation of a policy in a statute almost invites opposition. It will certainly invite a very searching analysis and examination of what is this policy that you propose to commit the state legislature to.

M.L. was keen and he saw that at once, although he was not a lawyer. He's not accustomed to analyzing and dealing with statutes. But he pointed out, "We can turn it to our advantage. We can come clean with the fact that the problem of erosion and the efforts to do something about it have become a very important aspect of agricultural policy, both for the nation and the state." He said, "This will in itself be an educational document." It's almost a preliminary argument to the legislature and to the press and to the public generally about why this entire program is so important and should be enacted by the legislature. You will notice that the subjects under that are the condition, namely, the facts about the widespread geography of soil erosion.

Next, the consequences. The consequences of the occurrence of erosion, the consequences of neglecting to do anything about it as it spreads into gullies, and blowing of soil and water washing of soil, etcetera, its effect upon runoff, floods, disease, death, impoverishment of families, damage to roads, etcetera. Then the appropriate corrective methods. It concludes then with a declaration of policy. Section two, therefore, again is something that

has not been widely noticed, not widely recognized, as being so integral to the sttaute itself. It's usually thought of as a sort of sugar coating, icing on a cake. It isn't that at all. This section is a speech in favor of a legislative declaration by every state legislature in the country of something that Congress had already done as a matter of Federal policy in the statute establishing the Soil Conservation Service as an agency.

The condition then is described: farm and grazing lands are among the basic assets of the state. The preservation of the lands is necessary to protect health, safety and general welfare of the people of the state. Improper land use practices have caused and are now causing a progressively more serious erosion of the farm and grazing lands of the state by wind and water. Here we come, you see, to concepts that are well known to soil scientists, but poorly understood outside of the area of the soil scientists themselves. The breaking of natural grass, plant and forest cover has interfered with the natural factors of soil stabilization, causing a loosening of soil, exhaustion of humus, and developing a soil condition that favors erosion. The top soil is being blown and washed out of fields and pastures. There has been an accelerated washing of sloping fields. These processes of erosion by wind and water speed up with the removal of absorptive topsoil, causing exposure of less absorptive, and less protective, but more erosive subsoil.

Now, this next is crucial. The failure by any land occupier to conserve the soil and control the erosion upon his lands causes a washing and blowing of soil, of water, from his lands on to other lands, and makes the conservation of soil and the control of erosion of the other lands difficult or impossible. This is the first statement in state law, to my knowledge, of the fact that soil erosion isn't just a matter of every man's right to go to hell in his own way, every man's right to do as he pleases with his own lands. This is calling attention to the fact that what a man does in exercising his right, which no one questions, to do as he pleases on his own lands stops where what he does on his lands doesn't stop with his land itself, but spills over and has an effect, either on adjacent lands, or on other lands that are not adjacent but influenced by the soil and water runoff and blowoff from his lands. That particular statement concludes in subsection "a" of this section, by saying that such washing and blowing of soil and water, from his lands on to other lands, can make the conservation of soil and the control of erosion on other lands certainly more difficult, possibly impossible. Now, this obviously is a forerunner for an exercise of what the lawyers call the police power, which is the power of a legislature to enact laws to protect the general health, safety and general welfare of the people of the state.

Subsection "b" of that section talks about the consequences of erosion. It's a long list, where we have in effect a political speech on the importance of taking action. Again, something that normally you don't dream of putting into a bill. People say, "We get to that when we write the committee report." Or, "we'll get to that when the sponsors of the legislation make their speeches in the legislature." And of course, we will. But there is nothing like taking advantage of this bill itself, to put

it in here. First of all, it strengthens the argument for the constitutionality of what you are doing. Second, it strengthens the argument for substantial appropriations to carry out what you are doing. Thirdly, it invites, it asks for the support of all the population in the state for what you propose to do.

It is the nature of erosion control operations that you always work on a particular man's land, a particular farm, or a particular ranch. Most of the expenditure will go there. You can justifiably and legitimately call upon the land owner to contribute heavily to the cost of doing that work. His land is being improved. Its economic value is being raised for him. Therefore, you can legitimately call upon him to contribute. But this, you see, would justify public contributions beyond what would otherwise be justified. Because you are not just benefiting the land on which the erosion practices are being installed, the particular farm that you are terracing, the particular farm on which you are establishing ditches, and grassing the waterway, you are doing much more than that. You are preventing damage to highways, you are reducing the dangers of floods, promoting the stabilization of entire watersheds. So we have silting and sedimentation of stream channels, reservoirs, dams, harbors, loss of soil material in dust storms, piling up of soil on lower slopes and its deposit over alluvial planes. The reduction of productivity or outright ruin of rich bottom lands, by overwash of poor subsoil material. Deterioration of soil and its fertility. Deterioration of crops. Declining acre yields. Loss of soil and water, which causes the destruction of food and cover for wildlife. (Another state interest is here brought into it.) Blowing and washing of soil into streams. Sediment, the problem of sedimentation, which silts over spawning beds, destroys water plants, diminishes the food supply of fish. Diminishing of the underground water reserve, which causes water shortages, intensifies periods of drought, causes crop failures. An increase in the speed and volume of rainfall runoff, which increases floods, bringing suffering, disease and death. Impoverishment of the families attempting to farm the lands. Damage to roads, highways, railways, farm buildings and other property from floods and dust storms. Losses in navigation, hydroelectric power, municipal water supply, irrigation developments, farming and grazing.

By this time, two things had been, hopefully, very firmly established. The right to demand substantial financial contributions from all the governments involved, Federal, state and local. They all have an interest in it. They are all being damaged by erosion. They all will benefit from erosion control. And other costs of theirs will be reduced. This is a cost that they can legitimately be called upon to undertake.

So then in subsection "c" we go into the appropriate corrective methods. "Land use practices contributing to soil erosion must be discouraged and discontinued. Appropriate conserving land use practices must be adopted." And then we detail the procedures necessary for widespread adoption. "Engineering operations, such as the construction of terraces, terrace outlets, check dams, dikes, ponds, ditches, the utilization of strip cropping, lister furrowing, contour cultivation,

contour farming, land irrigation, seeding and planting of waste, sloping, abandoned or eroded lands"--what we came a short time after that, to call submarginal lands--"to water conserving, erosion preventing plants, trees and grasses. Forestation and reforestation. Rotation of crops, soil stabilization with the various kinds of trees and grasses. Retiring runoff by increasing absorption of rainfall. And then, complete retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded."

All of the strands of thought that are outlined in subsections "a," "b," and "c" are brought together in the final subsection "d."

HELMS: One question. By mentioning specifically what we now call measures and practices ...

GLICK: Corrective methods ...

HELMS: You don't know what future technology might bring. Do you limit yourselves in the law by specifically mentioning them?

GLICK: No. We did not think of specifically protecting ourselves by indicating that new technology, the results of further research, may indicate other corrective measures that are needed. That we did not think of and didn't say. There is nothing in the section as drafted that would obstruct the addition of other methods. Some of the phrases are so comprehensive and broad. For example, increasing absorption of rainfall. Then we said, erosion preventing plants, trees and grasses. A great many new varieties of plants, trees and grasses may come to be discovered by later research. And then we say also, "Among the procedures necessary for widespread adoption are...". Which also opens the door to adding others as knowledge develops. Very well, the rest of subsection "d" is a sort of waving of the flag and justification of doing what all of these summarized facts would seem to indicate.

Let's glance together down at subsection three to see whether any of the definitions included there require comment. We are looking through the various definitions and there is only one that I think does need particularly to be commented on. We created a new term, land occupier. Not that either of those two words in that phrase are new words. Normally, statutes of this type speak of landowner or tenant. The owner, the tenant, and the sharecropper are the three types of relationship of man to the land that normally get involved and affected by agricultural programs. But we wanted a term that would include both the owner and the tenant where that's appropriate. Furthermore, there may, in some cases, in a great many cases, particularly in the South at the time, be an owner, a tenant and a sharecropper. Or the tenancy may take the form of sharecropping. There, the owner's obligations are normally limited to and confined to his share of the crop. In turn, the tenant's obligations are normally considered as limited to and defined by his share of the crop, where there is a sharecropping arrangement. But that wouldn't do for this purpose. For this purpose, erosion control practices become the obligation of anybody who conducts operations on the land. When we come

later to conservation ordinances and land use regulations, where the public power to regulate private land use comes into play, there must be no escape or loophole, on the theory, "I may be the owner, but I don't operate the land. It's leased." Or worse yet, "My obligations as an owner are entirely limited to one-tenth of the crop or one-half of the crop, and therefore, you must be careful about your constitutional power to impose costs upon me because I am an owner."

We worked our way through that problem with great care and decided that we needed a term that would include all people who have the legal authority by virtue of their relationship to the particular tract of land, to conduct operations upon it and to receive benefits from the conducting of the operations. We wanted, in other words, all obligations here to extend to a land operator, whether he's an owner, a tenant, a sharecropper or whatever. Hence we used the term land occupier.

It may be worth calling attention to the fact that during the state legislative hearings on adoption of the bill, and subsequently in appropriation hearings, very rarely was any question raised about, "Why the term land occupier. Why do you deal with that?" I do recall the question being put to me in some cases. I was usually content to point out what I've just now said, and then to add that particularly in a district that has adopted a conservation ordinance or a land use regulation, this is necessary in order to set at rest constitutional questions as to the power to enforce a public regulation upon private land use where the user has only a limited interest in the land. But the obligation may run beyond his use, particularly in a year in which more or less expensive operations may need to be introduced.

Then we come to section 4. The bill establishes, in every state that adopted the bill, a state soil conservation committee. The section "a" of section 4 includes a provision which was quite novel, unusual in agricultural legislation. It died a slow but natural death. The provision is that the state soil conservation committee may invite the Secretary of Agriculture of the United States of America to appoint one person to serve with the abovementioned members as a member of the committee. Now, this is Federal-state collaboration with a vengeance. This is the state legislature authorizing the state committee, which is an agency of the state government, to invite the Federal Secretary of Agriculture to designate a man of his own free choice, without any confirmation by anybody, without any U.S. Senate confirmation, to serve as a member of the committee. It doesn't put any limitations upon that member. He would have the same right to vote on all questions that the state soil conservation committee deals with as the state-designated members of the committee, several of whom were very important ex officio members, the director of the state extension service, the director of the state agricultural experiment station. Those two served ex officio. But the United States member was to have equal power, equal significance within the committee.

Now, notice this; and this came up in legislative hearings in various state legislatures as they considered the bill. Does

this mean that the state committee and the governor of the state will have no voice whatever in choosing this member of the committee? There's nothing in the bill requiring confirmation by the U.S. Senate, of course. But there isn't anything in the bill requiring approval by the governor, or by anyone else. Our answer was, "The state has complete control." When a state statute says that the committee may invite the Secretary of Agriculture, they don't have to invite anyone. When they are considering inviting him, there is nothing to prevent them from saying to the Secretary of Agriculture, "We want an understanding about the kind of people you are going to choose. We want to know in advance. We want to be able to turn them down if we want to." I always answered, "It would be unwise to sort of stoke up political storms and political fights where none need exist at all, by spelling out all of this in the statute. The whole thing is taken care of by using the word 'may,' instead of 'shall invite.' Also, it's taken care of by not having the state legislature establish the post to be filled by the Federal Secretary of Agriculture. None of that is done. Instead, the entire authority and power is left with the state by the use of the word 'may.'" This usually satisfied the committees. I don't recall a single instance where this provision was stricken out of the bill. Now, I'm not certain of that. I'm speaking now about what happened 40 years ago. There may have been some states that did strike it out as they adapted the law to their own requirements before making it a statute. I don't recall any. This I do recall. Although most or all of the states retained the provision as is, what gradually happened was that for awhile in nearly all states, the Secretary of Agriculture was invited to designate someone. He very often designated the Soil Conservation Service's state conservationist to serve on the state soil conservation committee, thus greatly strengthening Federal-state cooperation in this area. This was the creation of a position and the appointment of a member in the governing arrangements within the state that would strengthen such federal-state collaboration. In addition to the fact that they both would be providing money to finance every single district.

What gradually happened is that the states became more and more restive about exercising this authority. They stopped asking the Secretary of Agriculture when the term expired, or the member died, retired, or whatever. When the vacancy was created, they didn't ask the Secretary to fill it. My own experience doesn't enable me to tell you what happened after that. You remember I left the Department of Agriculture in 1942. I had next to nothing to do with the soil conservation program or the soil conservation districts during the war while I was with the War Relocation Authority. Thereafter, I went into the State Department and was working on international technical assistance and the Point 4 Program. In late 1953, I left the Federal Government entirely. I went into private law practice in 1955. In 1953 to 1955 I was on the faculty of the University of Chicago, in a committee study of technical assistance in Latin America.

But in 1955, I went back into private law practice. Within a year or 18 months, NACD, the National Association of Conservation Districts, retained me to be

General Counsel of NACD. As a private lawyer in private practice, operating on a retainer basis with NACD, it now became my responsibility to give legal advice to every one of the districts. Almost immediately, the state soil conservation committees came in. As you know, within every state, the districts are organized in a state association of soil conservation districts. The state associations of districts began to send legal questions to the general counsel of NACD. In many cases, individual districts sent legal questions to me in that capacity. That brought in the state committees, because state associations of districts worked in reasonably close collaboration. The collaboration should be stronger, but they've always worked, and still do, in close collaboration with the state committee. That brought me back into the districts program from another door. During that period, this kind of a question never was referred to me. I wasn't acutely aware of it. Don Williams and his successors as Chief of Soil Conservation Service would know from their own experience why that particular provision of the law died a natural death.

We made it possible for it to have an easy burial, by the very use of the word "may" instead of "shall". Looking back on it however, I still don't think that was an error. I don't think it was a mistake on M.L. Wilson's part. He made the decision to use "may" instead of "shall." He foresaw, as a matter of fact, that the whole provision would probably be killed routinely by nearly every state legislature if we said "shall" instead of "may." He said, "I'm not certain that the country is ready for that kind of an intimate marriage of personnel appointments between the Federal and state government." He said, "The only instance of that kind that I know does occur is in the Extension Service." That took an Act of Congress. That came later. Namely, that personnel of state agricultural extension services became entitled, on retirement, to certain retirement benefits under the Federal retirement laws and were treated as Federal personnel for certain purposes. That state people would be treated as Federal people definitely required legislation. Only an act of Congress later made that possible.

HELMS: Was it in Mr. Wilson's mind or yours that somebody from SCS would be the logical appointee of the Secretary of Agriculture?

GLICK: I just don't recall. Also, I don't recall whether we discussed that. I also don't recall whether we thought of that as an advantage or a disadvantage. I'm not sure. Certainly I didn't foresee that the state conservationist of SCS would be a logical man for the state people to think of to invite under this provision.

HELMS: While you're talking about that, I'm not even sure they had come up with the term state coordinators yet.

GLICK: Ah, state conservationists? Yes.

HELMS: I'm not even sure you had the ...

GLICK: Basis for thinking about it.

HELMS: ...thinking about it.

GLICK: I have no recollection whatever that we gave any thought to that. Any federal person could be made a member

of a state committee. I'm trying hard to recall conversations of a long time ago. I made no notes about it. I'm not sure I saw then how important this might turn out to be. It just seemed to us a way of improving the operations of the state soil conservation committee.

Now, you may recall that in my speech in New Orleans, which dealt with means of strengthening future operations of soil conservation districts, I called attention to the importance of strengthening collaboration between the state soil conservation committees and the state associations of districts. I made that a parallel to another recommendation in the same speech, namely, the desirability of having the state committee and state association assist districts and counties in drawing up long-term contracts that would provide for close collaboration between the counties and the districts.

Returning now to what Section 4 of the bill provides, it deals with the details of the procedures and operations of the state committee. One point in subsection (b) that I need to call attention to. M.L. pointed out that within the states, and in the state extension services in particular, they are very sensitive about having state level personnel direct or control the operations of local government units. The state extension services deal directly with the counties and appoint county agents to head the work of agricultural extension within each county. But the relationships there are very sensitive. The counties are sensitive, but even more so, the state extension services are sensitive about that.

We provided, therefore, in Subsection (d) of that section for the duties and powers to be carried out by the state Soil Conservation Committee. The draft bill first authorized each such committee to offer appropriate assistance to the supervisors of districts, and then to keep the supervisors of each of the districts informed about the work of the others and to facilitate an interchange of advice and experience. Then subsection 3 says this, "to coordinate the programs of the several soil conservation districts organized hereunder so far as this may be done by advice and consultation." The significance of that language is, of course, that it is an express limitation on the power of the state committee to influence and control what the local soil conservation districts do. Soil conservation districts are to be independent local governmental units. Even their own state committee in the same state may coordinate the programs only through advice and consultation. It must be done on a voluntary basis in other words. Without the limitation to "so far as this may be done by advice and consultation," the power to coordinate a program obviously would include the power to direct the doing of something or the nondoing of something. The only way you can coordinate a and b is to require each to do something or to prohibit one or both from doing something. Also, the use of the words, "so far as this may be done," is about as strong a way as the English language permits of saying, "We don't mean that you may go beyond this. You may coordinate only so far as this may be done by advice and consultation." Without calling attention to it, a reader could fail to see the full significance of what lay behind that.

Next, there is spelled out elaborately in section 5 the procedure for creating soil conservation districts. This has to be, of course, elaborately spelled out. This is a very important step that a state takes. There are various kinds of what the political scientists call, special districts; "special" meaning that they are not general units of government. Even the soil conservation district is what a political scientist calls a special district, because it doesn't have the general powers of local government within certain stated boundaries or purposes. Instead it's a district only for a specific purpose, in this case, erosion control and soil and water conservation. So the procedure had to be very carefully spelled out.

The major important provision here in connection with the creation is the requirement that the proposed establishment of a soil conservation district be submitted to a local referendum. All land occupiers may vote. This we knew was going to be extremely sensitive and it's one of the reasons for using "land occupier," instead of owner. The power to determine whether or not you establish a soil conservation district is obviously going to very importantly affect the rights of landownership. Every man who owns land that is about to be incorporated within a soil conservation district knows, or ought to be able to foresee, that he is going to have to come to terms somehow with the supervisors of that district. If all they do is offer him a contract between a landowner and the district, he can just say, "Thank you, no. I'm not interested." If all they want to do is offer him assistance, he may accept the assistance and then indicate the limits on what they may do in granting that assistance. But the statutes also provide for conservation ordinances and public regulation of private land use. Who then is entitled to a vote in the referendum on whether a district should come into being? Obviously, not only the owner, he may be an absentee landowner. The tenant may be far more the important operator. The tenant may actually have a larger financial interest at stake than the owner. For the owner it's the market value of the particular acres. For the tenant it's the cost of all of the equipment and machinery and credit for annual operations, etcetera. Who then is to vote? You can't write a statute in such a way that a man could give himself more voting authority and power on whether or not a district should come into being, by merely leasing some of his lands, or dividing it up into 20 parcels.

HELMS: Can a man vote in two district elections: as an owner in one, and he's renting land in another?

GLICK: Yes. Because they involve different lands. Well, there is a legal point here that is worth mentioning but not stressing, since yours is not a legal study. The referendum is not made binding upon the state committee. See the last few lines on page 8 of the standard act. After the hearing and referendum, the committee may determine that there is no need for a soil conservation district to function in the territory considered in the hearing. It may make and record such determination and deny the petition. The denial remains in effect for at least six months. Then, if it determines that there is a need, that's when it holds the referendum and the referendum isn't binding upon the state committee.

Because they may decide that this referendum passed by a vote of fifty and a half to forty-nine and a half, and therefore, opposition to the district is as great as support for the district. It's not likely to be able to function effectively. The state committee may then refuse to establish that particular district on the basis of that referendum. It may wait until public opinion in the area, the need for erosion control, the eagerness to have Federal financial aid in carrying on erosion control operations, is great enough to persuade a working majority, a substantial majority.

HELMS: But why not come up with a figure two-thirds?

GLICK: That is the alternative frequently used. I don't recall definitely now. I have to be careful as I go, not to influence history by my own preferences as we go. I don't recall that we specifically discussed that. I can imagine that we thought that a two-thirds majority or a three-fourths majority or a 60-percent majority is a more mechanical thing, less controllable. People with knowledge of the facts, as they may exist at the time, have less control than this procedure gives them. But that's the kind of thing that I think would have appealed to M.L. This may very well have been our reason for that. I do know that one of the things that importantly influenced me was the question of constitutionality. I wasn't certain of how far we could go. Remember, this was way back in 1935, 1936. I wasn't certain how far we could go in providing for binding local referenda on questions of governmental power of this kind. And from what I know now from the subsequent course of judicial decisions, I don't think that would have been a constitutional problem. The referendum could have been made conclusive and I think the courts would have sustained it just as well.

HELMS: But there was a question that it might be taking too much of the state's power away to let the local unit decide entirely on their own?

GLICK: No, you see, it's the state committee that would be establishing the district.

HELMS: But that's the .....

GLICK: Ah yes, that's the landowner. Too much of a delegation of legislative power to those eligible to vote in the particular referendum. I think the courts would sustain that, as of today. And I'm not too sure that this loomed very large either in M.L.'s mind or mine at the time we were considering what the bill should say. You will notice that in subsection (e), after the referendum, again provision was made, "If the committee shall determine that the operation of such district is administratively practicable and feasible, it shall record such determination and shall proceed with the organization of the district in the manner hereinafter provided. In making such determination, the committee shall give due regard and weight to the attitudes of the occupiers of lands lying within the defined boundaries, the number of land occupiers eligible to vote in such referendum who shall have voted, the proportion of the votes cast in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the proposed dis-

trict, probable expense of operations, and such other economic and social factors, as may be relevant to such determination." There was no delegation of legislative powers to the voters in the district.

We have the next important point, in subsection (f). Again, relatively novel. The bill says, once the district is established, the state conservation committee shall appoint two supervisors to act with three supervisors elected as provided hereinafter as the governing body of the district. Such district shall be a governmental subdivision of this state and a public body corporate and politic upon the taking of the following proceedings. Many of the states, when they came to consider the recommended standard act, shied away from having three elected supervisors. Some shied away from having the two appointed supervisors. In some of the states now, all of the supervisors are appointed; in other states, all of them are elected. M.L. felt strongly that an important administrative problem is here involved. It's not just a matter of, you can do it one way, or you can do it another way, whichever the legislature likes. These supervisors of the district, if they are to serve their primary function of representing the actual landowners most affected, and being locally elected, are therefore, obviously able to speak for the people who vote for them. They will later have to stand for reelection and, therefore, they will have to answer to the people in the district. That we felt was very important.

Let me back up a minute. So far, the bill would take care of making the supervisors adequately representative of local opinion, local preference. These are highly technical operations that the district will be carrying out. The average farmer knows a great deal about farming. He doesn't necessarily have a great deal of information about terracing. He knows a good deal presumably about strip cropping and contour furrowing. But he knows much less about flood control over an entire watershed area. Two supervisors, a minority, you notice, could be outvoted by the other three supervisors on any question that comes before the district. Certainly M.L.'s reason for wanting two of them appointed is he assumed that the natural result would be those two would be selected because of their expertise in erosion control. At the state committee, he assumed they would discuss this with the extension service. They would know people who live there, own lands in the district, or operate lands in the district, or are close to the district, who do know the kind of technical facts that ought to be brought to the attention of a board of supervisors of a district.

This problem of having elected officers be truly politically representative, and at the same time administratively competent, continuously arises. This is why some Senators are so much better than others. Some Senators and Congressmen and county officers and district officers, are excellent in both respects. They know the job to be done and can give a certain amount of relevant experience and expertise to the decisions to be made. At the same time, they can legitimately and effectively know and represent political views, just as every Senator and Congressman frequently has to face this question. "My own personal view," he may tell himself on this particular vote, or this particular appropriation, "is

such and such. My constituents don't feel that way." Where there is a division of opinion among the constituents, in most cases, that's not much of a problem for the elected representative. He has the freedom to decide because he'll have as much support as opposition among his constituents. When a Senator Fulbright of Arkansas votes on a civil rights question, he may be very much in favor of extending civil rights, as Senator Fulbright was. But he knew that his Arkansas constituents didn't go anywhere near that far. Quite aside from the narrow, purely political question of political survival, a principled Senator, such as I believe Senator Fulbright to have been, would recognize that a Senator as well as a Congressman must represent his constituents. He's not supposed to be slavishly dependent upon their view. Senator Norris of Nebraska, for example, had such personal strength and power and prestige and respect from his constituents that he would frequently vote in the knowledge that a majority of his constituents wanted him to vote the other way. But they would recognize that we haven't elected a man who is supposed to be our rubber stamp. We want him to help us, to help educate us. He was given that kind of freedom. There was another Senator, equally strong in that respect, in New England. Who was it? I think he walked with a limp. Yes, Senator Aiken of Vermont is a very good example in New England. It's a better example, because it doesn't deal with a regional representation problem, such as a southern Senator faced with civil rights issues. Senator Aiken of Vermont had such prestige in his state and such strong respect of his constituents that he could frequently and did frequently stump his state on issues of war and peace. The Vietnam War came into that consideration, I believe. He would stump his state. He could "stump it" by making one speech, explain why he felt as he did feel, and say, "Now, I urge you to reconsider if you feel opposed to what I am about to do. But I feel I must vote this way." Aiken could do it and Norris could do it. Senator Jackson of Washington does it on armaments questions very frequently as just now on the MX issue. But not very many Senators and Congressmen could do so.

It was part of this that lay behind the decision that districts would be greatly strengthened, while not interfering with local democratic control of the supervisors' action, by having the three elected supervisors, if two men could be chosen by the appointing process in order to bring in expertise as well as local opinion representation.

The next points that we want to discuss here are sections 8 and 9. Sections 8 and 9 of the standard act deal with the powers of districts and supervisors. They deal with two categories of power. The first we might call the project powers. Those are defined in section 8. Next are the regulatory powers. Those are defined in section 9 and related subsequent sections. I think this would be a good place to stop. We'll begin with the powers of districts, I would suggest, in our next meeting.

June 9, 1983

HELMS: This is June 9, and we are going to continue with our interview with Mr. Philip Glick on the conservation districts act.

GLICK: Section 8 has a number of Subsections. I'm going to go into each subsection and then restate as briefly as I can what powers are conferred upon district supervisors, subsection by subsection. First, the districts are authorized to do research. The bill gives power to conduct surveys, investigations and research concerning the causes of erosion and the ways to control erosion. This subsection strangely enough created a rather major problem.

Mr. Wilson was aware that the Office of Experimental Stations was skittish about duplication of research by agriculture agents at the three levels, Federal, state and local. To introduce a new group of districts covering the entire country with an independent power to carry on research on erosion and erosion control would be a sensitive issue in each one of the state legislatures and in each state in relations with the Office of Experiment Stations. So he conducted some pretty careful discussions within the department, within the Office of Experiment Stations, primarily, and also in the Secretary's office. That led to an express provision in Subsection 1, that reads: "...provided, however, that in order to avoid duplication of research activities, no district shall initiate any research program, except in cooperation with the government of this state, or any of its agencies, or with the United States or any of its agencies." That's the end of the quotation.

As usual, and as a matter of fact, what seemed at the time to be a lot of excitement and delay over a more or less routine provision turned out actually to be a very important provision. It was very beneficial that we did have this in the bill. In most of the hearings, as I recall, in the various state legislatures, this became an issue during the hearings on the bill. It was fortunate that people were able to say, we've anticipated that problem. Let us look particularly at subsection 1 of section 8. That was taken care of.

The next subsection authorizes all districts to conduct demonstration projects within the district. You remember that at the time that this bill was being drafted and the first few years after its enactment in the earliest states, SCS was still doing most of its work in the country by operating demonstration projects. It was inevitable that the talk about establishing a new district would create the question about what kind of demonstration projects are they to have, how are they to relate to demonstration projects by Federal agencies, etcetera?

In subsection 3, "the districts are authorized to carry out preventive and control measures within the district, including but not limited to...". Then there is a rather detailed list of the various kinds of things that the districts may carry out in their erosion control program. Next, they are authorized to enter into cooperative agreements with any agency that also carries out erosion control and prevention operations, whether federal, state or local, and with private agencies. Next, they are authorized to acquire by purchase, exchange, lease, gift, grant, any property or to obtain interest in property. The Congress had always been very, very sensitive, and still is, about any Federal land acquisition in states or localities. This too had to be carefully

girded around with the protections and precautions spelled out in subsection 5.

In subsection 6 we have a brief subsection but a very important one. This is in effect the heart of the project operations. It authorizes every district to make available to land occupiers within the district agricultural and engineering machinery and equipment, fertilizer, seed, seedlings and other materials or equipment that are needed to assist the land occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion. We will be talking a little bit later about how the districts were to be able to finance their activities and whether they should be given the taxing power in order to have revenues with which to carry on their activities. This is important. In drafting the bill, we already knew when we reached this section we were not going to authorize the districts to levy taxes. Where then were the districts to obtain the large amounts of machinery, equipment, fertilizer, seeds, etcetera, necessary to enable them to help land occupiers control erosion. One major source, we knew, would have to be the Federal Government's Soil Conservation Service. Each district had to have authority to obtain this material from a Federal Government agency and then to use it for erosion control work in cooperation with the landowners.

In subsection 7, the districts are authorized to maintain such structures as are necessary for this. We had in mind very small dams, terraces, windbreak areas, etcetera.

In subsection 8 the districts are authorized to develop comprehensive plans for the conservation of soil resources and the control of erosion. Again, "which plans shall specify in such detail as may be possible, the procedures, performances and avoidances necessary or desirable for the effectuation of the plans, including engineering operations, methods of cultivation, growing of vegetation," etcetera.

In subsection 9 we have what we thought of at the time as a very important project power. I'm not sufficiently familiar with how this actually worked out in practice. I don't know whether these powers were used to a great extent. subsection 9 authorizes the districts to take over by purchase, lease or otherwise, and to administer any soil conservation, erosion control, or erosion prevention project located within its boundaries, to manage such projects as an agent of a Federal agency or of a state agency, to accept donations, gifts and contribution in money, services, materials, from any federal or state agency, and to use or expend such monies in carrying out its operations. Subsection 10 is....

HELMS: I might interrupt.

GLICK: Yes.

HELMS: On some of the land utilization projects, particularly in the Great Plains, the districts ended up doing the leasing of those for cattle raising.

GLICK: That's right. And the districts in those states, would, of course, find the powers in subsection 9 very convenient for that kind of an operation. Subsection

10 authorizes the districts to sue and be sued.

There's a very important Subsection 11. It provides that as the condition to extending any benefits under the act, or to performing work under the act on any lands, the supervisors may require contributions in money, services, materials, or otherwise, to any operations conferring benefits, and may require land occupiers 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. On this subsection 11 there developed the very significant pattern of operations used by districts. That is the contract or agreement between the district and individual landowners or occupiers. This is a very significant form of administrative procedure and not very much used, as a matter of fact, ordinarily, in agricultural legislation. Normally, an agricultural agency gives assistance or it regulates what public or private land occupiers may or may not do. But here, provision is made for a contract to be negotiated and signed between a district and any and all of its land occupiers to carry out mutually agreed upon plans and operations on the particular lands.

These, then, are the project powers of a district spelled out in section 8. Many district supervisors, in fact, don't know how broad are the powers that their state statute confers upon them. Many useful activities are not initiated by districts, because the supervisors don't know that they have the power to do so without going back to the legislature for an amendment to their statute. At staff meetings of the Soil Conservation Service, state conservation agencies, Federal and state extension agencies, etcetera, I have frequently urged the introduction of training programs that would assist district supervisors in reading and studying their own enabling act so that they would be encouraged by the sheer knowledge of the powers that their legislature has given them to carry them out and to extend and broaden their activities and thereby increase their effectiveness and success. So much for the project powers.

HELMS: May I ask one other question before we move on?

GLICK: Yes.

HELMS: Just in case I would perhaps forget it; subsection 11 refers to such agreements or covenants as to the permanent use. Is that something that concerned the state legislatures, the permanent use?

GLICK: That was in the standard act that was recommended to all the state legislatures. I don't recall that this ever gave any trouble to any state legislature as it was considering adopting the act. I don't recall that any state amended or deleted this particular provision. Although it speaks of permanent use, and therefore has connotations of a heavy governmental hand, nevertheless this was something that they could require the landowner to agree to as a condition of accepting assistance. All the landowner had to do, if he thought the provision was burdensome, was to refuse to accept the assistance.

The sections on conservation ordinances I am going to go over more quickly,

because they have not been widely used. I think it's worthwhile to discuss that point a little. Otherwise, I will seem to be going over hastily things that appear to be very, very important.

In the United States, as everybody knows, our traditions are against governmental regulation of private land use. We've always resisted that. We were an agricultural nation when the Federal Constitution was adopted and when our governmental traditions first were organized and formulated. Farmers don't like to be regulated. Really, nobody does. But in general we have learned as citizens to understand that some things need to be prohibited, some things need to be encouraged, and some things need to be permitted only under certain conditions. All of this together constitutes what we call public regulation of private activities.

As a matter of fact, the first problem that arose, and M.L. Wilson and I discussed this at some length in a number of meetings between ourselves, was, "What shall we call these things?" I suggested calling them "land use regulations." M.L. said, "Regulation is a prickly term. Can't we choose some other term than that?" We thought about that, and then we developed the alternative phrase, "conservation ordinances." We decided that we would refer to them as conservation ordinances throughout. The word ordinance is widely understood and instantly it reminds the hearer that this is something that is going to be adopted by a local governmental unit. If it's adopted by the Federal Government or a state, it's called a statute. It's only when it's something adopted by a city or a county that it's called an ordinance. So the word ordinance is palatable.

Similarly, the word conservation is pleasant. Whereas, even the word erosion control raises, in the subconscious mind, business about the public land and regulation, etcetera. We were on the verge at one point of excluding the use of the words "land use regulation" from the bill entirely and speaking only of conservation ordinances. Then at one point, we came up against this counter argument. We said, "There is such a thing as showing that you are very, very nervous about what you are talking about. Then you evoke opposition that might not ever have developed otherwise. After all, "conservation ordinance;" what does that do but regulate land use? Well, if we excessively avoid what would otherwise from the context appear a natural use of the word, people will ask, "What the hell are they afraid of? What are they hiding?" We would perhaps exaggerate the issue and invite misunderstanding.

We finally hit on this. We said, "We'll start out by calling the section, 'Adoption of Land Use Regulations.'" We go on first to authorize the supervisors of the district to formulate the land use regulations. Then we say, "The supervisors shall not have authority to enact such land use regulations into law until after ...," and we carefully provide for notice, and a number of public hearings, and then provide that the proposed regulations shall be embodied in a proposed ordinance. Then we provide for an extensive public education program concerning the proposed ordinances and what they will contain. We require also a local public referendum in every district on the

conservation ordinance that is proposed for adoption. No district is then given power to adopt such a conservation ordinance until a majority of the land occupiers of the district vote in favor of it. Even after a majority of the land occupiers of the district have voted favorably in a referendum, the bill goes on to provide that the supervisors must then reexamine the question of the desirability and need for the proposed conservation ordinance, and then determine whether or not to put the ordinance into effect. Why? Well, it occurred to us that there may be a very small turnout of voters, of land occupiers, voting in the referendum on the proposed ordinance. Therefore, the results of the referendum may not at all be indicative of the attitudes and the level of information on the part of the occupiers throughout the district. Furthermore, suppose the ordinance is approved by 51 percent of the voters in the referendum. This again would indicate that there has not yet been an adequate public education program on this subject. Perhaps it would be wiser in such a case, especially if all that's available is a 51 percent favorable vote of a very small percentage of the total number of land occupiers, to postpone the questioned bill.

M.L. always had a strong sensitivity to public opinion, to the moods and attitudes and wishes of the farmers and ranchers with whom the Federal government and the state governments would be working. Remember, he was the first county agent in Montana. He was an important county agent leader in Montana and earlier in Iowa. He was very much attuned to the county agent, to the individual farmer and the individual rancher. He saw things from their point of view. He never lost or broke that contact, merely by the fact that he came to the Department of Agriculture, worked in the Agricultural Adjustment Administration, then became an Assistant Secretary of Agriculture, which he was at the time we were considering this proposed bill. He later went on, of course, to become Undersecretary of Agriculture, and still laterbecame Director of Agricultural Extension, until he retired.

The sheer adoption of land use regulations is thus carefully prescribed and circumscribed in section 9. What a conservation ordinance may contain is carefully spelled out in five subsections. Provisions are made for the enforcement of regulations and the performance of work under the regulations by the supervisors. Now notice, provisions for enforcing the regulation, and then provisions for performance of the work by the supervisors themselves. Why? We thought, first of all, no statute makes sense if it doesn't provide for enforcement of any regulations that it authorizes. But M.L. visualized an effort by anywhere from 1,000 to 3,000 soil conservation districts trying to enforce land use regulations. If you have to enforce them, you have to be able to go into court to enforce them. You have to be able to impose penalties.

He shuddered away from the picture that all of this created. He said, "You can't put all these people in jail. You can't fine them." In the depth of the depression any public fines on farmers sounded quite horrendous. These provisions, he felt, were important. At the same time, they were not likely to be enacted by state legislatures if they got the same mental picture that he got about the

spread of public regulation of private land use throughout the country. He said that putting people in prison and fining them, even if the courts decide that they have to do it because of the importance of erosion control, isn't going to solve the problem. The lands will continue eroding even though the fines are paid. Subsection 11 provides for this. Where the supervisors of any district shall find that the provisions prescribed in an ordinance are not being observed on particular lands, and those particular lands are key lands, in the sense that failure to control erosion on those lands will interfere with erosion control on adjacent lands--the lands may be, for example, at the heads of hills, or the topography is such that certain lands are crucial--they are the lands of the first priority for extending public funds in an effort to control erosion. They may be the very lands that the occupier will be unwilling to cooperate with the district on. So, provision is made in section 11, that the supervisors may go to court and ask the court, not to penalize the land occupier, but to authorize the supervisors to go on the land and do the work directly themselves. Then the supervisors may recover the costs of the work that they have done with interest at the rate of 5 percent per annum from the occupier of such lands.

M.L. felt confident that if the county agent can explain to the land occupier. "You see, you know that we are not going to enforce this kind of provision all over the country, but only on key lands, the ones that have to be brought under control if the program is to succeed at all." As for those lands, the districts will want to go into court. So then they can say to the occupiers of those key lands, "You have nothing to gain by refusing to cooperate. Your refusal endangers not only yourself. You have a right to go to hell your own way, but you don't have a right to drag your neighbors to hell when they want to get the work done. Your lands are in just such a situation where if you don't cooperate you will be forcing your neighbors, the district supervisors, to go on your lands, do the work and collect the costs from you. And that will cost you much more than if you do the work yourself."

So this provision was written in with that in mind, as something that would be available to the county agent and the district supervisors when they talked to farmers. What I have always thought was very significant about the state soil conservation district laws, are the elaborate ways in which the law tries to anticipate problems of administration, problems of public acceptance, problems of public education, and to facilitate education, facilitate obtaining of willing consent from landowners, resorting to compulsion and penalties only as a last resource. Again, I think it would be highly educational in public administration if supervisors would study these sections of the act.

We then provide for the establishment of boards of adjustment. This is an idea adopted from zoning ordinances. Everybody is familiar with zoning ordinances in cities and counties. By this time, in the 1930s, everybody had learned that zoning ordinances are very, very useful and valuable. Yes, you have to comply with a zoning ordinance anytime you want to build a house, but in the long run, it's beneficial. It protects the areas that are

zoned. It benefits the landowners more than it throws burdens upon them. They were quite acceptable. But from the zoning ordinances we learned in turn that ordinances, like statutes, have to be written in general terms, because you are dealing with a great mass of different kinds of lands. An ordinance can therefore become very unreasonable in practice unless it's tailor-made to fit the particular situations.

Well, how do you tailor-make an ordinance? Well, the zoning people had developed from experience that you can establish a board of adjustment for anyone who finds that a zoning ordinance is absurd when applied to their land—it may suit most of the land, but on his land there are special circumstances and special adjustments are required. Therefore, boards of adjustment are provided for in every single zoning ordinance in the country. I think that's a safe generalization. I know of no zoning ordinance, I've never run into one that didn't have a state or local board of adjustment to appeal to. The board of adjustment is then authorized to authorize such modifications in the application of the particular regulation in the zoning ordinance as will make it suit the particular lands. If an alternative way of reaching the desired result is available for these particular lands, that can be authorized as a substitution for the generalized power otherwise contained in the zoning ordinance. That's why the number of pages devoted to land use regulations and conservation ordinances, runs in print from page 18 through page 25. Seven solid pages of law.

Well, that had an unfortunate effect. People glancing through the bill would say, "Well, look what a very large part of this bill is devoted to land use regulation. This must be the real reason for this statute. This must be the real secret behind the interest of the Soil Conservation Service and the Extension Service in asking for this new legislation." As it turned out, this was a bone of serious contention in every state legislature where the bill was introduced. The hearings, therefore, always show many pages devoted to the analysis and discussion of this issue. The Department of Agriculture had to train the people in the Soil Conservation Service, and offer many recommendations to the state extension services, on how to explain and how to justify this section. I'm happy to be able to report that after going through all this kind of a legislative tangle, state after state after state, 33 of the then 48 states, retained these provisions on land use regulations in the law that they adopted for their particular state, which is a triumph of public recognition of the need for this kind of public activity in the interest of erosion control.

Although 33 states did retain the provisions for land use regulations, a number of the states in effect took one step forward and one step back. They increased the proportion of votes that have to be cast in favor of the proposed ordinance in the referendum. Some states require a 90 percent vote in favor of the regulation. It's almost impossible to get 90 percent of the vote in favor of anything, even in favor of mother love. Too, that was a way of pacifying the Federal Government that asked for these provisions to be included in the law, and yet making it almost certain that no conser-

vation ordinances are going to be adopted in this state. And I think there are as many as six or seven certainly, maybe more, that require anywhere from two-thirds to 90 percent favorable votes in the referendum on a proposed conservation ordinance.

That led, of course, to another question. Suppose the state drops the provision for land use regulations. Will SCS, nevertheless, cooperate with the districts in that state in order to carry on the project powers? There were two strong schools of thought. M.L. never wanted to give up on including this in the bill. He said, "This is very important. I believe it can be sold in the sense of being explained so that the opponents will understand it and favor it. We ought not to give up without trying, but what do we do in a state where they have adopted the law? They are organizing districts. Districts are ready to carry on the project powers. Shall SCS refuse to cooperate?" The natural answer that he arrived at was, "We'll cross that bridge when we come to it. Let's by all means retain these provisions. Let's alert everybody to the need for a strong public education program, strong, intelligent, sensitive administration of these statutes. And then we will decide."

That's about the way it worked out. The project powers turned out to be extremely useful and effective. I have read a number of articles dealing generally with public regulation of private land use that tend to make exceptions for land use regulations of this type, not always singling out soil conservation district conservation ordinances, but nevertheless the regulations of this type. They are usually hedged around sufficiently so that they are not unreasonable either in content or in administration. But then what happened is that SCS never had enough money to make assistance available to every land occupier in a district who came asking for a conservation contract. The state legislatures in appropriating money to help finance the districts rarely appropriated generously money for these purposes.

HELMS: You are not just referring to the salary of the individual technician, but money to put into the work?

GLICK: Yes. Money to make available to the districts to cooperate with land-occupiers. The districts therefore found that in any one year, after they had already signed contracts to use all the money available to them for helping land occupiers control erosion, they still had a backlog of farmers and ranchers who were asking for help in carrying on erosion control operations on their land. The districts had to tell them, "We've used up all our funds. You are high on the list. As we get more money, or as we complete operations, the costly part of the operations, on a number of lands, we will be able to add new farms to our work program. Then you'll come on." This psychological situation developed. You don't have a favorable environment for asking farmers to vote land use regulations to deal with the recalcitrant farmer, when you are not even able to help all those who are anything but recalcitrant, who are continually knocking on the door and saying, "Look, I'm ready. I'm doing all I can, I need help." And the districts have to ask them to wait. You didn't have a congenial environment for regula-

tions.

HELMS: You are saying had there been more money available to do the work, there would have been more of an attitude of using this where needed?

GLICK: Precisely. In a few states they did reach the point where they were pretty well meeting the need for cooperating with farmers who were ready to cooperate. Yet there were lands where the farmers were not ready to cooperate, but those were key lands and badly needed erosion control.

At the high point of activity in connection with conservation ordinances, I think such ordinances were adopted in as many as 10 or 11 states. Even today as we speak, conservation ordinances are in effect in some four or five states. But in the main, considering the fact that we now have the districts law operating in 50 states, these land use regulations or conservation ordinance provisions have been only a small part of the total erosion control effort in the country, for the reasons that we have already discussed adequately.

We have covered the powers of the districts and I suggest we go into your questions. If your questions don't raise some of the other points on which I have made notes, I'll tell you about them.

HELMS: Appointed members among the district supervisors. It didn't really work out that way in most places, did it?

GLICK: No, it didn't, although again, this varies greatly from state to state and even varies greatly from year to year and certainly from decade to decade. I don't know today, although I think SCS knows, how many states have appointed members of their boards of supervisors in the various districts. Many state conservation agencies who were coordinating the work of the districts, and many of the boards of supervisors themselves wanted all of the supervisors to be elected, rather than three elected and two appointed by the state commission. In a number of states, I have the impression that it's somewhere in the neighborhood of 15 to 20 out of the 50, they dropped the provision for appointed supervisors. I think that's an unfortunate mistake. Erosion control is after all a technical subject. Much is known by the professionals that is not known to the average farmer or rancher. If a state commission has power to name two supervisors on every district, farmers still have majority control. Three of the five supervisors have to be elected. Any ideas proposed by the professionals that the three don't like will be voted down in any meeting of the board of supervisors. We think the democratic controls are adequately safeguarded by provision for election of three of the five supervisors. Not having these appointed supervisors has provided, generally, a weaker level of administration by supervisors than could have been obtained. This is a personal opinion.

HELMS: Did any of the state acts make any useful additions to the standard act, any improvements?

GLICK: Yes. I recall specifically that this was true in Iowa and Wisconsin. SCS can give you the names of a number of other states where this is true. A num-

ber of states strengthened the act by spelling out additional activities. Wind blowing was a special problem in many areas. Local flooding was a serious problem in others. Such provisions were therefore offered in those states.

HELMS: Were there people around who wanted a more national land use planning effort rather than this local democracy type thing?

GLICK: Yes, yes. You've touched a very important point and I don't recall that we've discussed it. M.L. Wilson was very much aware that he had a major selling job to do within the Department of Agriculture on this notion of his that the Federal Government should encourage the states to take over the major responsibility in erosion control and to provide for the organization of local districts to carry out these operations. In particular, he expected strong opposition from SCS itself. Hugh Bennett, the chief of the Soil Conservation Service at the time, had a national reputation as an expert and prophet in the area of erosion control and soil conservation. The SCS staff had the general reputation of being the largest and most capable group of technical experts on problems of erosion control in the entire country. They were already authorized and responsible under the act of Congress establishing SCS to plan for and carry out necessary erosion control operations all over the country. The argument was, "Why disrupt all this? Why suddenly talk about delegation from the Federal Government to the states and localities in this particular area? Aren't we going to weaken the quality of the erosion control effort?"

Anticipating all of this difficulty didn't change M.L. Wilson's opinion that it was very much necessary to make this kind of a move. His problem was, "Is there anything we can do in our proposal itself, before we publish it, that will soften the opposition or will help the opposition join us?" He made mental notes that he must carefully talk to the Secretary of Agriculture, to the Agricultural Extension Service in Washington, to the state extension agencies throughout the country and explain why it was wise to do this. You remember I said at the very beginning that M.L. began by saying no Federal agency in Washington is going to be able to carry out the detailed kinds of operations necessary all over the country to control erosion all over the country. He felt that this is not the kind of a program which can be centralized in Washington and be effectively carried out. After all, you couldn't just adopt a lot of regulations. A Federal agency can draft regulations, publish them, and try to enforce them. But is this the way to obtain erosion control in 3,000 counties in the United States? So he felt that this kind of delegation was important. But he anticipated that the other argument would be made, and it was made.

Should we not talk, then, about what happened after M.L. Wilson was satisfied on the kind of bill that he had drafted. He recognized that he was going to get nowhere until Secretary Wallace had made this a part of his own program as Secretary of Agriculture. If M.L. Wilson had found that Secretary Wallace was opposed to this idea or wanted to retain it under his supervision and the supervision of the Soil Conservation Service, he would have dropped the idea right then

and there. He had great respect for Secretary Wallace. They were almost lifelong friends. They knew each other's minds and abilities very, very strongly.

M.L. wanted to help Secretary Wallace. He wanted to help Hugh Bennett. If he could persuade them that he was right, fine and dandy. But if they weren't convinced that he was right, then he certainly was not a man who would ever have undertaken to engineer it without their consent and happy approval. I don't know how many times M.L. Wilson talked to Secretary Wallace, but over a period of weeks, and then later months, I became aware that he had drawn up a list of the offices in the Department of Agriculture who were important on this kind of an agricultural policy issue. Secretary Wallace himself; Paul Appleby, who was Secretary Wallace's principal assistant in the actual day-by-day administration of the Department; Hugh Bennett, Chief of the Soil Conservation Service; Walter Lowdermilk; and others who were working with Hugh Bennett in SCS; the Federal Director of Extension Work; the Federal Director of the Office of Experiment Stations, Milton Eisenhower, who was the Director of Information, then, and a very imaginative, intelligent, knowledgeable man about agriculture, and a man who approached these things conservatively. He had been in the Department of Agriculture for a very long time. He was himself a lifelong Republican. These New Deal Democrats could learn a great deal from him and felt that they had a great deal to teach him. But he was an influential person. He was on M.L. Wilson's list among the people who had to be sold on the idea.

Gradually and slowly, M.L. tried to persuade them of his views. M.L. believed that important social ideas cannot spring suddenly upon the people who will be affected by them and win early acceptance. He felt you have to drop seeds. This is his favorite terminology. You plant seeds. You nurture them. You water them. And you wait for them to grow. People have to get used to thinking about new ideas before they can be relied upon to take action to carry out those ideas.

At a certain stage, M.L. told me that we needed a meeting. It would probably turn out to be a series of meetings which Secretary Wallace would preside over. We would bring in a large number of the policy makers, and policy influencers in the Department. And I recall the first meeting. I think there were some 30 people there.

HELMS: About what time?

GLICK: This would have been in late 1935 or very early in 1936. As I recall, in addition to the people that I have already mentioned, Howard Tolley, who was then in the Agricultural Adjustment Administration, and a long time collaborator with M.L. Wilson on agricultural programs of various kinds, in the original domestic allotment plan, was another of the very key, influential people who were consulted and considered.

At the very first meeting, Secretary Wallace personally presided over it. When the question period came, Secretary Wallace said he had a question. He said, "How are these districts going to be financed? Are they going to have the tax

power?" I explained what I think I have already covered here: had the districts been given the power to tax the farmers and ranchers in their districts in order to have money enough to carry out erosion control operations, it is unlikely that state legislatures would have been willing to enact it at all. In the depth of the depression, with farm lands already in the opinion of most experts too heavily taxed, Secretary Wallace and the department wouldn't be about to recommend new tax powers by the soil conservation districts. The method of finance, we said, was that SCS should have authority and appropriations large enough to enable it to give assistance to the districts, unreimbursed assistance, that is. Do the districts need technicians? Let SCS make available people employed by the SCS, assigned to work in the district offices, to work directly with the district supervisors, paid by SCS, but carrying out the orders of the district supervisors. Do they need machinery and equipment? Terracing machinery and other equipment to carry out these operations? Yes. Well, let SCS have the authority in this Federal appropriation to make gifts of this kind of machinery, equipment, seedlings, fertilizer, etcetera, to the districts. Then let the district supervisors, having now acquired title by gift to this machinery and equipment, use that in their operations.

In effect what M.L. was saying was, let the financing come by Congressional appropriations to SCS and to other Federal agencies. Let SCS and the other Federal agencies make this available, not by writing checks, but by making the actual people and the actual machinery and equipment available to the districts. Turn over to the districts what they would otherwise buy with the money that they would raise by taxation. Let the districts be responsible for administering the use of these resources in their district programs. You may remember that in the printed pamphlet on the standard act there is a long footnote on page 29, footnote 12. It says that the standard act contemplates that funds to finance the operations of the districts will be secured in two ways--by appropriations made available to the districts out of funds in the State treasury, annual appropriations; and secondly, by funds, properties and services made available to the districts by the United States, through the Soil Conservation Service or through any other agencies. The footnote goes on to explain why it was very strongly felt by the drafters of the act that it would be unwise to give power to the districts to levy property taxes, and also unwise to give power to the districts to borrow money by selling bonds. Bonds would have to be paid, principal and interest, out of property taxation. That's merely a way of postponing the evil day, but no way of solving the problem. This turned out to be not only a major question in Secretary Wallace's mind, but also a major question in the minds of all of the States.

In the course of thinking on this problem of sources of money to the districts, M.L. formulated the policy that the Federal Government should be looked to to provide most of what might be called the actual operating funds, the money to pay technicians' salaries, and the money to buy equipment, machinery and materials. But that the State government should be primarily responsible for the money

needed by each district as immediate administrative expenses. Every district would have to rent an office and buy some automobiles for its technicians. It would need telephones and secretaries and stationery and what not. Just as a county has to finance its operation, just as a city has to finance its operations, every district is going to have to finance its operations. M.L. drew that line in his mind. He said, "Let the States provide the administrative costs. Let the Federal Government provide most of the money needed by the districts for operating costs."

Well, that inevitably raised this question. Should assistance by SCS to the districts be made conditional upon appropriations by the State legislature to give administrative funds to the districts? A strong case can be made each way. But finally what prevailed was this view, which M.L. Wilson came to accept, which Secretary Wallace felt strongly about, and which Hugh Bennett in particular felt very strongly about. He said, "This requirement that the State by merely adopting the law start looking for a regular, new substantial appropriation that it would have to make to finance every district that is established in the state under its law, will make state legislatures reluctant to adopt the act at all." "The main argument," said M.L., "that we have for persuading the states to adopt this legislation and persuading the districts to carry on these operations, is that we can subsidize it. We can give them financial help in these depression years."

The difficulties that the New Deal administration in Washington had in getting its various statutes enacted, after the first 100 days and their excitement had subsided, were very strongly in the minds of M.L. and everybody else in the Department who was working with him. It was decided not to write that in as a condition in the bill. There isn't anything in the act that does do that. This has been one of the major problems that the districts have suffered from ever since. Many states were not generous in providing administrative expense money for the districts. It's reasonably obvious that the states felt the Federal government very much wants this program. They are already providing millions of dollars every year to carry on the program. They are providing nearly all of the operating money. Well, the administrative expense money is a small part of the total cost; let the Federal Government add this. Why shouldn't they? Why should they draw this line here?

M.L. felt that if the Federal Government provides all the administrative expense money, as well as the operating funds, there isn't enough of a strong link of the program to the policy-makers at the state levels to make them feel that they are the fathers of their state erosion control act and that they are entitled to the credit as erosion is controlled. The major contribution the states <u>can</u> make is the administrative expense money. So M.L. felt that this is a case where we had no alternative but to stand firm. Gradually, he felt, the states will take over more and more of the obligation to provide money, and the districts will become satisfied that they cannot get their local rent and telephone bills paid by Uncle Sam. They normally go to the state legislature for such administrative expense funds. They will gradually take it

over. This has remained policy to this day. Many of the districts in many of the states are not adequately financed. Many districts don't have their own offices. They share an office with the county agent or they share an office with a state conservation agency. For a long time, they shared office with the chief SCS person working locally.

That was certainly undesirable because it tended to have people speak of this as a Soil Conservation Service district rather than the soil conservation district. It tended to obscure and retard the development of independence by the districts and local responsibility by the district supervisors for making the districts successful. Gradually, however, this problem is being very greatly eased. SCS has always published monthly summaries of the monies made available by states, counties and other local agencies to help finance district operations. These have grown very substantially.

HELMS: Was there anything else about this particular meeting?

GLICK: Well, aside from the major question of financing and how to encourage adequate financing, the questions really dealt with the inevitable question, why this provision, why that provision, what thinking lay behind this? Have you considered this? Have you considered that?

Shortly after this meeting, M.L. told me that Hugh Bennett was not only in agreement with this, but he was growing increasingly enthusiastic. And Hugh Bennett volunteered to M.L. a statement, an insight, that was very prophetic. Bennett said, "We're having increasing difficulty in getting increased appropriations to SCS for establishing additional demonstration projects." He said, "It will be much easier to get appropriations for SCS to assist state agencies and local districts in carrying on operations. Every single Congressman will be thinking of the erosion control program in his particular state. Every Senator will be thinking of the work to be done in his particular state. Therefore, we will be able to appeal not only to their broad national patriotism and their awareness of national problems, but to the local interests particularly in the case of the Congressman, to the local interest they have, which goes way down to the county level even below the Congressional district." And he said, "This will be a powerful force. Perhaps in this way we can actually get monies on the level that this country ought to be spending for erosion control."

And M.L., I remember, told me at one stage happily, "I think we've now moved this difficult problem to the place where the energies of the Soil Conservation Service and its people in all of the states are churning on this problem. They are beginning to think that we need state legislation to broaden the program. What kind of state legislation do we need and should we have?" And, he said, "This is what I am really trying to do. I was trying to generate a set of ideas that would call for a massive delegation by the Federal Government, of authority and power, to the states and localities."

I'd like to take a minute or two to dwell on this. People say that Federal programs never terminate. You start one of

them and they go on forever. The bureaucracy digs in its heels, etcetera. I know few instances that are as clear and as strong an illustration of the fact that where authority really needs to be delegated, from the nature of the problem, the Federal government, Federal bureaucrats, Federal bureau chiefs can be trusted to recognize and to move the laboring oar in getting movement toward such delegation.

It was right for Hugh Bennett to take some 8 to 10 months to mull over the whole idea of the proposed standard act and the proposed soil conservation districts. He was responsible, and we were asking him to make a decision that he and his own people could not do this without the help of state and local legislation. He had to be absolutely sure that he wasn't running away from his responsibility; that he wasn't making a mistake; that he wasn't creating a monster that wouldn't be subject to reason, wouldn't be collaborative, and wouldn't be cooperative. Therefore, there is certainly no valid criticism of him for taking months to make up his mind. On the contrary, he is entitled, I think, to far more praise than he has been personally given for rising to this responsibility when he became aware of it fully, and for making the decision that we cannot do this from Washington. We have to go to the state legislatures. We have to go to the farmers and ranchers and ask them to organize districts under these new state laws. We need a delegation of authority from Washington to the state capitals and to the local units.

HELMS: What about the legal opinion in the back of the pamphlet on the standard act?

GLICK: I drafted a proposed opinion of the Solicitor of the Department of Agriculture on constitutionality of the Standard State Soil Conservation Districts Law. This is an appropriate place for me to point out that although I have had to use the personal pronoun "I" so often, on legal questions, I wasn't the only lawyer in the Department of Agriculture to work on this. I had two able assistants, Sigmund Timberg and Albert Cotton. They were both lawyers on the staff of the Solicitor. They had been assigned to work with me. We three at that time were a small unit in the Solicitor's Office, called the Land Policy Division. Later we were to grow, of course, as the number of legal questions reaching the Solicitor under the state district laws grew. But during the two years that were spent on the drafting of the Standard Act, I had only two lawyers to assist me; and we three did it. A great many of the provisions in the districts law, were first suggested either by Sigmund Timberg or Albert Cotton. It would be tedious, and after 40 years it's very difficult, for me to recall exactly who first thought, for example, of the board of adjustment.

At every stage when you are drafting a bill, almost every sentence raises questions of legal propriety and constitutionality. Habits of simplification in attributing credit for various work, has resulted in the fact that people in the department sometimes say, "the districts' law--M.L. Wilson and Philip Glick." In the case of M.L. Wilson, it's true. A single attribution is the most accurate attribution in his case. He was the

father of the policy. He was the father of the entire spirit and content of the districts' law. But I wasn't the father of all the legal provisions at all. I did my share, I hope; but I was enormously helped by both Sigmund Timberg and Albert Cotton. The entire opinion has been published as an appendix. The abstract of the opinion itself runs to a full printed page of small print. That's page 31 in the pamphlet on the districts' law. The opinion, itself, runs from page 32 to 64, half of the pamphlet.

We had to research, you see, not only the Federal constitutional questions, but every state constitution. The state constitutions, of course, differ greatly. I don't want to take more time on this, because I don't think most of your readers will be interested in going into such detail. But the legal opinion did cover the major legal problems. The power of the state under the police power to provide for the prevention and control of erosion, and the scope of the police power. There we tried to find cases from every one of the 48 states. Every state legislature would say, "Well, what about us? What court cases can you cite from our state?" We couldn't find, on every legal problem, a decision in every one of the 48 states. But this was explained at great length with detail of citation, because we were dealing with legal questions that would come from 48 state legislatures and not just from the Congress. The next major question is, are the appropriations authorized in the standard act for "a public purpose?" That is, the appropriations by state legislatures; are they for a public purpose? Under the constitution, neither the state legislature nor the Federal Congress may spend tax monies except for public purposes. Certainly appropriations for these statutory purposes have to be considered public purposes. Soil erosion control is a public purpose.

The next question discussed is, do the state legislatures have the power to provide for the organization of soil conservation districts as new governmental subdivisions of the state? Next, are the procedures specified for organizing the districts constitutionally valid under the constitution of this particular state? Next, are the procedures specified for adopting and enforcing conservation ordinances, land use regulations, are they constitutional under the constitution of the particular state? Next, the constitutionality of section 12, providing for Boards of Adjustment. Next, does the title of the standard act explain its purpose? All state constitutions require of state statutes that the subject be adequately expressed in the title of the act.

HELMS: For each of these questions, you searched state constitutions and court cases?

GLICK: In each of the 48 states. This kind of detailed state legal research no one lawyer could have possibly carried out by himself. The great bulk of that particular research burden again fell upon Sigmund Timberg and Albert Cotton. However, because of my own personal responsibility in connection with all of this operation, I had to satisfy myself that the memoranda and opinions I received from Sigmund Timberg and Albert Cotton were sound. This was a 32-page printed opinion, probably the longest opinion that Mastin G. White ever issued

as Solicitor of the Department of Agriculture during his tenure. We three, Timberg, Cotton and Glick, spent a great many hours on this kind of legal research. Well, that brings us finally then to the problem of winning the consent of the state extension services.

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GLICK: We've already talked about how M.L. went about explaining the entire project to Secretary Wallace. We've also talked about the results of presenting these ideas to Hugh Bennett. The next major task, M.L. said, was to build on the tentative conversations that he had held from time to time over the preceding two years with individual directors of agricultural extension in different states. He knew that without the support of the state extension services, any such program as this wouldn't be able to get off the ground. At the same time, he felt that the best way to proceed was not simply to lay an abstract idea before a meeting of all of the extension directors at a single nationwide meeting, but rather to think through all of the major problems, formulate his own tentative recommendations and suggestions, and then lay that before the extension directors individually and in group sessions. That's what led him to the drafting of what has come to be known as the Standard State Soil Conservation Districts Law. Now, he felt, with the Secretary's blessing, he could more formally talk to the various state extension services.

During the last six or eight months of my further work with M.L. in drafting the law, he submitted draft provisions to them, always, I think, in individual sessions with individual directors. M.L. was a great one for the one-on-one approach in selling any new or complicated idea. It enabled him to determine the reactions of the particular person and benefit from that man's suggestions, answer that man's questions, deal with that man's hesitations and difficulties and obstacles. By the time we had a draft law, a draft bill satisfactory to M.L. and satisfactory to Secretary Wallace, he had something he felt confident about discussing concretely with the individual extension directors. His glow increased in successive meetings with me as he kept telling me that he was having more success than he had anticipated in working with the state extension directors. He said that one problem that every single extension director immediately raised was, "Why do you need new soil conservation districts. Why not a draft state bill that would authorize the counties of the particular state to add programs on erosion control to their ongoing county work?" This idea was ex-plored very carefully by M.L with the various extension directors since all of them were interested in the idea. I have already summarized in some detail the pros and cons of what really became three alternatives, in my article in the Journal of Soil and Water Conservation for March and April of 1967. And I don't see much point in taking up time to go over those again. They are in that article.

In essence, the conversations between M.L. and state extension directors explored three alternatives. One, legislation that would give additional powers in soil conservation and erosion control to the counties. Secondly, one that would

give these additional powers to other special agencies state by state. In a number of states there are irrigation districts, and in others there are conservancy districts. There are a great variety of agricultural districts that the political scientists refer to as special districts, "special" because they do not have general governmental power over the local area. And the third alternative was to establish new soil conservation districts. Well, these three alternatives and the pros and cons for each of them are discussed in that article which is entitled "The Coming Transformation of the Soil Conservation District."

What M.L. and the individual directors who were enthusiastic about the bill more or less concluded was that the bill should be open-ended. It would be a bill authorizing soil conversation districts, but the bill should contain such broad provisions for cooperation among counties and soil conservation districts, that if the legislation were adopted, it wouldn't necessarily decide against the counties, and pro the soil conservation district. Instead it would establish another entity, specifically responsible for erosion control within soil conservation districts but provide for the greatest degree of cooperation and collaboration between counties and districts.

That led to the next natural question. What are to be the boundaries of these new soil conservation districts? As a result of these conversations with the state extension directors, they agreed the bill should provide that the boundaries of the district should be proposed in a petition to establish the district and that the state committee, would have the authority to define the boundaries of the proposed district. The state committee could then decide that the boundaries should be precisely along county lines. That's one alternative. Or they should be along watershed lines, which could be less or more than the area of a single county. Or it could be any combination of these, so that the role of the counties, the role of the districts and the definition of the boundaries of the soil conservation districts would all be open-ended as a result of adoption of the law.

Many extension directors pointed out to M.L. that he was in a sense loading the dice. If you weren't going to give major responsibilities to the new soil conservation districts, why establish them at all? If you ask the states to establish new soil conservation districts, obviously you are going to look to them to be a major, if not the major, local cooperating entity in these programs. And M.L. said, "Yes, perhaps so. The counties, however, are already here. They already have these powers. The legislature is frequently amending the powers of counties to broaden them and can readily enough do so. Frequently, they do it merely in an appropriation act, when they give additional money for particular activities to the counties and that becomes part of the organic act of the counties."

This is essentially where they left the problem. The legislation would make it possible for experience to decide the role of the counties, the role of the new soil conservation districts, and the role of other Federal and state conservation agencies in the entire effort to control soil erosion. After the soil conservation district laws were adopted fairly widely,

what actually developed is that in some states, although the law as adopted in that state didn't specifically say so, there was an understanding, sort of a part of the informal legislative history of the bill, that the districts would be established along county boundary lines. We have some states in which all the districts are coterminous in boundaries with the counties within which they operate. There are states, in which some of the districts are coterminous with counties, county boundaries, and others cut across them in various ways. There are some states in which there is no external, obvious formal limitation of the districts to county areas at all. Nevertheless, whenever a district is located anywhere, every acre within a district is bound to be an acre within a county somewhere. That's the nature of these 3,000 counties in the United States. Their inherent legislative and executive jurisdiction as counties extends to every piece of land within their boundaries, urban as well as rural, but certainly to all rural areas.

M.L., as a matter of fact, was frequently unhappy with the emphasis upon county boundaries in connection with the organization of districts. Not as a matter of jurisdiction. I've never known anybody with less emphasis on bureaucratic jurisdiction, or whose turf it is, than M.L. Rather, his concern was this. County boundary lines are not defined by reference to erosion areas, or natural watersheds, or subwatersheds. They are political boundaries. But M.L. felt that the really most effective way to carry on erosion control and soil and water conservation is to operate on the basis of natural watersheds.

M.L. knew that some watersheds are so very large that they include several states. But M.L. was thinking about what sometimes are referred to as subwatersheds, but which are, more accurately in hydrological terms, independent local watersheds. Independent because so carved by nature. Their boundaries frequently change with the course of riverflow. But they are separate watersheds. M.L. hoped that most of the districts would have their boundaries coterminous with such watersheds. But he also emphasized that there was nothing to prevent several districts, whose lands together constituted a watershed, from collaborating intimately. Then, all you would have done was to have brought in more people into the governing process. That's all to the good.

In time, people began to feel that this is an argument about unrealities, It's purely theoretical or even semantic. In practice, since what we want to do is to promote intimate cooperation between districts and counties, between districts and watershed agencies, districts and other special districts of the state, districts and state conservation agencies, districts and Federal conservation agencies; not alone SCS, but also the Forest Service and the National Park Service, the Reclamation Service, the Bureau of Indian Affairs--since all of these will be collaborating intimately, the precise boundaries of any one of these units become a matter of relative insignificance. That's how it was more or less left. I've also discussed this particular issue of ideal and practical boundaries in the article on "The Coming Transformation."

HELMS: What was your impression of how many of the directors agreed? Was Wilson, later on, somewhat surprised at some of the opposition that popped up, from not all but some of these extension services?

GLICK: I asked M.L. that question, and he chuckled the famous M.L. chuckle, and said, "In the area of cooperation between USDA and the state extension services, few things are formalized. Few things ever get embodied explicitly in documents that a lawyer would call sufficient to define what has been decided upon and what road map has been established. We talk about a subject until we feel that everybody had a chance to get what's on his chest off of it and has planted ideas in other people's minds. Then we just go about doing it and we let things develop as they will. Agricultural activities," he said, "are always wild flowers. We've plowed the soil by talking together. And we stimulate the growth by our own conversations as we meet. But beyond that we don't have things written down."

He said, "I couldn't tell you now how many state extension directors will support this bill, if it ever gets introduced into a state legislature, and how many will oppose it." He said, "You will probably never know, in any one state, the exact position of the extension service on the particular question. If they testify, then you can draw pretty firm conclusions from their testimony. But even then you'll have to be as much a prophet as a reader to be able to know what their position is from reading their testimony."

He said, "I do not anticipate die-hard opposition anywhere. I do not anticipate, equally, a strong assertive leadership from any of the state extension services. I think they will sort of lie back, and they'll say, 'Well, M.L.'s got this idea, Secretary Wallace has this idea, they are going to ask the state legislature. We'll have our chance to talk to the legislative committees and to the legislature. Let's see how things develop and then we'll know.' " He said, "It's the only answer I can give to your question." And I said, "Well, that's not a bad answer, M.L. You're not saying that you definitely feel that there is so much opposition at the state level that there is no point in going forward."

He said, "Oh, no. Very definitely they expect the Department of Agriculture to come forward. In fact," he said, "the cover of whatever pamphlet we issue as the recommended text of a soil conservation district law must say, 'We have prepared this at the request of a number of the state extension services.' " And he said, "That's completely true. These ideas weren't just born in my mind while I was trying to fall asleep one night. In my talks with the state extension directors, in their complaints to me about the problems of erosion control and the inadequacies of Federal assistance to them in dealing with these problems, came the ideas that you and I have been talking about." And as a matter of fact, you recall that the pamphlet issued under the title, "A Standard State Soil Conservation District's Law," contains this statement, "Prepared at the suggestion of representatives of a number of states." In effect we discharged our responsibility to recognize the collaboration of our partners.

This was and is therefore a mutual

pamphlet, not just a sole initiative by the Department of Agriculture. Now, as we moved into the arena of transferring this to the state level for further consideration, we found that a few state extension directors, and I would mention one in particular, the then state extension director of the State of Missouri, were adamantly opposed to this whole idea. They said, "Say what you will, this will be simply Federal intervention in the area of erosion control. And we have that subject well under control and we don't need any new state law and we certainly don't need any new local units. The state agencies and the counties of this state," said the director in Missouri and the directors in several other states, "can handle this problem adequately." And they said so in a number of cases in the state legislative hearings. Actually, in effect, the state legislatures over a period of 10 years voted one by one on this question as on all other questions raised by the proposed adoption of the state law. Every one of the 48 state legislatures that considered the recommended law adopted it. Later, when Alaska and Hawaii joined the Union, the legislatures in those two states adopted it. The legislatures in every one of the territories, Puerto Rico, the Virgin Islands, adopted the statute. Today, state legislation along the lines of the standard act is law in every political jurisdiction of the United States of America.

Now we were ready to begin the state action. The question became, how do we get it all started. And I don't know where the answer came from, it doesn't matter. But somehow there developed an awareness that this kind of a program, this kind of a broad, breathtaking, new recommendation to all of the states in the Union, ought to begin with the President of the United States. So M.L. and I jointly drafted a letter for the President's signature. It went to Secretary Wallace. He sent it to Paul Appleby. They sent it to several other people of the Department, and M.L. never told me who the others were. But a number of people recommended it and then Secretary Wallace had the Standard Act printed up in this pamphlet, in early 1936.

He brought a number of copies of the pamphlet and his proposed presidential letter to President Roosevelt and laid it on his desk, and talked to the President at some length. In later meetings, M.L. told me, "This is under consideration in the White House and I keep talking to President Roosevelt about it at every chance I get. And Secretary Wallace, I understand from him, does the same thing." Then at a later stage, M.L. told me, "The President has turned over the proposed legislation to Benjamin Cohen." You remember that Ben Cohen and Tommy Corcoran were the two men to whom President Roosevelt frequently turned to check on the adequacy of or to draft, ab initio, the legislation of the New Deal. My first conversation with Ben Cohen about the proposed district law came after the President had already issued the recommended statute to the 48 governors. Well, Ben Cohen obviously told the President that this was suitable for clearance. I've already discussed the very lengthy, comprehensive legal opinion that the Solicitor of the Department of Agriculture, Mastin G. White, had issued on the proposed Standard Act. That's also included in the printed pamphlet.

HELMS: What did Cohen tell you when you finally talked about it?

GLICK: He said that he thought that this was good legal thinking. Then began a process that extended over a full 10-year period. M.L., from time to time, would ask me to go to a particular state, always at the request of the state conservationist of SCS, and in several cases, at the request of a state extension director, in order to meet with them and talk about it.

The most extensive and elaborate such discussion came at the invitation of a state extension director in Iowa. Dean Buchanan was then the state director. He asked me to come to Ames and stay several days. He called in several faculty members, including particularly Theodore Schultz of the Economics Department, who later transferred to the University of Chicago, and is now Chairman of the Department of Economics of the University of Chicago, Emeritus, having retired some years ago. Those conversations at Ames, Iowa, were very thorough, very exhaustive. M.L. told me, "If Dean Buchanan turns thumbs down on this bill, it's dead in Iowa. If it dies in Iowa, it will be a seriously wounded creature in all of the agricultural states. As a matter of fact," he said, "I don't know whether the bill would be able to recover from that severe a blow." But he said, "We'll cross that bridge when we come to it." After a number of days of joint discussions with Dean Buchanan, Ted Schultz, and their discussions with others, I heard that the bill had been forwarded by the Governor of Iowa to the agricultural committees of the two houses of the Iowa legislature. M.L. said, "That would never have happened without Dean Buchanan's blessing. We started it off well."

The only other state initiation process that I think I ought to take time to mention here is in Texas. Louis Merrill was then State Conservationist of SCS in Texas. He told M.L. that he had talked with the state extension director, with the state experiment station director, with all of the state conservation agencies in Texas. They had talked to a number of the leading members of the Texas legislature. And he said, "We have run into a serious problem here in Texas." A Senator (I think the name was Van Zant, of the Texas Senate) was fearful that the hidden purpose behind the standard act was the control of agricultural production, that it was called conservation, called erosion control, but the real purpose was to tell farmers what and how much to grow of what crops. Merrill wanted the Secretary to send a representative down who would be authorized to speak for the Secretary in explaining what the standard act contained and what impingement it could have on control of agricultural production. Secretary Wallace had asked M.L. to designate someone to go down for that purpose and M.L. designated me. I got Mastin White's permission. I went down to Texas.

I remember a very colorful four-hour session in a court building, somewhere in Texas. Senator Van Zant sat in the middle of the front row. Senator Van Zant, by the way, was completely blind. He had enormous prestige and respect. As I listened to him talk and his questions, I can be excused for saying, I think, I fell in love with the old man. Here was a

man who was tremendously well informed about agriculture in Texas, who was thoroughly and completely devoted to the farmers. He felt that he had seen a menacing danger in the bill that others with less experience might overlook. He wanted to be absolutely assured on that point. Fortunately, he had chosen a criticism that is totally a misconception. I summarized the provisions of the proposed soil conservation districts law. Then I turned to Senator Van Zant. I said, "Sir, if you wanted to establish a Texas agency to control agricultural production within the State of Texas, would you let the decisions of that state agency be completely under the control of such local districts as might later be established without your knowing which they are? Would you let it be influenced by those districts, if the districts only covered half of the state, or ten percent of the state? Isn't the very function of control of agricultural production something, if it's to be done on a state level, that must be centralized in a single state agency?"

Senator Van Zant didn't say yes, and he didn't say no. He just nodded his head and looked up. And I said, "Sir, if the Federal Department of Agriculture is to be involved in this, they couldn't be content just with the establishment of such authority in a centralized agency in the State of Texas. What about Iowa, or Mississippi, or Alabama, Washington, Kansas, and Florida? If agricultural production is to be controlled or even influenced by the Federal government, it would have to be done by a Federal agency. If this was the purpose, Senator Van Zant," I said, "it seems to me that so intelligent and knowledgeable a man as Secretary Wallace would simply have called upon the Agricultural Adjustment Administration to undertake these chores and tasks. This bill calls for the establishment of local soil conservation districts, if people in the proposed district want one, and then calls for a referendum of farmers which may turn down the establishment of the district. Furthermore, it calls for every one of the 48 states to be able to turn it down if they wish. That very fact proves that whatever may be the real purpose and intention of this bill, it is not the control of agricultural production. You just can't do it that way." And I think Senator Van Zant was won at that point. Because then he went into questions about boundaries. One of his major problems was how was the district going to be financed? And then what will be the relationship between district and county if it isn't established on county boundary lines? And so on and so on.

Well, we had a very, very fine time in that session. And immediately after the meeting, when I stepped up to thank Senator Van Zant, and to express my pride that I was able to participate in this state meeting, I felt that he was going to be one of our stalwart agricultural supporters, which he turned out to be. Louis Merrill later told me that Senator Van Zant wielded the laboring oar on adoption of the soil conservation districts law in Texas.

Well, state by state, this came up for discussion in the committees of the legislature, and state by state, it was adopted. In not one single state did the bill get adopted 100 percent in the form recommended by President Roosevelt. Every

single state adapted the bill to local conditions. In some states, they entirely eliminated four very large sections of the bill, those that provided for the adoption of conservation ordinances, also called land use regulations. In a number of states, they provided that the district boundary shall be coterminous with the particular county in which the district was established, which really made it a series of counties with new powers and new names. The adaptations and changes in the laws as the states adopted them became so numerous, and so frequently went to the heart of the program, that the Solicitor of the Department of Agriculture and Hugh Bennett decided jointly that state by state, as the bill was adopted by the legislature and signed by the governor, it would be sent by the state conservationist to Hugh Bennett, by Hugh Bennett to Mastin White.

Mastin White would undertake an analysis of the state law and prepare what came to be called an "adaptation opinion." The opinion was a document that would summarize all the new things put into the law by the state legislature that were not in the standard act, all the things that were in the standard act but were omitted from the law of the particular state, and all the changes made. Now, a lawyer's opinion cannot recommend what ultimate legislative action should be. It can only inform an administrator of how the state law differs from the standard act and let the administrator decide from there. Hugh Bennett, with the help of his own staff, then determined whether SCS would cooperate with the particular state, if they adopted this law. The governor and Secretary of Agriculture and others concerned in the state were then notified.

After about three or four years of this process, SCS made this decision. SCS will cooperate with the districts in any state that adopts what they call a soil conservation districts law. If we in SCS don't like the law, we'll tell the people in the state about it and recommend the changes we think they need. But we will not say to any state, "You have shown this much interest in erosion control in your area, but we will refuse to cooperate with any districts you choose to establish because the legislative provisions are not the ones that we recommended." By this time, SCS felt that this would be unconscionable and impertinent. The soil conservation district laws were obviously different in practically every state. Well, all right, our task is more difficult, but it's still our task. And we are not going to run away from it. We'll go on. We'll cooperate. Furthermore, this was promptly announced.

Some of the political advisors in SCS urged other views. Some said, if this becomes the policy you will throw away your strongest inducement for getting a good law, getting what we think is the best law, what we think is the best that the state can do and ought to be asked and expected to do, in order to have the best possible erosion control statute. But Hugh Bennett and the then director of agricultural extension work in the Department of Agriculture both felt strongly that they were willing to leave this much open within the Department of Agriculture. That is, it may be that a state will adopt a law so bad that we will want to inform that state that SCS will not give financial and technical assistance to

districts in that state. We'll cross that bridge when we come to it. We will not back up from the assertion we have already made in state extension meetings, that what law is adopted is up to the state legislature. What program is carried out in the state is up to the state and the local people. And we in SCS will cooperate with them to help them achieve what they are authorized to achieve.

HELMS: For a time didn't the level of assistance given to districts reflect to what degree their state law complied with the standard law?

GLICK: I think the most accurate answer to that question is "no." During that time the policy was, "We will examine every state statute to see whether we can cooperate with activities under it." During that time there was a somewhat widespread impression that aid should be qualified or modified depending upon the degree of satisfaction that Washington felt with the state law. That may, therefore, have sort of spilled over. I can't know. But it never became the announced policy of the Department to so modify or qualify SCS assistance. The original policy was, we will cooperate only if there are districts with whom we can cooperate. Otherwise, the only obligation of SCS was to administer its demonstration projects.

The policy was never, to my knowledge, issued as a written document. USDA is in continual contact with all the state extension services, through the Federal extension director primarily, but not limited to him. This is the way the Federal/state relations are maintained in the area of agricultural cooperation between Federal and state governments in USDA. No such formal policy ever became adopted. I do not know of a single state that got less assistance under its law as passed than it would have received if it had simply adopted 100 percent the wording of the standard act.

HELMS: Another thing I wanted to ask you about was something about the wind erosion control districts. If I recall what Lee Morgan told me, he was of the opinion that one of the beneficial aspects of that working arrangement was that it was sort of like a matching grant or cost sharing provision. If the district put up something--money, equipment, personnel --then the Federal government through SCS would match that amount. It gave some incentive to the districts to participate more fully.

GLICK: Yes. Both in the legislative process while the committees were considering the proposed bill, and later in the administrative process when the state committees were considering what districts to approve for establishment, the question arose of what the relationship should be between the new soil conservation districts and existing wind erosion districts in Montana and elsewhere, for example, and other special districts. The contents of the laws in these various special district cases greatly influenced the amendments made by the state legislature in drafting their own soil conservation district law. As a matter of fact, we on the legal staff had to study the laws of all of these special districts, because there are some in so many states that we knew that until we understood them, and spelled out the relationships

with them, no state legislature would know whether they need a soil conservation district law, given the fact that they have wind erosion districts, and irrigation districts, and agricultural districts of various kinds with various powers in erosion control.

The legal opinion included in the districts pamphlet discusses the relationships with those state districts, but not separately of course for every one of the 48 states. We found quickly enough that there was no reason to fear that the new soil conservation districts would duplicate or push out the activities of any of the existing special districts, whether it's a wind erosion district, or an irrigation district, or a water conservancy district, or any of the other special districts of a variety of names that existed. We quickly decided this is no problem. The provisions in the standard act which direct the districts to cooperate with all other districts having similar or related powers in the state and which direct the state committee to coordinate and assist the districts in collaborating with other such special districts, were all that was needed in the law to take care of the questions of relationships with those districts.

A next step that needs to be mentioned here is this. Sometime early in the process of adoption of state laws, Congress decided to prohibit the Soil Conservation Service from establishing any new demonstration projects. This would compel SCS to devote all of its resources, both in manpower and in funds and equipment, machinery, materials, exclusively to cooperation with the soil conservation districts.

Well, this had an inevitable effect in stimulating the adoption of soil conservation district laws in every state. Now that Hugh Bennett couldn't establish a demonstration project, by his own determination under Public Law 46, the only way SCS could come into a state to help in erosion control was by cooperating with the soil conservation districts. Therefore, the ball was in the state legislature's corner, in the state governor's corner, and in the state committee's corner. SCS could stand by cheerfully, optimistically, waiting for the state to bring itself into position where it could collaborate with SCS and invite SCS into the state to help. Of course, as you know, every state adopted a law, every state committee invited the Secretary to cooperate. Hugh Bennett received an invitation from every state. He accepted every invitation. The Federal and state agricultural administrators really demonstrated something that I think is, unfortunately, frequently overlooked; they really demonstrated magnificent collaboration and cooperation in dealing with the erosion control problem.

May I step back and point out that it was a magnificently courageous thing for Secretary Wallace and Chief Hugh Bennett to decide, at a time when they almost had a Federal monopoly in the area of erosion control. They could have decided that this was a Federal agency, that the SCS people were an accumulation of the best soil conservation technicians in the whole country. Our salaries are higher than the salaries generally paid in most of the states. We have the cream of the crop. We could make this a Federal program in all of the states. The states will want it, because it means

financial contributions in men, material, equipment. But they didn't make the decision. You know how often political commentators and critics say, "Once you've established a Federal bureau, just try to get them out of the area. They are wedded to that particular turf, and there's no terminating them." Here it was the Federal people that initiated the idea of transferring the responsibility for erosion control and soil conservation in a particular state, one by one, from the Federal government, from SCS, to the states. I think we ought to recognize that.

Second, I've mentioned that there were some ten or a dozen states that opposed adoption of the standard act in their legislatures. Missouri was one of the major holdbacks. Missouri may have been the last of the 48 states to come in, I don't know. This information has been tabulated for the Department of Agriculture and it's already a matter of public record. The Tennessee Valley Authority examined the standard act very carefully and decided they didn't need it and didn't want such legislation in Tennessee or in any of the other states in which TVA is a dominant operating agency. No state within the geographic area of the Tennessee Valley adopted the soil conservation district law for some 7 or 8 years after the President had recommended it to the governors of those states. Then the board of directors of TVA changed their minds. They had, of course, kept the entire problem under observation. The TVA board position originally was, we're doing erosion control throughout our states. This is one of the agricultural responsibilities of TVA under its statutes. We don't need any additional federal or local agencies. Then they changed their minds. Maybe they merely decided they could be more effective working within a pattern that all the other states are using. Maybe they decided for other reasons. We do know, however, that the Board of TVA became supporters of the act and the statutes were adopted.

This Congressional prohibition of further demonstration projects has another great significance. Up to that point, it was only an executive branch decision that erosion control should be carried out by SCS in cooperation with the districts. The executive branch could have modified it or revoked that decision at any time. But suddenly, Congress said: after the effective date of this act (referring to the appropriation act that contained the provision) SCS shall not establish any new demonstration projects. SCS promptly moved, as soon as the district law was established in a particular state, to wind up demonstration projects in that area and turn them over to the district that came into existence. And no new demonstration projects were established.

My last point that I want to make on this subject is this. I want to call attention to the degree to which the districts cooperate with counties and with cities, the degree to which districts cooperate among themselves, the degree to which Federal, state and local governments follow the historic American pattern of collaborating and cooperating--but not pooling their funds, many of them don't have legal authority to do that. They have to retain responsibility for spending the money the Congress or the state legislature has appropriated to them. But they can make a contract with any other

Federal or state or local agency. The pattern of cooperation by contract is now very well established in American agriculture, in American government generally. The common law idea of the contract is one of the great human institutions, developed over the centuries. We are as familiar with it as we are with our religion and our language. We take it for granted. Through such contracts, a district and a county can agree that they will jointly prepare a plan of erosion control and soil conservation activity in the state and that they will jointly modify that plan as needed. They can follow this joint planning with joint financing. The district can undertake financing indirectly in the form providing of personnel, equipment, and supplies. This is simply another way of administering a program, but it still amounts to joint financing. Having jointly planned and jointly financed, they can jointly administer. When a city is undertaking a large amount of construction work and has all kinds of sedimentation and erosion problems at construction sites, or when a city has other kinds of erosion control problems, even erosion control problems on city-owned lands, the city can then come in and it can become a three-way contract, the county, the district and the city, calling for joint planning, financing, and operating. I think this pattern has magnificent promise for the future.

The End

A STANDARD

State Soil Conservation Districts Law

PREPARED AT THE SUGGESTION OF

REPRESENTATIVES

OF A NUMBER OF STATES

19 36

United States Department of Agriculture

SOIL CONSERVATION SERVICE

CONTENTS

A Standard

State Soil Conservation Districts Law

AN ACT To declare the necessity of creating governmental subdivisions of the State, to be known as "soil conservation districts", to engage in conserving soil resources and preventing and controlling soil erosion; to establish the State soil conservation committee, and to define its powers and duties; to provide for the creation of soil conservation districts; to define the powers and duties of soil conservation districts, and to provide for the exercise of such powers, including the power to acquire property by purchase, gift, and otherwise; to empower such districts to adopt programs and regulations for the discontinuance of land-use practices contributing to soil wastage and soil erosion, and the adoption and carrying out of soil-conserving land-use practices, and to provide for the enforcement of such programs and regulations; to provide for establishing boards of adjustment in connection with land-use regulations, and to define their functions and powers; to provide for financial assistance to such soil conservation districts, and making an appropriation for that purpose; to declare an emergency requiring that this act take effect from the date of its passage, and for other purposes.[1]

[Enacting Clause.][2]

SECTION 1. SHORT TITLE

This act may be known and cited as the soil conservation districts law.

SECTION 2. LEGISLATIVE DETERMINATIONS, AND DECLARATION OF POLICY[3]

It is hereby declared, as a matter of legislative determination—

A. *The condition.*—That the farm and grazing lands of the State of ———— are among the basic assets of the State

[1] This title will be appropriate in most States. See discussion in Solicitor's opinion, p. 62. In many States it will be necessary to modify the title to conform with the local legislative practice.

[2] The form of the enacting clause is generally prescribed in the State constitution. An enacting clause should be supplied in conformity with the legislative practice.

[3] This section is important in announcing the constitutional basis upon which the legislation is predicated. See Solicitor's opinion, pp. 38, 39.

and that the preservation of these lands is necessary to protect and promote the health, safety, and general welfare of its people; that improper land-use practices have caused and have contributed to, and are now causing and contributing to, a progressively more serious erosion of the farm and grazing lands of this State by wind and water; that the breaking of natural grass, plant, and forest cover have interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus, and developing a soil condition that favors erosion; that the topsoil is being blown and washed out of fields and pastures; that there has been an accelerated washing of sloping fields; that these processes of erosion by wind and water speed up with removal of absorptive topsoil, causing exposure of less absorptive and less protective but more erosive subsoil; that failure by any land occupier to conserve the soil and control erosion upon his lands causes a washing and blowing of soil and water from his lands onto other lands and makes the conservation of soil and control of erosion on such other lands difficult or impossible.

B. *The consequences.*—That the consequences of such soil erosion in the form of soil-blowing and soil-washing are the silting and sedimentation of stream channels, reservoirs, dams, ditches, and harbors; the loss of fertile soil material in dust storms; the piling up of soil on lower slopes, and its deposit over alluvial plains; the reduction in productivity or outright ruin of rich bottom lands by overwash of poor subsoil material, sand, and gravel swept out of the hills; deterioration of soil and its fertility, deterioration of crops grown thereon, and declining acre yields despite development of scientific processes for increasing such yields; loss of soil and water which causes destruction of food and cover for wildlife; a blowing and washing of soil into streams which silts over spawning beds, and destroys water plants, diminishing the food supply of fish; a diminishing of the underground water reserve, which causes water shortages, intensifies periods of drought, and causes crop failures; an increase in the speed and volume of rainfall run-off, causing severe and increasing floods, which bring suffering, disease, and death; impoverishment of families attempting to farm eroding and eroded lands; damage to roads, highways, railways, farm buildings, and other property from floods and from dust storms; and losses in navigation, hydro-

electric power, municipal water supply, irrigation developments, farming, and grazing.

C. *The appropriate corrective methods.*—That to conserve soil resources and control and prevent soil erosion, it is necessary that land-use practices contributing to soil wastage and soil erosion be discouraged and discontinued, and appropriate soil-conserving land-use practices be adopted and carried out; that among the procedures necessary for widespread adoption, are the carrying on of engineering operations such as the construction of terraces, terrace outlets, check-dams, dikes, ponds, ditches, and the like; the utilization of strip cropping, lister furrowing, contour cultivating, and contour furrowing; land irrigation; seeding and planting of waste, sloping, abandoned, or eroded lands to water-conserving and erosion-preventing plants, trees, and grasses; forestation and reforestation; rotation of crops; soil stabilization with trees, grasses, legumes, and other thick-growing, soil-holding crops; retardation of run-off by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.

D. *Declaration of policy.*—It is hereby declared to be the policy of the legislature to provide for the conservation of the soil and soil resources of this State, and for the control and prevention of soil erosion, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this State.

SECTION 3. DEFINITIONS

Wherever used or referred to in this act, unless a different meaning clearly appears from the context:

(1) "District" or "soil conservation district" means a governmental subdivision of this State, and a public body corporate and politic, organized in accordance with the provisions of this act, for the purposes, with the powers, and subject to the restrictions hereinafter set forth.

(2) "Supervisor" means one of the members of the governing body of a district, elected or appointed in accordance with the provisions of this act.

(3) "Committee" or "State soil conservation committee" means the agency created in section 4 of this act.

(4) "Petition" means a petition filed under the provisions of subsection A of section 5 of this act for the creation of a district.

(5) "Nominating petition" means a petition filed under the provisions of section 6 of this act to nominate candidates for the office of supervisor of a soil conservation district.

(6) "State" means the State of ————.

(7) "Agency of this State" includes the government of this State and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this State.

(8) "United States" or "agencies of the United States" includes the United States of America, the Soil Conservation Service of the United States Department of Agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.

(9) "Government" or "governmental" includes the government of this State, the Government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them.

(10) "Land occupier" or "occupier of land" includes any person, firm, or corporation who shall hold title to, or shall be in possession of, any lands lying within a district organized under the provisions of this act, whether as owner, lessee, renter, tenant, or otherwise.

(11) "Due notice" means notice published at least twice, with an interval of at least 7 days between the two publication dates, in a newspaper or other publication of general circulation within the appropriate area, or if no such publication of general circulation be available, by posting at a reasonable number of conspicuous places within the appropriate area, such posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally. At any hearing held pursuant to such notice, at the time and place designated in such notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjourned dates.

SECTION 4. STATE SOIL CONSERVATION COMMITTEE

A. There is hereby established, to serve as an agency of the State and to perform the functions conferred upon it in this act, the State soil conservation committee. The committee shall consist of a chairman and —— members.[4] The following shall serve, ex officiis, as members of the committee: the director of the State extension service; the director of the State agricultural experiment station located at ———; ——— and ———.[5] The committee may invite the Secretary of Agriculture of the United States of America to appoint one person to serve with the above-mentioned members as a member of the committee. The committee shall keep a record of its official actions, shall adopt a seal, which seal shall be judicially noticed, and may perform such acts, hold such public hearings, and promulgate such rules and regulations as may be necessary for the execution of its functions under this act.

B. The State soil conservation committee may employ an administrative officer and such technical experts and such other agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties, and compensation.[6] The committee may call upon the attorney general of the State for such legal services as it may require, or may employ its own counsel and legal staff. It shall have authority to delegate to its chairman, to one or more of its members, or to one or more agents or employees, such powers and duties as it may deem proper. It shall be supplied with suitable office accommodations at the seat of the State government, and shall be furnished with the necessary supplies and equipment. Upon request of the committee, for the purpose of carrying out any of its functions, the supervising officer of any State agency, or of any State institution of learning shall, insofar as may be possible under available appropriations, and having due regard to the needs of the agency to

[4] The number, which should be not less than 3, and probably not more than 5, should be here inserted.

[5] There should be here added the other State officials who are to serve as members of the committee, such as, possibly, the State conservation commissioner, if there is such an official; the State commissioner of agriculture, or similar official; a representative of the State planning board, if such a board has been created by statute or resolution of the State legislature. This list should, however, designate one member less than the total membership of the committee, to leave room for the Federal representative mentioned in the next sentence.

[6] Appropriate provision may be here made to conform with existing State civil service laws.

which the request is directed, assign or detail to the committee members of the staff or personnel of such agency or institution of learning, and make such special reports, surveys, or studies as the committee may request.

C. The committee shall designate its chairman, and may, from time to time, change such designation. A member of the committee shall hold office so long as he shall retain the office by virtue of which he shall be serving on the committee. A majority of the committee shall constitute a quorum, and the concurrence of a majority in any matter within their duties shall be required for its determination. The chairman and members of the committee shall receive no compensation for their services on the committee, but shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of their duties on the committee. The committee shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements.

D. In addition to the duties and powers hereinafter conferred upon the State soil conservation committee, it shall have the following duties and powers:

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

(2) To keep the supervisors of each of the several districts organized under the provisions of this act informed of the activities and experience of all other districts organized hereunder, and to facilitate an interchange of advice and experience between such districts and cooperation between them.

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

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

(5) To disseminate information throughout the State concerning the activities and programs of the soil conservation districts

organized hereunder, and to encourage the formation of such districts in areas where their organization is desirable.

SECTION 5. CREATION OF SOIL CONSERVATION DISTRICTS [7]

A. Any twenty-five (25) occupiers of land lying within the limits of the territory proposed to be organized into a district may file a petition with the State soil conservation committee asking that a soil conservation district be organized to function in the territory described in the petition. Such petition shall set forth:

(1) The proposed name of said district;

(2) That there is need, in the interest of the public health, safety, and welfare, for a soil conservation district to function in the territory described in the petition;

(3) A description of the territory proposed to be organized as a district, which description shall not be required to be given by metes and bounds or by legal subdivisions, but shall be deemed sufficient if generally accurate;

(4) A request that the State soil conservation committee duly define the boundaries for such district; that a referendum be held within the territory so defined on the question of the creation of a soil conservation district in such territory; and that the committee determine that such a district be created.

Where more than one petition is filed covering parts of the same territory, the State soil conservation committee may consolidate all or any such petitions.

B. Within thirty (30) days after such a petition has been filed with the State soil conservation committee, it shall cause due notice to be given of a proposed hearing upon the question of the desirability and necessity, in the interest of the public health, safety, and welfare, of the creation of such district, upon the question of the appropriate boundaries to be assigned to such district, upon the propriety of the petition and other proceedings taken under this act, and upon all questions relevant to such inquiries. All occupiers of land within the limits of the

[7] It is true that in many States there now exist too many local governmental subdivisions. It is important, nevertheless, to provide for establishing soil conservation districts rather than to confer additional jurisdiction upon existing counties or other agencies. The most important consideration here relevant is the fact that this provision will permit inclusion within 1 district of all of the territory which should, for physical and economic reasons, be governed as a unit. It will probably be found desirable, in most cases, to include in a district parts or all of several counties, and in some cases it may be found appropriate to establish a district over an area smaller than a single county.

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territory described in the petition, and of lands within any territory considered for addition to such described territory, and all other interested parties, shall have the right to attend such hearings and to be heard. If it shall appear upon the hearing that it may be desirable to include within the proposed district territory outside of the area within which due notice of the hearing has been given, the hearing shall be adjourned and due notice of further hearing shall be given throughout the entire area considered for inclusion in the district, and such further hearing held. After such hearing, if the committee shall determine, upon the facts presented at such hearing and upon such other relevant facts and information as may be available, that there is need, in the interest of the public health, safety, and welfare, for a soil conservation district to function in the territory considered at the hearing, it shall make and record such determination, and shall define, by metes and bounds or by legal subdivisions, the boundaries of such district. In making such determination and in defining such boundaries, the committee shall give due weight and consideration to the topography of the area considered and of the State, the composition of soils therein, the distribution of erosion, the prevailing land-use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits such lands may receive from being included within such boundaries, the relation of the proposed area to existing watersheds and agricultural regions, and to other soil conservation districts already organized or proposed for organization under the provisions of this act, and such other physical, geographical, and economic factors as are relevant, having due regard to the legislative determinations set forth in section 2 of this act. The territory to be included within such boundaries need not be contiguous. If the committee shall determine after such hearing, after due consideration of the said relevant facts, that there is no need for a soil conservation district to function in the territory considered at the hearing, it shall make and record such determination and shall deny the petition. After 6 months shall have expired from the date of the denial of any such petition, subsequent petitions covering the same or substantially the same territory may be filed as aforesaid and new hearings held and determinations made thereon.

C. After the committee has made and recorded a determination that there is need, in the interest of the public health, safety, and welfare, for the organization of a district in a particular territory and has defined the boundaries thereof, it shall consider the question whether the operation of a district within such boundaries with the powers conferred upon soil conservation districts in this act is administratively practicable and feasible. To assist the committee in the determination of such administrative practicability and feasibility, it shall be the duty of the committee, within a reasonable time after entry of the finding that there is need for the organization of the proposed district and the determination of the boundaries thereof, to hold a referendum within the proposed district upon the proposition of the creation of the district, and to cause due notice of such referendum to be given. The question shall be submitted by ballots upon which the words "For creation of a soil conservation district of the lands below described and lying in the county (ies) of ——, ——— and ———" and "Against creation of a soil conservation district of the lands below described and lying in the county(ies) of ——— and ———" shall be printed, with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose creation of such district. The ballot shall set forth the boundaries of such proposed district as determined by the committee. All occupiers of lands lying within the boundaries of the territory, as determined by the State soil conservation committee, shall be eligible to vote in such referendum. Only such land occupiers shall be eligible to vote.

D. The committee shall pay all expenses for the issuance of such notices and the conduct of such hearings and referenda, and shall supervise the conduct of such hearings and referenda. It shall issue appropriate regulations governing the conduct of such hearings and referenda, and providing for the registration prior to the date of the referendum of all eligible voters, or prescribing some other appropriate procedure for the determination of those eligible as voters in such referendum. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice

thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

E. The committee shall publish the result of such referendum and shall thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the committee shall determine that the operation of such district is not administratively practicable and feasible, it shall record such determination and deny the petition. If the committee shall determine that the operation of such district is administratively practicable and feasible, it shall record such determination and shall proceed with the organization of the district in the manner hereinafter provided. In making such determination the committee shall give due regard and weight to the attitudes of the occupiers of lands lying within the defined boundaries, the number of land occupiers eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the proposed district, the probable expense of carrying on erosion-control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative determinations set forth in section 2 of this act; provided, however, that the committee shall not have authority to determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible unless at least a majority of the votes cast in the referendum upon the proposition of creation of the district shall have been cast in favor of the creation of such district.

F. If the committee shall determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, it shall appoint two (2) supervisors to act, with the three (3) supervisors elected as provided hereinafter, as the governing body of the district. Such district shall be a governmental subdivision of this State and a public body corporate and politic, upon the taking of the following proceedings:

The two appointed supervisors shall present to the secretary of state an application signed by them, which shall set forth (and

such application need contain no detail other than the mere recitals): (1) that a petition for the creation of the district was filed with the State soil conservation committee pursuant to the provisions of this act, and that the proceedings specified in this act were taken pursuant to such petition; that the application is being filed in order to complete the organization of the district as a governmental subdivision and a public body, corporate and politic, under this act; and that the committee has appointed them as supervisors; (2) the name and official residence of each of the supervisors, together with a certified copy of the appointments evidencing their right to office; (3) the term of office of each of the supervisors; (4) the name which is proposed for the district; and (5) the location of the principal office of the supervisors of the district. The application shall be subscribed and sworn to by each of the said supervisors before an officer authorized by the laws of this state to take and certify oaths, who shall certify upon the application that he personally knows the supervisors and knows them to be the officers as affirmed in the application, and that each has subscribed thereto in the officer's presence. The application shall be accompanied by a statement by the State soil conservation committee, which shall certify (and such statement need contain no detail other than the mere recitals) that a petition was filed, notice issued, and hearing held as aforesaid; that the committee did duly determine that there is need, in the interest of the public health, safety, and welfare, for a soil conservation district to function in the proposed territory and did define the boundaries thereof; that notice was given and a referendum held on the question of the creation of such district, and that the result of such referendum showed a majority of the votes cast in such referendum to be in favor of the creation of the district; that thereafter the committee did duly determine that the operation of the proposed district is administratively practicable and feasible. The said statement shall set forth the boundaries of the district as they have been defined by the committee.

The secretary of state shall examine the application and statement and, if he finds that the name proposed for the district is not identical with that of any other soil conservation district of this State or so nearly similar as to lead to confusion or uncertainty, he shall receive and file them and shall record them in an appropriate book of record in his office. If the secretary of state shall find

that the name proposed for the district is identical with that of any other soil conservation district of this State, or so nearly similar as to lead to confusion and uncertainty, he shall certify such fact to the State soil conservation committee, which shall thereupon submit to the secretary of state a new name for the said district, which shall not be subject to such defects. Upon receipt of such new name, free of such defects, the secretary of state shall record the application and statement, with the name so modified, in an appropriate book of record in his office. When the application and statement have been made, filed, and recorded, as herein provided, the district shall constitute a governmental subdivision of this State and a public body corporate and politic. The secretary of state shall make and issue to the said supervisors a certificate, under the seal of the State, of the due organization of the said district, and shall record such certificate with the application and statement. The boundaries of such district shall include the territory as determined by the State soil conservation committee as aforesaid, but in no event shall they include any area included within the boundaries of another soil conservation district organized under the provisions of this act.

G. After six (6) months shall have expired from the date of entry of a determination by the State soil conservation committee that operation of a proposed district is not administratively practicable and feasible, and denial of a petition pursuant to such determination, subsequent petitions may be filed as aforesaid, and action taken thereon in accordance with the provisions of this act.

H. Petitions for including additional territory within an existing district may be filed with the State soil conservation committee, and the proceedings herein provided for in the case of petitions to organize a district shall be observed in the case of petitions for such inclusion. The committee shall prescribe the form for such petitions, which shall be as nearly as may be in the form prescribed in this act for petitions to organize a district. Where the total number of land occupiers in the area proposed for inclusion shall be less than 25, the petition may be filed when signed by a majority of the occupiers of such area, and in such

case no referendum need be held. In referenda upon petitions for such inclusion, all occupiers of land lying within the proposed additional area shall be eligible to vote.

I. In any suit, action, or proceeding involving the validity or enforcement of, or relating to, any contract, proceeding, or action of the district, the district shall be deemed to have been established in accordance with the provisions of this act upon proof of the issuance of the aforesaid certificate by the secretary of state. A copy of such certificate duly certified by the secretary of state shall be admissible in evidence in any such suit, action, or proceeding and shall be proof of the filing and contents thereof.

SECTION 6. ELECTION OF THREE SUPERVISORS FOR EACH DISTRICT

Within thirty (30) days after the date of issuance by the secretary of state of a certificate of organization of a soil conservation district, nominating petitions may be filed with the State soil conservation committee to nominate candidates for supervisors of such district. The committee shall have authority to extend the time within which nominating petitions may be filed. No such nominating petition shall be accepted by the committee, unless it shall be subscribed by twenty-five (25) or more occupiers of lands lying within the boundaries of such district. Land occupiers may sign more than one such nominating petition to nominate more than one candidate for supervisor. The committee shall give due notice of an election to be held for the election of three supervisors for the district. The names of all nominees on behalf of whom such nominating petitions have been filed within the time herein designated, shall be printed, arranged in the alphabetical order of the surnames, upon ballots, with a square before each name and a direction to insert an X mark in the square before any three names to indicate the voter's preference. All occupiers of lands lying within the district shall be eligible to vote in such election. Only such land occupiers shall be eligible to vote. The three candidates who shall receive the largest number, respectively, of the votes cast in such election shall be the elected supervisors for such district. The committee shall pay all the expenses of such election, shall supervise the conduct thereof, shall prescribe regulations governing the

conduct of such election and the determination of the eligibility of voters therein, and shall publish the results thereof.

SECTION 7. APPOINTMENT, QUALIFICATIONS AND TENURE OF SUPERVISORS

The governing body of the district shall consist of five (5) supervisors, elected or appointed as provided hereinabove. The two supervisors appointed by the committee shall be persons who are by training and experience qualified to perform the specialized skilled services which will be required of them in the performance of their duties hereunder.

The supervisors shall designate a chairman and may, from time to time, change such designation. The term of office of each supervisor shall be three (3) years, except that the supervisors who are first appointed shall be designated to serve for terms of 1 and 2 years, respectively, from the date of their appointment. A supervisor shall hold office until his successor has been elected or appointed and has qualified. Vacancies shall be filled for the unexpired term. The selection of successors to fill an unexpired term, or for a full term, shall be made in the same manner in which the retiring supervisors shall, respectively, have been selected. A majority of the supervisors shall constitute a quorum and the concurrence of a majority in any matter within their duties shall be required for its determination. A supervisor shall receive no compensation for his services, but he shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of his duties.

The supervisors may employ a secretary, technical experts, and such other officers, agents, and employees, permanent and temporary, as they may require, and shall determine their qualifications, duties, and compensation. The supervisors may call upon the attorney general of the State for such legal services as they may require, or may employ their own counsel and legal staff. The supervisors may delegate to their chairman, to one or more supervisors, or to one or more agents, or employees such powers and duties as they may deem proper. The supervisors shall furnish to the State soil conservation committee, upon request, copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as they shall adopt or employ, and

such other information concerning their activities as it may require in the performance of its duties under this act.

The supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements. Any supervisor may be removed by the State soil conservation committee upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason.

The supervisors may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county.

SECTION 8. POWERS OF DISTRICTS AND SUPERVISORS

A soil conservation district organized under the provisions of this act shall constitute a governmental subdivision of this State, and a public body corporate and politic, exercising public powers, and such district, and the supervisors thereof, shall have the following powers, in addition to others granted in other sections of this act:

(1) To conduct surveys, investigations, and research relating to the character of soil erosion and the preventive and control measures needed, to publish the results of such surveys, investigations, or research, and to disseminate information concerning such preventive and control measures; provided, however, that in order to avoid duplication of research activities, no district shall initiate any research program except in cooperation with the government of this State or any of its agencies, or with the United States or any of its agencies;

(2) To conduct demonstrational projects within the district on lands owned or controlled by this State or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the occupier of such lands or the neces-

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sary rights or interests in such lands, in order to demonstrate by example the means, methods, and measures by which soil and soil resources may be conserved, and soil erosion in the form of soil blowing and soil washing may be prevented and controlled;

(3) To carry out preventive and control measures within the district including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, and the measures listed in subsection C of section 2 of this act, on lands owned or controlled by this State or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the occupier of such lands or the necessary rights or interests in such lands;

(4) 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 occupier of lands within the district, in the carrying on of erosion-control and prevention operations within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this act;

(5) To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests therein; to maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this act; and to sell, lease, or otherwise dispose of any of its property or interests therein in furtherance of the purposes and the provisions of this act;

(6) To make available, on such terms as it shall prescribe, to land occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, seeds, and seedlings, and such other material or equipment, as will assist such land occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion;

(7) To construct, improve, and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this act;

(8) To develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion within

the district, which plans shall specify in such detail as may be possible, the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land; and to publish such plans and information and bring them to the attention of occupiers of lands within the district;

(9) To take over, by purchase, lease, or otherwise, and to administer, any soil-conservation, erosion-control, or erosion-prevention project located within its boundaries undertaken by the United States or any of its agencies, or by this State or any of its agencies; to manage, as agent of the United States or any of its agencies, or of this State or any of its agencies, any soil-conservation, erosion-control, or erosion-prevention project within its boundaries; to act as agent for the United States, or any of its agencies, or for this State or any of its agencies, in connection with the acquisition, construction, operation, or administration of any soil-conservation, erosion-control, or erosion-prevention project within its boundaries; to accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this State or any of its agencies, and to use or expend such moneys, services, materials, or other contributions in carrying on its operations;

(10) To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; 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;

(11) As a condition to the extending of any benefits under this act to, or the performance of work upon, any lands not owned or controlled by this State or any of its agencies, the supervisors may require contributions in money, services, materials, or otherwise to any operations conferring such benefits, and may require land occupiers 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;

(12) No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state.

SECTION 9. ADOPTION OF LAND-USE REGULATIONS

The supervisors of any district shall have authority to formulate regulations governing the use of lands within the district in the interest of conserving soil and soil resources and preventing and controlling soil erosion. The supervisors may conduct such public meetings and public hearings upon tentative regulations as may be necessary to assist them in this work. The supervisors shall not have authority to enact such land-use regulations into law until after they shall have caused due notice to be given of their intention to conduct a referendum for submission of such regulations to the occupiers of lands lying within the boundaries of the district for their indication of approval or disapproval of such proposed regulations, and until after the supervisors have considered the result of such referendum. The proposed regulations shall be embodied in a proposed ordinance. Copies of such proposed ordinance shall be available for the inspection of all eligible voters during the period between publication of such notice and the date of the referendum. The notices of the referendum shall recite the contents of such proposed ordinance, or shall state where copies of such proposed ordinance may be examined. The question shall be submitted by ballots, upon which the words "For approval of proposed ordinance no. ——, prescribing land-use regulations for conservation of soil and prevention of erosion" and "Against approval of proposed ordinance no. ——, prescribing land-use regulations for conservation of soil and prevention of erosion" shall be printed, with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose approval of such proposed ordinance. The supervisors shall supervise such referendum, shall prescribe appropriate regulations governing the conduct thereof, and shall publish the result thereof. All occupiers of lands within the district shall be eligible to vote in such referendum. Only such land occupiers shall be eligible to vote. No informalities in the conduct of such referendum or in any matters relating therto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

The supervisors shall not have authority to enact such proposed ordinance into law unless at least a majority of the votes cast in such referendum shall have been cast for approval of the said proposed ordinance. The approval of the proposed ordinance by a majority of the votes cast in such referendum shall not be deemed to require the supervisors to enact such proposed ordinance into law. Land-use regulations prescribed in ordinances adopted pursuant to the provisions of this section by the supervisors of any district shall have the force and effect of law in the said district and shall be binding and obligatory upon all occupiers of lands within such district.

Any occupier of land within such district may at any time file a petition with the supervisors asking that any or all of the land-use regulations prescribed in any ordinance adopted by the supervisors under the provisions of this section shall be amended, supplemented, or repealed. Land-use regulations prescribed in any ordinance adopted pursuant to the provisions of this section shall not be amended, supplemented, or repealed except in accordance with the procedure prescribed in this section for adoption of land-use regulations. Referenda on adoption, amendment, supplementation, or repeal of land-use regulations shall not be held more often than once in six (6) months.

The regulations to be adopted by the supervisors under the provisions of this section may include:

1. Provisions requiring the carrying out of necessary engineering operations, including the construction of terraces, terrace outlets, check dams, dikes, ponds, ditches, and other necessary structures;

2. Provisions requiring observance of particular methods of cultivation including contour cultivating, contour furrowing, lister furrowing, sowing, planting, strip cropping, seeding, and planting of lands to water-conserving and erosion-preventing plants, trees and grasses, forestation, and reforestation;

3. Specifications of cropping programs and tillage practices to be observed;

4. Provisions requiring the retirement from cultivation of highly erosive areas or of areas on which erosion may not be adequately controlled if cultivation is carried on;

5. Provisions for such other means, measures, operations, and programs as may assist conservation of soil resources and prevent or control soil erosion in the district, having due regard to the legislative findings set forth in section 2 of this act.

The regulations shall be uniform throughout the territory comprised within the district except that the supervisors may classify the lands within the district with reference to such factors as soil type, degree of slope, degree of erosion threatened or existing, cropping and tillage practices in use, and other relevant factors, and may provide regulations varying with the type or class of land affected, but uniform as to all lands within each class or type. Copies of land-use regulations adopted under the provisions of this section shall be printed and made available to all occupiers of lands lying within the district.

SECTION 10. ENFORCEMENT OF LAND-USE REGULATIONS

The supervisors shall have authority to go upon any lands within the district to determine whether land-use regulations adopted under the provisions of section 9 of this act are being observed. Any person, firm, or corporation who shall violate any of such regulations shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than ——— dollars, and not more than ——— dollars for each such offense, at the discretion of the court. The supervisors are further authorized to provide by ordinance that any land occupier who shall sustain damages from any violation of such regulations by any other land occupier may recover damages at law from such other land occupier for such violation.

SECTION 11. PERFORMANCE OF WORK UNDER THE REGULATIONS BY THE SUPERVISORS

Where the supervisors of any district shall find that any of the provisions of land-use regulations prescribed in an ordinance adopted in accordance with the provisions of section 9 hereof are not being observed on particular lands, and that such nonobservance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district, the supervisors may present to ———[8] a petition, duly verified, setting forth the adoption of the ordinance prescribing land-use regulations, the failure of the defendant land occupier to observe such regulations, and to perform particular work, operations, or avoidances as required thereby, and that such nonobservance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district, and praying the court to require the defendant to perform the work, operations, or avoidances within a reasonable time and to order that if the defendant shall fail so to perform the supervisors may go on the land, perform the work or other operations or otherwise bring the condition of such lands into conformity with the requirements of such regulations, and recover the costs and expenses thereof, with interest, from the occupier of such land. Upon the presentation of such petition, the court shall cause process to be issued against the defendant, and shall hear the case. If it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence, or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may dismiss the petition; or it may require the defendant to perform the work, operations, or avoidances, and may provide that upon the failure of the defendant to initiate such performance within the time specified in the order of the court, and to prosecute the same to completion with reasonable diligence, the supervisors may enter upon the lands involved and perform the work or operations or otherwise bring the condition of such lands into conformity with the requirements of the regulations and recover the costs and expenses thereof, with interest at the rate of 5 per centum per annum, from the occupier of such lands. In all cases where the person in possession of lands, who

[8] There should be here inserted the title of the appropriate court of original law and equity jurisdiction in the State.

shall fail to perform such work, operations, or avoidances shall not be the owner, the owner of such lands shall be joined as party defendant.

The court shall retain jurisdiction of the case until after the work has been completed. Upon completion of such work pursuant to such order of the court the supervisors may file a petition with the court, a copy of which shall be served upon the defendant in the case, stating the costs and expenses sustained by them in the performance of the work and praying judgment therefor with interest. The court shall have jurisdiction to enter judgment for the amount of such costs and expenses, with interest at the rate of 5 per centum per annum until paid, together with the costs of suit, including a reasonable attorney's fee to be fixed by the court. The Supervisors shall have further authority to certify to ———[9] the amount of such judgment, which shall be a lien upon such lands, and shall be collected as are general taxes upon real estate. The procedure for collection of delinquent general taxes upon real estate shall be applicable to the collection of such judgments. When such judgment shall be paid or collected, the proceeds shall be paid over to the district within the boundaries of which the lands shall lie.

SECTION 12. BOARD OF ADJUSTMENT

A. Where the supervisors of any district organized under the provisions of this act shall adopt an ordinance prescribing land-use regulations in accordance with the provisions of section 9 hereof, they shall further provide by ordinance for the establishment of a board of adjustment. Such board of adjustment shall consist of three (3) members, each to be appointed for a term of three (3) years, except that the members first appointed shall be appointed for terms of 1, 2, and 3 years, respectively. The members of each such board of adjustment shall be appointed by the State soil conservation committee, with the advice and approval of the supervisors of the district for which such board has been established, and shall be removable, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason, such hearing to be conducted jointly by the State soil conservation committee

[9] There should be here inserted the name of the official, State or county or otherwise, who may be charged by law with collecting taxes upon real property.

and the supervisors of the district. Vacancies in the board of adjustment shall be filled in the same manner as original appointments, and shall be for the unexpired term of the member whose term becomes vacant. Members of the State soil conservation committee and the supervisors of the district shall be ineligible to appointment as members of the board of adjustment during their tenure of such other office. The members of the board of adjustment shall receive compensation for their services at the rate of ——— dollars ($——) per diem for time spent on the work of the board, in addition to expenses, including traveling expenses, necessarily incurred in the discharge of their duties. The supervisors shall pay the necessary administrative and other expenses of operation incurred by the board, upon the certificate of the chairman of the board.

B. The board of adjustment shall adopt rules to govern its procedures, which rules shall be in accordance with the provisions of this act and with the provisions of any ordinance adopted pursuant to this section. The board shall designate a chairman from among its members, and may, from time to time, change such designation. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Any two (2) members of the board shall constitute a quorum. The chairman, or in his absence such other member of the board as he may designate to serve as acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep a full and accurate record of all proceedings, of all documents filed with it, and of all orders entered, which shall be filed in the office of the board and shall be a public record.

C. Any land occupier may file a petition with the board of adjustment alleging that there are great practical difficulties or unnecessary hardship in the way of his carrying out upon his lands the strict letter of the land-use regulations prescribed by ordinance approved by the supervisors, and praying the board to authorize a variance from the terms of the land-use regulations in the application of such regulations to the lands occupied by the petitioner. Copies of such petition shall be served by the petitioner upon the chairman of the supervisors of the district within which his lands are located and upon the chairman of the State

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soil conservation committee. The board of adjustment shall fix a time for the hearing of the petition and cause due notice of such hearing to be given. The supervisors of the district and the State soil conservation committee shall have the right to appear and be heard at such hearing. Any occupier of lands lying within the district who shall object to the authorizing of the variance prayed for may intervene and become a party to the proceedings. Any party to the hearing before the board may appear in person, by agent, or by attorney. If, upon the facts presented at such hearing, the board shall determine that there are great practical difficulties or unnecessary hardship in the way of applying the strict letter of any of the land-use regulations upon the lands of the petitioner, it shall make and record such determination and shall make and record findings of fact as to the specific conditions which establish such great practical difficulties or unnecessary hardship. Upon the basis of such findings and determination, the board shall have power by order to authorize such variance from the terms of the land-use regulations, in their application to the lands of the petitioner, as will relieve such great practical difficulties or unnecessary hardship and will not be contrary to the public interest, and such that the spirit of the land-use regulations shall be observed, the public health, safety, and welfare secured, and substantial justice done.

D. Any petitioner aggrieved by an order of the board granting or denying, in whole or in part, the relief sought, the supervisors of the district, or any intervening party, may obtain a review of such order in any ——— [10] court, by filing in such court a petition praying that the order of the board be modified or set aside. A copy of such petition shall forthwith be served upon the parties to the hearing before the board and thereupon the party seeking review shall file in the court a transcript of the entire record in the proceedings, certified by the board, including the documents and testimony upon which the order complained of was entered, and the findings, determination, and order of the board. Upon such filing, the court shall cause notice thereof to be served upon the parties and shall have jurisdiction of the proceedings and of the questions determined or to be determined therein, and shall

[10] There should be here inserted the name of the appropriate court exercising original or appellate law and equity jurisdiction.

have power to grant such temporary relief as it deems just and proper, and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside, in whole or in part, the order of the board. No contention that has not been urged before the board shall be considered by the court unless the failure or neglect to urge such contention shall be excused because of extraordinary circumstances. The findings of the board as to the facts, if supported by evidence, shall be conclusive. If any party shall apply to the court for leave to produce additional evidence and shall show to the satisfaction of the court that such evidence is material and that there were reasonable grounds for the failure to produce such evidence in the hearing before the board, the court may order such additional evidence to be taken before the board and to be made a part of the transcript. The board may modify its findings as to the facts or make new findings, taking into consideration the additional evidence so taken and filed, and it shall file such modified or new findings which, if supported by evidence, shall be conclusive, and shall file with the court its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review in the same manner as are other judgments or decrees of the court.[11]

SECTION 13. COOPERATION BETWEEN DISTRICTS

The supervisors of any two or more districts organized under the provisions of this act may cooperate with one another in the exercise of any or all powers conferred in this act.

SECTION 14. STATE AGENCIES TO COOPERATE

Agencies of this State which shall have jurisdiction over, or be charged with the administration of, any State-owned lands, and of any county, or other governmental subdivision of the State, which shall have jurisdiction over, or be charged with the administration of, any county-owned or other publicly owned lands, lying within the boundaries of any district organized hereunder,

[11] This last provision may need to be adjusted to the law of the particular State.

shall cooperate to the fullest extent with the supervisors of such districts in the effectuation of programs and operations undertaken by the supervisors under the provisions of this act. The supervisors of such districts shall be given free access to enter and perform work upon such publicly owned lands. The provisions of land-use regulations adopted pursuant to section 9 of this act shall have the force and effect of law over all such publicly owned lands, and shall be in all respects observed by the agencies administering such lands.

SECTION 15. DISCONTINUANCE OF DISTRICTS

At any time after five (5) years after the organization of a district under the provisions of this act, any twenty-five (25) occupiers of land lying within the boundaries of such district may file a petition with the State soil conservation committee praying that the operations of the district be terminated and the existence of the district discontinued. The committee may conduct such public meetings and public hearings upon such petition as may be necessary to assist it in the consideration thereof. Within sixty (60) days after such a petition has been received by the committee it shall give due notice of the holding of a referendum, and shall supervise such referendum, and issue appropriate regulations governing the conduct thereof, the question to be submitted by ballots upon which the words "For terminating the existence of the ——— (name of the soil conservation district to be here inserted)" and "Against terminating the existence of the ——— (name of the soil conservation district to be here inserted)" shall be printed, with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose discontinuance of such district. All occupiers of lands lying within the boundaries of the district shall be eligible to vote in such referendum. Only such land occupiers shall be eligible to vote. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

The committee shall publish the result of such referendum and shall thereafter consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible. If the committee shall determine that the continued operation of such district is administratively practicable and feasible, it shall record such determination and deny the petition. If the committee shall determine that the continued operation of such district is not administratively practicable and feasible, it shall record such determination and shall certify such determination to the supervisors of the district. In making such determination the committee shall give due regard and weight to the attitudes of the occupiers of lands lying within the district, the number of land occupiers eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the discontinuance of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the district, the probable expense of carrying on erosion control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative findings set forth in section 2 of this act; provided, however, that the committee shall not have authority to determine that the continued operation of the district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum shall have been cast in favor of the continuance of such district.

Upon receipt from the State soil conservation committee of a certification that the committee has determined that the continued operation of the district is not administratively practicable and feasible, pursuant to the provisions of this section, the supervisors shall forthwith proceed to terminate the affairs of the district. The supervisors shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of such sale to be covered into the State treasury. The supervisors shall thereupon file an application, duly verified, with the secretary of state for the discontinuance of such district, and shall transmit with such application the certificate of the State soil conservation committee setting forth the determination of the committee that the continued operation of such district is not administratively practicable and feasible. The application shall recite that the property

of the district has been disposed of and the proceeds paid over as in this section provided, and shall set forth a full accounting of such properties and proceeds of the sale. The secretary of state shall issue to the supervisors a certificate of dissolution and shall record such certificate in an appropriate book of record in his office.

Upon issuance of a certificate of dissolution under the provisions of this section, all ordinances and regulations theretofore adopted and in force within such districts shall be of no further force and effect. All contracts theretofore entered into, to which the district or supervisors are parties, shall remain in force and effect for the period provided in such contracts. The State soil conservation committee shall be substituted for the district or supervisors as party to such contracts. The committee shall be entitled to all benefits and subject to all liabilities under such contracts and shall have the same right and liability to perform, to require performance, to sue and be sued thereon, and to modify or terminate such contracts by mutual consent or otherwise, as the supervisors of the district would have had. Such dissolution shall not affect the lien of any judgment entered under the provisions of section 11 of this act, nor the pendency of any action instituted under the provisions of such section, and the committee shall succeed to all the rights and obligations of the district or supervisors as to such liens and actions.

The State soil conservation committee shall not entertain petitions for the discontinuance of any district nor conduct referenda upon such petitions nor make determinations pursuant to such petitions in accordance with the provisions of this act, more often than once in five (5) years.

SECTION 16. APPROPRIATIONS [12]

[Provision should be here made for an appropriation out of funds in the State treasury to finance the operations of the State soil conservation committee, and to finance the activities of soil conservation districts organized under this law. For the latter purpose, it should be provided that the State soil conservation committee shall annually certify to the State treasurer or other appropriate official, the number of districts in operation in the State. Provision may be made on an acreage or other basis for an allocation of the annual appropriation among the districts.

No form of provision is here set out inasmuch as this must necessarily differ in every State. In some States it may be necessary that the appropriations be embodied in a separate act.]

SECTION 17. SEPARABILITY CLAUSE

If any provision of this act, or the application of any provision to any person or circumstance, is held invalid, the remainder of the act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

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[12] The standard act contemplates that funds to finance the operations of the districts (which will, of course, be supplemented with contributions by land occupiers of funds, labor, materials, and equipment, for erosion-control operations carried out on their lands) will be secured in two ways: (a) By appropriations made available to the districts out of funds in the State treasury, these funds to be annually appropriated by the State legislature and to be divided among the various districts; (b) funds, properties, and services made available to the districts by the United States through the Soil Conservation Service of the Department of Agriculture or through any other agencies.

Two other possible sources of funds may be considered, but it is very strongly felt that it will be unwise to utilize them. These two possible sources are: (a) A grant of power to the districts to levy property taxes upon property within the district, or to make assessments against property in the district for benefits conferred; (b) a grant of power to the districts to borrow money by selling bonds.

It must be borne in mind that these conservation districts will not be operating revenue-producing properties. In this very important respect the soil conservation districts will differ from public bodies operating toll bridges, power plants, low-cost housing projects, and other revenue-producing properties. There are now too many local governmental authorities with power to levy real property taxes. The farm and grazing lands of this country are now too heavily subject to property taxation. Insofar as the soil conservation districts are financed by appropriations out of the Federal and State treasuries, a substantial part of such funds will be derived from income and inheritance taxation. It is much to be preferred that revenues to finance the operations of these districts shall come from sources other than property taxation.

If the soil conservation districts are given authority to levy property taxes upon farms in the district, it may be expected that a great many of such farms will be found already tax delinquent and unable to pay the taxes assessed. This source of funds is therefore perhaps quite unreliable. It seems unnecessary, also, to assess against particular landowners the entire costs of terracing, the building of check dams and ponds, and other engineering operations, when all the people in the State will profit from such operations.

If the districts are authorized to issue bonds, such bonds will ultimately have to be retired from property taxation or assessments against the properties in the districts, inasmuch as the districts do not operate revenue-producing properties. The issuance of bonds by these districts would therefore simply create a postponed liability without adequate appropriate provision for later retirement of the bonds.

It may be noted, also, that attempts to assess benefits against the farms in the districts and to offset against such benefits losses sustained by the farmer in not seeding sloping surfaces or in converting part of the crop land into wood lots, etc., will raise a number of administrative difficulties and will be sources of constant friction in the operation of the districts.

For all of these reasons it seems clearly preferable to finance the operations of the soil conservation districts by direct appropriation out of the State treasury and by supplementation with Federal aid.

SECTION 18. INCONSISTENCY WITH OTHER ACTS

Insofar as any of the provisions of this act are inconsistent with the provisions of anv other law, the provisions of this act shall be controlling.

SECTION 19. EFFECTIVE DATE[18]

[18] Provision should be here made, in accordance with the requirements of the constitution of the particular State, declaring an emergency, and providing that the act shall go into effect upon passage, or at the earliest date permitted under the State constitution.

Abstract of Opinion of the Solicitor on Constitutionality of Standard State Soil Conservation Districts Law

UNITED STATES DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SOLICITOR,
Washington, D. C.

INTRODUCTORY STATEMENT

SUMMARY OF THE ACT

CONSTITUTIONALITY OF THE STANDARD ACT

CONCLUSION

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Memorandum for the Secretary

UNITED STATES DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SOLICITOR,
Washington, D. C., February 26, 1936.

Re: Proposed Standard State Soil Conservation Districts Law

Dear MR. SECRETARY:

The act of Congress entitled "An Act to provide for the protection of land resources against soil erosion, and for other purposes" (Public No. 46, 74th Cong., approved Apr. 27, 1935) has declared it to be the policy of Congress "to provide permanently for the control and prevention of soil erosion". To this end the act has conferred upon the Secretary certain broad powers to conduct research, disseminate information, conduct demonstrational projects and carry out preventive measures in a coordinated national program for the prevention and control of soil erosion. Section 3 of this act provides in part as follows:

> SEC. 3. As a condition to the extending of any benefits under this Act 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 Act, require—
>
> (1) The enactment and reasonable safeguards 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; * * *.

Some months ago the Secretary asked the Land Policy Committee of the Department to work out, in cooperation with the Soil Conservation Service established under the provisions of the above-mentioned act, a standard form of soil conservation districts law which should be appropriate for adoption by the State legislatures of the several States. My office has worked with representatives of the Land Policy Committee and of the Soil Conservation Service upon this problem. There is submitted herewith for your approval a proposed standard form of State soil conservation districts law.

On June 5, 1935, the Secretary's committee on soil conservation submitted its report on recommended policies to govern the activities of the Department in its erosion control program. One of the recommendations of the report (p. 42) was that "on and after July 1, 1937, and sooner wherever feasible, all erosion control work on private lands, including new demonstration projects, be undertaken by the Soil Conservation Service only through legally constituted soil conservation associations or governmental agencies empowered to function as indicated above". The committee's report and recommendations were approved by you on June 6, 1935. The Soil Conservation Service proposes to assist in securing the adoption by the State legislatures in the several States of erosion control legislation as nearly as may be in the form of the standard act, which will be submitted, after it has received your approval, as the recommendation of the Department of Agriculture regarding appropriate State legislation in this field.

In the balance of this memorandum I shall briefly summarize the accompanying standard act and shall indicate my opinion upon the major objections which may be raised against its validity under the Federal Constitution and under typical provisions contained in the several State constitutions.

SUMMARY OF THE ACT

Three basic considerations have largely determined the provisions of the standard act. These may be stated as follows:

(1) Soil erosion is so intimately tied in with the farm management plan of the particular farm or with the land-use practices on given lands that the mere adoption of such engineering devices as the construction of terraces must fall far short of success in preventing and controlling erosion. A genuine attack on the problem will in most instances require considerable modification of land-use practices, including the utilization of strip cropping, contour cultivating and contour furrowing, the seeding of waste, sloping, abandoned, or eroded lands to water-conserving and soil-holding grasses and legumes, modifications in cropping programs and tillage practices, and the retirement from cultivation of steep, highly erosible tracts;

(2) Failure by particular farmers to control erosion on their lands can cause a washing and blowing of soil and water from such lands onto other lands, and thus make erosion control on such other lands difficult or impossible. It follows that the problem of erosion cannot be met by the conduct of isolated demonstrational projects by State and Federal agencies. Virtually all of the lands in particular watersheds must be brought under some form of erosion control operations for the problem to be adequately dealt with;

(3) A program for modifying land-use practices in the interest of soil conservation and prevention of soil erosion can be made effective only if farmers can be induced to cooperate in this work voluntarily. The legislation should, therefore, create machinery which can be used by the farmers if they have been educated to the desirability of taking action.

The essence of the statute may be thus stated: It provides a procedure by which soil conservation districts may be organized, such districts to be governmental subdivisions of the State and to exercise, in the main, two types of powers: (1) The power to establish and administer erosion control demonstration projects and preventive measures; (2) the power to prescribe land-use regulations in the interest of the prevention and control of erosion, such regulations to have the force of law within the district.

The act establishes a State soil conservation committee of from three to five members, the membership to be selected from such officers as the director of the State extension service, the director of the State agricultural experiment station, the State conservation commissioner or commissioner of agriculture, and a representative of the State planning board. The committee is given authority to

invite the Secretary of Agriculture of the United States to appoint one person to serve on the committee. This committee is to administer the procedures involved in establishing districts, assist the supervisors of the various districts, encourage the organization of districts where needed, facilitate an interchange of advice and experience between districts, and coordinate the programs of the several districts in the State "so far as this may be done by advice and consultation".

The procedure for creation of districts will be stated in greater detail hereinafter in connection with the discussion of some of the constitutional questions which may be raised concerning this procedure. It may be sufficient at this point to indicate that it is provided that any 25 land occupiers may file a petition with the State committee asking that a district be organized. (The act, in subsection (10) of sec. 3, defines "land occupier" to include "any person, firm, or corporation who shall hold title to, or shall be in possession of, any lands lying within a district organized under the provisions of this act, whether as owner, lessee, renter, tenant, or otherwise.") The committee is required to give public notice of a hearing to be held upon the petition, to hold such hearing, at which all interested parties may be heard, and to define the boundaries of the proposed district. Thereafter the committee is required to conduct a referendum in which all land occupiers within the proposed district may vote on the question whether a district should be created. For reasons stated below the result of the referendum is not made conclusive upon the committee, except that the committee may not complete the organization of a district unless at least a majority of the votes cast in the referendum shall have been cast in favor of organization of the district.

The governing body of each district is to consist of five supervisors, three elected by the land occupiers of the district, two appointed by the State committee. The first of the types of powers listed above as those to be exercised by the districts is covered in section 8 of the act. This section empowers the districts, through their supervisors, to conduct necessary research (but seeks to avoid duplication of research activities by requiring research projects to be initiated only in cooperation with State or Federal agencies), to conduct demonstrational projects, to carry out preventive and control measures, to acquire necessary properties and make necessary contracts, to make available to land occupiers machinery and equipment needed for control operations, to develop land-use plans and bring them to the attention of land occupiers, and to take over Federal and State erosion-control projects and administer them.

The second major set of powers conferred upon the districts is covered in sections 9 to 12. The supervisors are authorized to formulate land-use regulations in the interest of prevention and control of erosion, and to conduct hearings thereon. The regulations may not be enacted into law, however, until after they have been submitted to a referendum of the land occupiers in the district. Again, for reasons stated below, the result of the referendum is not made conclusive upon the supervisors, except that it is provided that the supervisors may not enact the regulations into law unless they shall have been approved by at least a majority of the votes cast in the referendum. It is provided

that the regulations may include requirements for the carrying on of necessary engineering operations including the construction of terraces, check dams and similar work, specifications of cropping programs, requirements with reference to methods of cultivation, provisions for retirement from cultivation of highly erosive areas, and similar means and measures. A violation of the regulations is declared to be a misdemeanor punishable in the local courts by fines, and the supervisors are empowered to provide civil penalties as well. The supervisors are authorized to file petitions in the local courts to require recalcitrant land occupiers to observe the provisions of the regulations. The courts are empowered to compel compliance and to authorize the supervisors to go upon privately owned lands and perform the necessary operations which the land occupier may fail to perform, the costs of such performance to be recovered from the land occupier.

Provision is made for a board of adjustment to be established in each district in which land-use regulations shall be in force, the board to consist of three members appointed by the State committee with the advice and approval of the district supervisors. The board of adjustment is authorized, upon proper petition by a land occupier, to authorize variances from the terms of the land-use regulations in cases where a literal application of the land-use regulations to particular lands would result in great practical difficulties or unnecessary hardship. Special provision is made for judicial review of decisions of the board of adjustment.

Provision is made for cooperation among districts and for cooperation of the districts with State and Federal agencies. All agencies of the State are directed to observe upon publicly owned lands the provisions of land-use regulations in force in any district within which such publicly owned lands may lie.

At any time after 5 years after organization of a district its operations may be terminated and the district discontinued by the State committee upon appropriate petition of the land occupiers. The committee is not authorized, however, to discontinue any district until after it shall have held a referendum upon the question of discontinuance and unless a majority of the votes cast in such referendum shall have been cast in favor of such discontinuance. Referenda upon the discontinuance of districts may not be held more often than once in 5 years.

The statute provides for financing the operations of the districts by annual appropriations to be made by the State legislature out of funds in the State treasury. The Land Policy Committee and the Soil Conservation Service have deemed this a more desirable procedure than authorizing the districts to levy property taxes or special assessments.[1] While it is anticipated that substantial contributions will be made by the United States through the Soil Conservation Service and other agencies to the operations of the districts, the present statute cannot, of course, provide for such contributions. The statute does, however, give authority to the districts to accept contributions and assistance from the United States or any of its agencies.

[1] For a further discussion of this point, see footnote 12, p. 29.

CONSTITUTIONALITY OF THE STANDARD ACT

It has been anticipated that some of the land occupiers in any State in which the standard act above summarized may be adopted may challenge the constitutional power of the State government to enact and enforce such legislation. A careful study has been made, therefore, of the relevant court decisions upon the constitutional problems involved, and every effort has been made to bring the provisions of the legislation within the main body of these decisions.

The constitutional challenges which may be directed against this legislation will fall into two large classes. It may be argued (1) that the subject matter of the legislation is itself outside the scope of the powers which the State legislature may exercise because of the fact that those powers have been circumscribed by a number of constitutional guaranties, prominent among them the guaranty that no person may be deprived of liberty or property without due process of law, and that the proceeds of State taxation may be spent only upon public purposes. It may be argued that because of this fact land-use regulations of the type above described may not be enforced, and State funds may not be appropriated to finance the operations of the districts. (2) It may be urged that the particular procedures specified in the act, such as the provision for the organization of districts and the manner of their creation, the procedure provided for the adoption of land-use regulations, or the powers conferred upon the board of adjustment, violate certain constitutional provisions, such as the prohibition against delegation of legislative power, or the provision that no State shall deny to any person within its jurisdiction the equal protection of the laws.

I shall not attempt in this opinion to deal with any of these constitutional issues exhaustively, but shall indicate as to each of the major provisions of the act why I deem it to be within the constitutional power of the State legislature to enact.

1. THE POWER OF THE STATE UNDER THE "POLICE POWER" TO PROVIDE FOR THE PREVENTION AND CONTROL OF SOIL EROSION.

The most basic attack which can be made against the constitutionality of this legislation is the contention that the legislative power of a State does not extend to regulating the carrying on of operations upon private lands, and that this remains true even if it be demonstrated that unregulated operations are bringing about erosion of the soil and that the proposed regulations are directed to preventing and controlling such erosion. It is true that, unlike the Federal Government which is a government of delegated powers and may exercise no power not conferred upon it in the Federal Constitution, the State governments are governments of inherent power and therefore a State legislature may exercise any power not *prohibited* to it in the State or Federal Constitutions. To challenge Federal legislation on the ground of lack of power, it is sufficient to show that the Federal Constitution does not confer such power; but to challenge State legislation on this ground, it is necessary to find in the State or Federal Constitution a prohibition of the exercise of such power. The Federal Constitution, however, in the Fourteenth Amendment provides that no State shall deprive any citizen of his liberty or property without due process of law. Almost identical guaranties are contained in every State constitution, and the guaranty of due process is held to protect the individual from interference by the State with the freedom with which he may carry on operations upon his lands. The guaranteed freedom is not, however, absolute, and that power which the State may exercise to regulate private land use or other private conduct in the public interest, even though it should interfere with the absolute liberty or property interests of the citizen, is called the police power. The present problem becomes, therefore, that of determining whether regulating private land use in the interest of erosion control, in the manner provided for in the standard act, is within the police power.

Traditionally, the police power has been defined as the power to protect and promote the public health, safety, and morals. More recent decisions of the highest courts have expanded the police power to include also the power to promote the general prosperity and welfare of the community. In *Chicago, B. & Q. R. R. Co. v. Ill. ex rel Grimwood*, 200 U. S. 561, 592 (1906), in upholding certain procedures taken under the Illinois Farm Drainage Act, the Supreme Court of the United States said: "We hold that the police power of the State embraces regulations designed to promote the public convenience or the general welfare as well as regulations designed to promote the public health, the public safety or public morals." To the same effect is *Bacon v. Walker*, 204 U. S. 311, at 317 (1907), in which the Supreme Court upheld an Idaho Statute regulating sheep grazing and said concerning the police power: "That power is not confined * * * to the suppression of what is offensive, disorderly or unsanitary. It extends to so dealing with the conditions which exist in the State as to bring out of them the greatest welfare of its people." The Supreme Court of New Mexico has recently stated the same doctrine:

> The police power is necessarily expansive. It must meet new conditions and standards. On the other hand, "liberty" is contractive. It is not an absolute thing. Any Government at all encroaches upon it. "Liberty restrained by law" is our tradition. The power to regulate the conduct of an individual for the common good, the police power, has never been bounded and never will be. * * * No jurist has ever attempted to enumerate all the specific objects for which the power may be legitimately invoked. To such enumeration as definitions include, by way of illustration, there is always added "the general welfare." (*State* v. *Henry*, 37 N. M. 536, 25 Pac. (2d) 204, (1933).)

The recent decision of the Supreme Court of the United States in *Nebbia v. New York*, 291 U. S. 502, decided March 5, 1934, has stated clearly the relationship between legislative exercise of the police power and the guarantees of due process. The court said, in part:

> Under our form of government, the use of property and the making of contracts are normally matters of private and not of public concern. The general rule is that both shall be free of governmental interference. But

neither property rights nor contract rights are absolute; for government cannot exist if the citizen may at will use his property to the detriment of his fellows, or exercise his freedom of contract to work them harm. Equally fundamental with the private right is that of the public to regulate it in the common interest. * * *

Thus has this court from the early days affirmed that the power to promote the general welfare is inherent in government. * * * These correlative rights, that of the citizen to exercise exclusive dominion over property and freely to contract about his affairs, and that of the state to regulate the use of property and the conduct of business, are always in collision. No exercise of the private right can be imagined which will not in some respect, however slight, affect the public; no exercise of the legislative prerogative to regulate the conduct of the citizen which will not to some extent abridge his liberty or affect his property. But subject only to constitutional restraint the private right must yield to the public need.

The Fifth Amendment, in the field of Federal activity, and the Fourteenth, as respects State action, do not prohibit governmental regulation for the public welfare. They merely condition the exertion of the admitted power, by securing that the end shall be accomplished by methods consistent with due process. And the guaranty of due process, as has often been held, demands only that the law shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained. It results that a regulation valid for one sort of business, or in given circumstances, may be invalid for another sort, or for the same business under other circumstances, because the reasonableness of each regulation depends upon the relevant facts. * * *

The court has repeatedly sustained curtailment of enjoyment of private property, in the public interest. The owner's rights may be subordinated to the needs of other private owners whose pursuits are vital to the paramount interests of the community. The State may control the use of property in various ways; may prohibit advertising bill boards except of a prescribed size and location, or their use for certain kinds of advertising; may in certain circumstances authorize encroachments by party walls in cities; may fix the height of buildings, the character of materials, and methods of construction, the adjoining area which must be left open, and may exclude from residential sections offensive trades, industries, and structures likely injuriously to affect the public health or safety; or may establish zones within which certain types of buildings or businesses are permitted and others excluded. * * *

The Constitution does not guarantee the unrestricted privilege to engage in a business or to conduct it as one pleases. Certain kinds of business may be prohibited; and the right to conduct a business, or to pursue a calling, may be conditioned. Regulation of a business to prevent waste of the state's resources may be justified.

Section 2 of the standard act is entitled "Legislative Determinations and Declaration of Policy." In this section it is declared as a matter of legislative determination that improper land-use practices are contributing to a progressively more serious erosion of the farm and grazing lands of the State by wind and water; that among the consequences of such erosion are the silting and sedimentation of stream channels and reservoirs; the loss of fertile soil material in

dust storms; the deposit of subsoil over alluvial plains, and the reduction in productivity or outright ruin of rich bottom lands by overwash of poor subsoil material; deterioration of soil and its fertility; loss of soil and water, which causes destruction of food and cover for wildlife; a blowing and washing of soil into streams, which silts over spawning beds, and diminishes the food supply of fish; a diminishing of the underground water reserve, which causes water shortages, intensifies periods of drought, and causes crop failures; an increase in the speed and volume of rainfall run-off, which causes severe and increasing floods, bringing suffering, disease, and death; impoverishment of families attempting to farm eroded and eroding lands; damage to roads, highways, railways, farm buildings, and other property from floods and from dust storms, and losses in navigation, hydroelectric power, municipal water supply, irrigation developments, farming, and grazing. It is then declared to be the policy of the State to provide for the conservation of the soil and soil resources of the State, and for the control and prevention of soil erosion. These legislative determinations as to the facts, while, of course, not conclusive upon the courts, are entitled to judicial consideration and deference: *Block* v. *Hirsh*, 256 U. S. 135, at 154 (1921); *People* v. *Nebbia*, 262 N. Y. 259, at 265, 186 N. E. 694 (1933); *Perry* v. *Keene*, 56 N. H. 514 (1876); *State* v. *McKay*, 137 Tenn. 280, at 306, 193 S. W. 99 (1916); *People* v. *Johnson*, 288 Ill. 442, at 445, 123 N. E. 543 (1919).

The question whether the police power extends to the type of regulation of land use involved in the legislation under consideration is essentially an open one. There is, however, considerable material in the cases which strongly supports the contention that the police power does extend to the types of regulation provided in the standard act. A close case in point is the decision of the Supreme Court of Iowa in 1924 in the case of *Kroon* v. *Jones*, 198 Iowa 1270, 201 N. W. 8. An Iowa statute (Code of 1924, sec. 7421–7423) authorized the boards of supervisors of counties of the State to establish drainage districts and to establish "embankments, revetments, retards, or any other approved system of construction which may be deemed necessary adequately to protect the banks of any river or stream, within or adjacent to any county, from wash, cutting, or erosion", and provided that the provisions of the statute should be "liberally construed to promote, embrace, and authorize the drainage, reclamation, or protection of wet and overflowed lands, or lands endangered, or liable to be endangered by wash, cutting, or erosion, within this State." The action of the board of supervisors of Mills County, Iowa, in establishing a district under the statute and in providing for the placing of retards in the Missouri River to deflect the current and protect the bank from erosion was challenged on the ground that the erosion was a private matter affecting only the land lying along the river, and therefore its prevention was outside the police power of the State. The court sustained the constitutionality of the statute, saying, in part:

> It is quite clear, we think, that the benefit to be naturally expected from the proposed improvement is not confined to the land immediately at the river bank and which will be protected from actual present destruction by erosion, but that there is a very appreciable benefit to the lands

> in the district generally. This results, not only from the fact that the improvement will, in the proportion that it is successful in preventing erosion and checking the movement of the river channel to the east, remove the danger of the destruction of the land by future encroachments of the river, but by lessening the danger to be apprehended from high waters, protecting the present levees, and creating a condition that will enable further work of that character to be carried out. In short, from a careful examination of the record we are satisfied that the proposed improvement comes within the purview of the statute, that it is of public utility and conducive to the public health, convenience, and welfare.

Regulation of private land use in the interest of conserving natural resources has repeatedly been sustained as a proper exercise of the police power. Thus the courts have sustained statutes prohibiting the waste of natural gas and crude oil: *Bandini Petroleum Co.* v. *Superior Court*, 284 U. S. 8 (1931); *Champlin Refining Co.* v. *Corporation Commission of Oklahoma*, 286 U. S. 210 (1932); *Sterling* v. *Constantin*, 287 U. S. 378 (1932); *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61 (1911); *People's Petroleum Producers Co.* v. *Sterling*, 60 F. (2d) 1041 (D. Tex. 1932); *People* v. *Associated Oil Co.*, 211 Calif. 93, 294 Pac. 717 (1930), citing cases from other States at 722; *Hague* v. *Wheeler*, 157 Pa. St. 324, 27 Atl. 714 (1893). The courts are particularly apt to sustain such regulation where the well-being and prosperity of the entire community is involved, as in cases where the oil industry is one of the principal industries of the State and the State derives large revenue from the taxation of that industry. See *Townsend* v. *State*, 147 Ind. 624, 47 N. E. 19 (1897); *Quinton Relief Oil & Gas Co.* v. *Corporation Commission*, 101 Okla. 164, 224 Pac. 156 (1924); *Julian Oil & Royalties Co.* v. *Capshaw*, 145 Okla. 237, 292 Pac. 841 (1930). Statutes designed to conserve timber resources by requiring owners of forest land to patrol their lands and to remove brush and debris likely to cause fires have been sustained: *First State Bank of Sutherlin* v. *Kendall Lumber Corporation*, 107 Ore. 1, 213 Pac. 142 (1923); *Chambers* v. *McCollum*, 47 Ida. 74, 272 Pac. 707 (1928); *State* v. *Pape*, 103 Wash. 319, 174 Pac. 468 (1918); *Perley* v. *North Carolina*, 249 U. S. 510 (1919); *In re Opinion of the Justices*, 69 Atl. 627 (Me. 1908).

In the interest of conserving the food supply of a community, legislation requiring the destruction of cedar trees to prevent the spread of cedar rust to apple orchards have been adopted in a number of States, and have been sustained: *Miller* v. *Schoene*, 276 U. S. 272 (1928); *Upton* v. *Felton*, 4 F. Supp. 585 (D. Neb. 1932); *Kelleher* v. *Schoene*, 14 F. (2d) 341 (W. D. Va. 1926); *Kelleher* v. *French*, 22 F. (2d) 341 (W. D. Va. 1927), affirmed in 278 U. S. 563 (1928); *Lemon* v. *Rumsey*, 108 W. Va. 242, 150 S. E. 725 (1929). Destruction of trees to exterminate types of orchard pests other than cedar rust has also been required by State legislatures, and sustained by State supreme courts: *Balch* v. *Glenn*, 85 Kan. 735, 119 Pac. 67 (1911) (San Jose scale and other orchard pests); *State* v. *Main*, 69 Conn. 123, 37 Atl. 80 (1897) (the "yellows"); *Louisiana State Board of A. & I.* v. *Tanzmann*, 140 La. 756, 73 So. 854 (1917) (citrus diseases); *Colvill* v. *Fox*, 51 Mont. 72, 149 Pac. 496 (1915) (apple scab). Similar are the

cases which have upheld the required destruction of wheat crops where cornstalks upon which corn borers could grow were present in wheat fields: *Van Gunten* v. *Worthley*, 25 Ohio App. 496, 159 N. E. 326 (1927); *Wallace* v. *Feehan*, 206 Ind. 522, 190 N. E. 438 (1934); *Wallace* v. *Dohner*, 89 Ind. App. 416, 165 N. E. 552 (1929). Extensive powers to abate insect pests have been conferred upon administrative boards, and sustained in *Los Angeles County* v. *Spencer*, 126 Cal. 670, 59 Pac. 202 (1899) (pests injurious to fruits and plants); *Graham* v. *Kingwell*, 218 Cal. 658, 24 P. (2d) 488 (1933) (prevention of bee diseases); *Carstens* v. *DeSallem*, 82 Wash. 643, 144 Pac. 934 (1914) (power delegated to commission to name diseases justifying destroying trees). These cases contain frequent statements that preservation of the food supply is a major valid objective of the police power.

Statutes requiring farmers to dip their cattle to destroy tick have been upheld: *Armstrong* v. *Whitten*, 41 F. (2d) 241 (D. Texas, 1930); *Stine* v. *Lewis*, 33 Okla. 609, 127 Pac. 396 (1912); *State* v. *McCarty*, 5 Ala. App. 212, 59 So. 543 (1912); *Davis* v. *State*, 126 Ark. 260, 190 S. W. 436 (1917); *Neal* v. *Boog-Scott*, 247 S. W. 689 (Tex. Civ. App. 1923); *Neal* v. *Cain*, 247 S. W. 694 (Tex. Civ. App. 1923); *State* v. *Hodges*, 180 N. C. 751, 105 S. E. 417 (1920); as well as statutes making the dipping of sheep compulsory, to destroy sheep scab: *State* v. *Hall*, 27 Wyo. 224, 194 Pac. 476 (1921). Statutes providing for compensating farmers for cattle killed in administering programs for the reduction of scabies have been sustained: *Payne* v. *Jones*, 47 S. D. 488, 199 N. W. 472 (1924); and see *Moss* v. *Mississippi Live Stock Sanitary Board*, 154 Miss. 766, 122 So. 776 (1929). Statutes requiring the killing of tubercular cattle have been sustained whether or not they provided for compensation. The statute sustained in *City of New Orleans* v. *Charouleau*, 121 La. 890, 46 So. 911 (1908), and see *Houston* v. *State*, 98 Wis. 481, 74 N. W. 111 (1898), provided for no compensation, while the statutes sustained in *Campbell* v. *Manchester*, 67 N. H. 146,36 Atl. 877 (1891) and *Cory* v. *Graybill*, 96 Kan. 20, 149 Pac. 417 (1915) provided for partial compensation. It may be noted here that where the State is predominantly agricultural the courts are more readily willing to extend the police power to include protection of agricultural interests: *State* v. *Boehm*, 92 Minn. 374, 100 N. W. 95 (1904); *Green* v. *Frazier*, 44 N. D. 395, 176 N. W. 11 (1920), affirmed 253 U. S. 233, (1920); *Scott* v. *Frazier*, 258 F. 669 (D. N. D. 1919); *State ex rel. Lyon* v. *McCown*, 92 S. C. 81, 75 S. E. 392 (1912); *Hill* v. *Ray*, 52 Mont. 378, 158 Pac. 826 (1916); *Colvill* v. *Fox*, 51 Mont. 72, 149 Pac. 496 (1915), and *Miller* v. *Schoene*, 146 Va. 175, 135 S. E. 813 (1926), affirmed 276 U. S. 272 (1928).

A number of cases have upheld the constitutionality of statutes requiring property owners to destroy weeds on their own premises: *Missouri, Kansas & Texas Railway Co.* v. *May*, 194 U. S. 267 (1904); *Wedemeyer* v. *Crouch*, 68 Wash. 14, 122 Pac. 366 (1912); *City of St. Louis* v. *Galt*, 179 Mo. 8, 77 S. W. 876 (1903). Statutes requiring property owners to destroy weeds on publicly owned property adjoining their land have also been sustained: *Commonwealth* v. *Watson*, 223 Ky. 427, 3 S. W. (2d) 1077 (1928); *Northern Pacific Ry. Co.* v. *Adams County*, 78 Wash. 53, 138 Pac. 307 (1914).

Regulations of land use in the interest of preserving fish and wildlife have been sustained under the police power: *Geer* v. *Connecticut*, 161 U. S. 519 (1895); *State* v. *Southern Coal & Transportation Co.*, 71 W. Va. 470, 76 S. E. 970 (1912); *Commonwealth* v. *Sisson*, 189 Mass. 247, 75 N. E. 619 (1905); *Connolly* v. *Standard Oil Co. of N. Y.*, 264 Fed. 383 (D. R. I. 1920); *State* v. *Rodman*, 58 Minn. 393, 59 N. W. 1098 (1894); *Gentile* v. *State*, 29 Ind. 409 (1868). Legislation directed to assuring adequate drainage of farm lands has been sustained: *Eccles* v. *Ditto*, 23 N. M. 235, 167 Pac. 726 (1917); *Wurts* v. *Hoagland*, 114 U. S. 606 (1885); *Hagar* v. *Reclamation District No. 108*, 111 U. S. 701 (1884); *Houck* v. *Little River Drainage District*, 239 U. S. 254 (1915); *O'Neill* v. *Leamer*, 239 U. S. 244 (1915); *Hagar* v. *Supervisors of Yalo County*, 47 Cal. 222 (1874); *O'Reiley* v. *Kankakee Valley Draining Co.*, 32 Ind. 169 (1869); *In re Bonds of Madera Irrigation District*, 92 Cal. 296, 28 Pac. 272, 675 (1891). But cf. *Sundquist* v. *Fraser*, 191 N. W. 931 (Minn. 1923). In *Chicago & Alton Railroad Co.* v. *Tranbarger*, 238 U. S. 67 (1915) and *Peterson* v. *Northern Pac. Ry. Co.*, 132 Minn. 265, 156 N. W. 121 (1916) it was held that railroad companies may constitutionally be required to maintain ditches to prevent the flooding of adjoining property that would otherwise result from their erection of embankments. In the following cases legislation providing for the organization of irrigation districts to assure an adequate supply of water and protect against drought was sustained: *Board of Directors of Modesto Irrigation Dist.* v. *Tregea*, 88 Cal. 334, 26 Pac. 237 (1891), dismissed on other grounds in 164 U. S. 179 (1896); *Turlock Irrigation Dist.* v. *Williams*, 76 Cal. 360, 18 Pac. 379 (1888); *In re Bonds of Madera Irrigation District*, 92 Cal. 296, 28 Pac. 272, 675 (1891); *Hagar* v. *Supervisors of Yalo County*, 47 Cal. 222 (1874); *Billings Sugar Co.* v. *Fish*, 40 Mont. 256, 106 Pac. 565 (1910); cf. *Eden Irrigation Co.* v. *District Court of Weber County*, 61 Utah 103, 211 Pac. 957 (1922). The establishment of river regulating districts and conservancy districts to prevent and control floods has been sustained: *Orr* v. *Allen*, 245 Fed. 486 (D. Ohio 1917); *Miami County* v. *City of Dayton*, 92 Ohio St. 215, 110 N. E. 726 (1915); *People* v. *Lee*, 72 Col. 598, 213 Pac. 583 (1923); *Board of Black River Regulating Dist.* v. *Ogsbury*, 203 A. D. 43, 196 N. Y. S. 281 (1922); *Board of Hudson River Regulating Dist.* v. *Fonda, J. & G. R. Co.*, 127 Misc. 866, 217 N. Y. S. 781 (1926), affirmed on appeal in 249 N. Y. 445, 164 N. E. 541 (1928); cf. *State ex rel. Skordahl* v. *Flaherty*, 140 Minn. 19, 167 N. W. 122 (1918).

Statutes intended to conserve the water supply of cities have repeatedly been sustained: *Bountiful City* v. *De Luca*, 77 Utah 107, 292 Pac. 194 (1930) (regulated grazing of livestock within 300 feet of streams from which a municipal water supply was taken); *Topeka Supply Co.* v. *City of Potwin Place*, 43 Kan. 404, 23 Pac. 578 (1899); *Town of Shelby* v. *Cleveland Mill & Power Co.*, 155 N. C. 196, 71 S. E. 218 (1911); *State* v. *Wheeler*, 44 N. J. L. 88 (1882) (the foregoing three cases all deal with emptying of sewage); *State* v. *Griffin*, 69 N. H. 1, 39 Atl. 260 (1897) (prohibiting throwing of sawdust); *State* v. *Shaw*, 22 Ore. 287, 29 Pac. 1028 (1892); *City of New York* v. *Kelsey*, 158 A. D. 183, 143 N. Y. S. 41, affirmed in 213 N. Y. 638, 107 N. E. 1074 (1914) (prohibiting establishment of cemetery within half mile of source of water supply); *Perley* v. *North Carolina* 249 U. S. 510 (1919) (regulating forestry practices). The Supreme Court of Kansas upheld in *Chaput* v. *Demars*, 120 Kan. 273, 243 Pac. 311 (1926), 244 Pac. 1042 (1926), a statute requiring property owners to trim hedges bordering on public highways upon the order of the road commissioners, the court saying as justification for the statute that: "High hedges obstruct the highway, causing snow to drift in them, prevent their drying out quickly after heavy rains, render the highways more difficult to keep in proper condition, obstruct the view, and render them more dangerous."

The appositeness of the cases above discussed is obvious. Regulation of land use in the interest of erosion control is, at one and the same time, regulation to conserve natural resources, to conserve the food supply, to aid in preserving wildlife, to improve farm lands, to prevent and control floods, to protect public lands and public highways, to conserve the water supply of cities, to prevent impairment of dams and reservoirs. It is regulation in the interest of protecting and promoting the health, safety, prosperity, and general welfare of the people of the State.

Not all of the instances of legislation above discussed have required private landowners to perform particular operations, or refrain from performing particular operations, upon their own lands at their own expense, but it is important to note that the courts have repeatedly sustained land-use regulations under the police power which have done precisely that, where the purpose to be achieved was deemed sufficiently important and the interference with private right deemed necessary to accomplish the purpose. In the cedar rust cases discussed above (p. 40) the owner of the infested cedar trees was left no choice but to cut down his trees, though they possessed considerable sentimental value, and though their market value might greatly increase with further growth. Similarly, in the corn borer cases (p. 41) the property owners were required to destroy their wheat fields without compensation, to eliminate cornstalks which were prospective hosts for the corn borer. It is worth noting that the Ohio and Indiana corn borer statutes (112 Ohio Laws, 1927, p. 83; Indiana Acts, 1927, ch. 56, p. 146) in addition to authorizing the administrative destruction of agricultural products, also authorized the administrative specification of tillage practices insofar as necessary to accomplish the purpose of the legislation. The Supreme Court of California in *Graham* v. *Kingwell*, 218 Cal. 658, 24 Pac. (2d) 488 (1933) sustained a statute conferring power to prescribe broad regulations governing the conduct of the bee industry insofar as necessary to eradicate bee diseases.

It may, indeed, now be regarded as definitely established that the legislatures may, when acting in defense of the public health, safety, prosperity, or general welfare, require the carrying on by landowners of particular operations upon their lands at their own expense: *Perley* v. *North Carolina*, 249 U. S. 510 (1919); *First State Bank of Sutherlin* v. *Kendall Lumber Corporation*, 97 Ore. 1, 213 Pac. 142 (1923); *Chambers* v. *McCollum*, 47 Idaho 74, 272 Pac. 707 (1928); *Missouri, Kansas & Texas Ry. Co.* v. *May*, 194 U. S. 267 (1904); *Wedemeyer* v.

Crouch, 68 Wash. 14, 122 Pac. 366 (1912); *Commonwealth* v. *Watson*, 223 Ky. 427, 3 S. W. (2d) 1077 (1928); *Northern Pac. Ry. Co.* v. *Adams County*, 78 Wash. 53, 138 Pac. 307 (1914); *Chaput* v. *Demars*, 120 Kans. 273, 243 Pac. 311, 244 P. 1042 (1926); *Davis* v. *State*, 141 Ala. 84, 37 So. 454 (1904); *State* v. *Pape*, 103 Wash. 319, 174 Pac. 468; Note, 58 A. L. R. 215 (1928). It seems clear, further, from the cases immediately above cited, that the power to require such operations at the expense of the landowner may be exercised even though the benefit to flow from the operations is for the community at large rather than for the particular landowner who is required to perform.

It is my opinion, therefore, that the police power of the States should be deemed to extend to regulating land use in the interests of conserving soil resources and preventing and controlling soil erosion. I have indicated above that the standard act here considered involves, in addition to regulating land use in this manner, appropriations of funds out of the State treasury to carry on projects for the same purpose. The next question which confronts us, therefore, is: Are appropriations to finance the establishment and administration of erosion control projects for a "public purpose" and within the power of State legislatures?

2. ARE THE APPROPRIATIONS AUTHORIZED IN THE STANDARD ACT FOR A "PUBLIC PURPOSE"?

State constitutions generally provide, either expressly or by implication, that tax proceeds may be expended only for public purposes. The United States Supreme Court has strengthened this requirement by deciding that the due process clause of the Fourteenth Amendment to the Federal Constitution is violated by an appropriation by a State legislature of the proceeds of taxes for other than a public purpose: *Loan Association* v. *Topeka*, 20 Wall. (U. S.) 655 1874); *Parkersburg* v. *Brown*, 106 U. S. 487, (1882); *Cole* v. *LaGrange*, 113, U. S. 1 (1885). The Supreme Court has indicated, however, that only in extreme cases will it permit its judgment as to what constitutes a public purpose to override the judgment of the State legislature when supported by the decisions of the State courts: *Jones* v. *City of Portland*, 245 U. S. 217 (1917); *Green* v. *Frazier*, 253 U. S. 233 (1920).

The standard act authorizes appropriations to defray the administrative expenses of the various agencies provided for in the act, and to provide a sum of money to be divided annually among the districts in the State to finance the establishment and operation by the districts of erosion-control projects of various types. From the conclusion above stated to the effect that the police power of the State extends to regulating land use in the interest of erosion control, it will follow that the State may appropriate money to cover the necessary administrative expenses in effectuating such regulation. It would be futile for a court to hold that the legislature may prescribe certain regulations but may not appropriate money to enforce them. The appropriation for administrative expenses may therefore be said to stand or fall with the conclusion that this legislation is

within the police power of the States. See *Neal* v. *Boog-Scott*, 247 S. W. 689 (Tex. Civ. App. 1923) and *Neal* v. *Cain*, 247 S. W. 694 (Tex. Civ. App. 1923).

A good deal of the work of the districts will, however, consist of construction and other work to be performed upon privately owned lands. Under section 8 of the standard act the districts will have power, upon obtaining the consent of the land occupier, to build terraces and check dams upon his lands; to contribute labor and materials to the performance of control operations upon privately owned lands; to lend, for a small charge or without charge, the use of agricultural machinery and equipment; to distribute seeds and seedlings, and otherwise generally to assist private landowners to control erosion on their lands. The purpose of this work is, of course, to make erosion control effective, and section 2 of the act summarizes in detail the ways in which such erosion control activities will redound to the benefit of the entire State. Yet it cannot be denied that individual land occupiers will be receiving private benefit from such expenditure of the appropriations.

The general rule seems to be that where the benefit to the individual is but incidental to the object of achieving a benefit to the general public, the appropriation will be held to be for a public purpose: *Kentucky Live Stock Breeders' Association* v. *Hager*, 120 Ky. 125, 85 S. W. 738 (1905); *State* v. *Robinson*, 35 Neb. 401, 53 N. W. 213 (1892); *Merchants Union Barb-Wire Co.* v. *Brown*, 64 Ia. 275, 20 N. W. 434 (1884); *Millard* v. *Roberts*, 202 U. S. 429 (1906); *In re Opinions of the Justices*, 118 Me. 503, 106 Atl. 865 (1919); *City of Kearney* v. *Woodruff*, 115 Fed. 90 (C. C. A. 8th 1902) cf. *Allied Architects' Association of Los Angeles* v. *Payne*, 192 Cal. 431, 221 Pac. 209 (1923). It is not always possible to predict whether the court will hold the private benefit to be merely incidental or to be the major object of the legislation. Thus, in *State ex. rel. Moody* v. *Williams*, 43 Nev. 290, 185 Pac. 459 (1919), the court invalidated expenditures for reclamation purposes involving loans to individual farmers. On the other hand, in *Kentucky Live Stock Breeders' Association* v. *Hager*, and *State* v. *Robinson*, both *supra*, the court sustained an appropriation to a private organization for the conduct of a State agricultural fair, and in *Merchants Union Barb-Wire Co.* v. *Brown*, *supra*, the Iowa Supreme Court sustained an appropriation of moneys to a nonprofit company to assist that company in defending patent infringement suits, the company having been organized to furnish barbed wire to farmers at cost.

In the case of land settlement schemes where public funds have been appropriated to make loans to settlers, the benefit derived by the settlers has been considered merely incidental to the public welfare involved in opening up agricultural lands to cultivation: *State ex rel. State Reclamation Board* v. *Clausen*, 110 Wash. 525, 188 Pac. 538 (1920); *Wheelon* v. *South Dakota Land Settlement Board*, 43 S. Dak. 551, 181 N. W. 359 (1921); *Veterans' Welfare Board* v. *Jordan*, 189 Cal. 124, 208 Pac. 284 (1922); *McMahan* v. *Olcott*, 65 Ore. 537, 133 Pac. 836 (1913). On the other hand, direct bounties to farmers and agricultural industries have been held unconstitutional as not for a public purpose: *Oxnard Beet Sugar Co.* v. *State*, 73 Neb. 57, 66; 102 N. W. 80, 105 N. W. 716 (1905);

Michigan Sugar Co. v. *Auditor General*, 124 Mich. 674, 83 N. W. 625 (1900); *Minnesota Sugar Co.* v. *Iverson*, 91 Minn. 30, 97 N. W. 454 (1903) (the three foregoing cases involving sugar bounties); *Deal* v. *Mississippi County*, 107 Mo. 464, 18 S. W. 24 (1891) (bounty for planting trees). On the related question of whether loans to farmers to purchase seed and for other relief purposes in times of emergency are appropriations for a public purpose the courts have divided, such appropriations having been sustained in: *Cobb* v. *Parnell*, 183 Ark. 429, 36 S. W. (2d) 388 (1931); *State ex rel. Cryderman* v. *Wienrich*, 54 Mont. 390, 170 Pac. 942 (1918); and *State* v. *Nelson County*, 1 N. D. 88, 45 N. W. 33 (1890), and having been disapproved in *William Deering & Co.* v. *Peterson*, 75 Minn. 118, 77 N. W. 568 (1898); *Patty* v. *Colgan*, 97 Cal. 251, 31 Pac. 1133 1893); *State ex rel. Griffith* v. *Osawkee Tp.*, 14 Kans. 418 (1875), and *In re Opinion of the Judges*, 59 S. D. 469, 240 N. W. 600 (1932).

General expenditures for the benefit of agriculture have been upheld on the specific ground that they tend to preserve farm lands from erosion: *Kroon* v. *Jones*, 198 Iowa 1270, 201 N. W. 8 (1924) (see discussion of this case herein, p. 39); *Perkins* v. *Board of Comr's of Cook County*, 271 Ill. 449, 111 N. E. 580 (1916); but cf. *State* v. *Donald*, 151 N. W. 331 (Wis. 1915). In *Scott* v. *Frazier*, 258 Fed. 669 (D. N. Dak. 1919) and *Green* v. *Frazier*, 44 N. D. 395, 176 N. W. 11, affirmed in 253 U. S. 233 (1920), the entry of the State into the warehouse and grain elevator business was sustained in part on the ground that the State purpose was to protect farmers from manipulative marketing practices, and in part on the ground that soil conservation would be thereby promoted. It is important to recognize that both on the question earlier considered as to the limits of the police power, and on the present question of what appropriations may be said to be for a public purpose, the reported decisions must be considered in the light of the year in which they were decided. There is considerable movement in the judicial decisions in these fields. Thus, the courts originally divided sharply on the question of the constitutional propriety of using public funds for the drainage of lands for agricultural purposes. The following cases held such expenditures to be for a public purpose: *Hagar* v. *Reclamation District No. 108*, 111 U. S. 701 (1884); *Houck* v. *Little River Drainage District*, 239 U. S. 254 (1915); *Miller & Lux* v. *Sacramento and San Joaquin Drainage District*, 256 U. S. 129 (1921); *Billings Sugar Co.* v. *Fish*, 40 Mont. 256, 106 Pac. 565 (1910); *Coster* v. *Tide Water Co.*, 18 N. J. Eq. 54, reversed on other grounds in 18 N. J. Eq. 518 (1866); *Drainage Dist. No. 1* v. *Richardson County*, 86 Neb. 355, 125 N. W. 796 (1910), and *Brown* v. *Keener*, 74 N. C. 714 (1876), while in the following cases such expenditure was held invalid: *Kinnie* v. *Bare*, 68 Mich. 625, 36 N. W. 672 (1888); *In re Theresa Drainage District*, 90 Wis. 301, 63 N. W. 288 (1895); *In re Tuthill*, 163 N. Y. 133, 57 N. E. 303 (1900). Today, however, there is very little tendency to deny the propriety of appropriations for such purposes: cf. *Drainage Dist. No. 1* v. *Richardson County*, 86 Neb. 355, 125 N. W. 796 (1910); *City of Huntington* v. *Amiss*, 167 Ind. 375, 79 N. E. 199 (1906); *Sisson* v. *Board of Sup'rs of Buena Vista County*, 128 Iowa 442, 104 N. W. 454 (1905); *Grand River Drainage Dist.* v. *Moseley*, 220 S. W. 886 (Mo. 1920); *Lucas* v. *Blaine*, 42 Ohio App. 177, 181 N. E. 269 (1931). Similarly, the validity of expenditures of public money for irrigation projects is established: *Fallbrook Irrigation District* v. *Bradley*, 164 U. S. 112, 163 (1896); *In re Madera Irrigation District*, 92 Cal. 276, 28 Pac. 272 (1891); *McMahan* v. *Olcott*, 65 Ore. 537, 133 Pac. 836 (1913); *Cummings* v. *Hyatt*, 54 Neb. 35, 74 N. W. 411 (1898); cf. *Billings Sugar Co.* v. *Fish*, 40 Mont. 256, 106 Pac. 565 (1910).

Section 2 of the standard act recites the numerous ways in which public purposes are advanced by the conduct of erosion-control operations. It seems to me to be difficult to escape the conviction that since the present appropriations have for their tendency and object the control and prevention of soil erosion, the preservation of natural resources, the control of floods, the prevention of the impairment of dams and reservoirs, the preservation of wildlife, the protection of the tax base, and the promotion of the health and general welfare of the people of the State, they are for a public purpose. The benefits received by individuals from operations upon their lands are incidental to these public benefits precisely because the harm sustained by the public from uncontrolled erosion so far exceeds the decline in the value of agricultural lands which a single farmer may sustain from mining his soil and permitting his topsoil to wash and blow away.

The discussion thus far brings us to the conclusion that it is within the power of the State legislatures to provide for regulation of private land-use in the manner specified in the standard act in the interest of erosion control and, further, that it is within their power to appropriate funds out of the State treasuries to finance the establishment and operation of erosion-control projects. The present inquiry into the constitutionality of the standard act would terminate here, therefore, if that act itself contained the land-use regulations, enacted into law by the State legislature and made applicable over the entire State, and if the statute, similarly, itself defined what projects should be established and delegated appropriate authority to State officials to establish and administer them. That is not, however, what the standard act does. In order to realize the maximum amount of local participation in, and control of, erosion-control operations, the statute provides instead for the organization, in accordance with specified procedures, of soil conservation districts. It is the governing bodies of the districts which are authorized to enact land-use regulations into law and to establish and administer erosion-control projects; and it is to the districts that the appropriated funds are to be made available for expenditure. We come, therefore, upon a second set of constitutional problems—problems with reference to the procedures specified for the creation of districts, the expenditure of funds, and the adoption of land-use regulations.

3. DO THE STATE LEGISLATURES HAVE POWER TO PROVIDE FOR THE ORGANIZATION OF SOIL CONSERVATION DISTRICTS AS NEW GOVERNMENTAL SUBDIVISIONS OF THE STATES?

It is clear from the standard act that the soil conservation districts which the statute provides for are not mere administrative boards or agencies of the State government. The standard act recites in section 8 that "A soil conservation

district organized under the provisions of this act shall constitute a governmental subdivision of this State and a public body, corporate and politic, exercising public powers". (To the same effect is sec. 3 (1)). Section 9 of the act confers upon the supervisors of the districts authority to act as a legislative body for the district, and as such legislative body to enact into law land-use regulations which will govern land-use operations upon lands within the districts. Similarly, section 12 directs the supervisors under certain circumstances to establish a board of adjustment as an administrative agency, such establishment to be effected by an ordinance to be adopted by the supervisors. It is important that there be kept clearly in mind the distinction between a governmental subdivision of a State, familiar instances of which are the county, town, city, and incorporated village, and an administrative board or agency, such as a railroad commission, a bureau of the State government, an election board, and the like. The State soil conservation committee provided for in section 4 of the standard act is, for example, an administrative board and is not a governmental subdivision of the State. It should be noted, too, that the "districts" now commonly provided for in State legislation, such as sanitary, power, road, reclamation, irrigation, and drainage districts, are generally established merely as administrative agencies to operate particular engineering or other properties, without legislative or other powers within the "district". The soil conservation districts are more closely similar to cities and counties than to such "districts".

The first question which confronts us at this point is: Do the State legislatures have authority to provide for the creation of new governmental subdivisions, to function in addition to the traditional governmental subdivisions such as the county, town, city, and the like? While this question has been directly passed upon by the highest courts of only a few States, it seems clear that, with the possible exception of New York, the State legislatures will be held to have power to create the soil conservation districts as new governmental subdivisions of the respective States, as provided for in the standard act. In the following States it has been directly held that the State legislature may, in its discretion, create such additional municipalities or other governmental subdivisions of the State as it shall deem necessary or appropriate: *California: In re Bonds of Madera Irrigation District*, 92 Cal. 296, 28 Pac. 272, 675 (1891); *Illinois: Board of Education of Chicago* v. *Upham*, 357 Ill. 263, 191 N. E. 876 (1934); *People ex rel Weis* v. *Bowman*, 247 Ill. 276, 93 N. E. 244 (1910); *West Chicago Park Commission* v. *City of Chicago*, 152 Ill. 392, 38 N. E. 697 (1894); *Wilson* v. *Board of Trustees of Sanitary District of Chicago*, 133 Ill. 443, 27 N. E. 203 (1890); *Maine: Kennebec Water District* v. *City of Waterville*, 96 Me. 234, 52 Atl. 774 (1902); *Eaton* v. *Thayer*, 128 Atl. 475 (Me. 1925); *Michigan: Kuhn ex rel McRae* v. *Thompson*, 168 Mich. 511, 134 N. W. 722 (1912); *Missouri: Harris* v. *William R. Compton Bond & Mortgage Co.*, 244 Mo. 664, 149 S. W. 602 (1912); *North Carolina: Newsom* v. *Earnheart*, 86 N. C. 391 (1882); *Oregon: Shaw* v. *Harris*, 54 Ore. 424, 103 Pac. 777; *Washington: Paine* v. *Port of Seattle*, 70 Wash. 294, 126 Pac. 628, 127 Pac. 580 (1912). Cf. *Kentucky: Board of Trustees of Town of New Castle* v. *Scott*, 125 Ky. 545, 101 S. W. 944 (1907); *South Carolina: Briggs* v. *Greenville County*, 135 S. E. 153 (S. C. 1926).

While the decisions available in the States of New Jersey and Pennsylvania raise some doubt, it is probable that in these States as well it will be held that the legislature may create new governmental subdivisions of the type provided for in the standard act: See *Van Cleve* v. *Passaic Valley Sewerage Com'rs.*, 71 N. J. L. 574, 60 Atl. 214 (1905); *Lydecker* v. *Drainage & Water Com'rs. of Englewood*, 41 N. J. L. 154 (1878); Dillon, Municipal Corporations (5th ed. 1911) sec. 1434; *In re Corporation of Wyoming Valley Water Supply District*, 27 Luzerne Legal Register (Pa.) 191 (1932). It may well be, however, that if the Court of Appeals of New York will adhere to its decisions in *People ex rel Yost* v. *Becker*, 203 N. Y. 201, 96 N. E. 381 (1911) and *Miller* v. *Cavana*, 223 N. Y. 601, 119 N. E. 1059 (1918), then the present constitution of New York will be held to prohibit the legislature of that State from organizing governmental subdivisions within the State other than counties, towns, cities, and villages. In the *Becker* case the New York court held that the recognition given in the State constitution to counties, towns, cities, and villages is an implied prohibition against the creation of other subdivisions vested with similar powers. However, the New York courts have sustained the organization of districts given power only to administer certain engineering or other properties and not given general governmental powers: *Village of Kensington* v. *Town of N. Hempstead*, 236 App. Div. 340, 258 N. Y. Supp. 355 (1932), aff'd 261 N. Y. 260, 185 N. E. 94 (1933), sustaining collection of taxes by park district; *People ex rel Desiderio* v. *Conolly*, 238 N. Y. 326, 144 N. E. 629 (1924), sustaining issuance of bonds to finance operations of sewer district; *Kenwell* v. *Lee*, 261 N. Y. 113, 184 N. E. 692 (1933), involving creation of water supply district. In the last two cited cases the court stated that the territories of the sewer and water supply districts were "special administrative areas" and hence not within the doctrine of the *Becker* case.

There is no way of determining in advance what the New York court will answer to this question. I believe that in the case of New York the difficulty should be pointed out to the legislative committees of the State legislature. If they should determine that the precedent of the *Becker* case will make an adverse decision almost certain, then the statute can be readily revised to meet the special situation in New York. The revised statute can authorize the existing counties of the State to undertake the erosion-control programs specified in the act and to exercise the powers granted in sections 8 to 12 inclusive. It will still be possible to provide that the governing bodies of the counties shall adopt land-use regulations only after advisory referenda and in accordance with the other procedures specified in the act. The standard act as now submitted provides for the organization of new districts rather than for utilizing existing counties, because of the opinion held by members of the Land Policy Committee and of the Soil Conservation Service that it will be best to organize the districts on a watershed or other appropriate basis rather than in accordance with highly arbitrary county boundary lines. Because of the *Becker* decision it

may, however, be necessary to organize the districts on a county basis in the State of New York.

We come next to the question whether, in those States in which new governmental subdivisions may be organized, the doctrine of separation of governmental powers will be held to be applicable to such subdivisions. Governmental subdivisions of the States may be authorized to exercise, over the territory committed to them, the complete range of governmental powers which the State itself may exercise over the territory of the State. It is within the power of the State legislature to confer upon governmental subdivisions broad or narrow powers as the legislature shall see fit. Additional powers may be conferred upon such governmental subdivisions from time to time and powers formerly exercised may be taken away. (A familiar instance of the grant of new powers to governmental subdivisions is the movement now under way for State legislatures to adopt enabling acts conferring upon counties of the State the power to zone rural areas within the county.) The standard act specifies in detail what powers the soil conservation districts may exercise. (See particularly secs. 8 to 12, inclusive.)

Governmental powers are traditionally considered to be divisible into three types: Legislative, executive, and judicial. Since the soil conservation districts are to be governmental subdivisions and not merely administrative boards, the three types of powers may be conferred upon them. Most, if not all, of the State constitutions establish a separation of powers among the legislature, the executive, and the courts and forbid delegations of power by one of these agencies to another. It has become well established, however, that the requirement of separation of powers contained in the respective State constitutions is applicable only to the State government, and is not applicable to governmental subdivisions of the several States. A single governing body of such a governmental subdivision may, therefore, be authorized to exercise legislative, executive, and judicial powers: Charles W. Tooke, Construction and Operation of Municipal Powers, 7 Temple Law Quarterly 267 at 283, April 1933 (in which the author says: "The constitutional doctrine of the separation of the powers of government does not apply to the subordinate agencies of the state and therefore the authority to enact ordinances or to do other acts within the scope of municipal powers may be conferred upon local administrative bodies"); 12 Corpus Juris 804 (in which the rule is stated as follows: "The application of the 'distributive' clause is confined mainly to the sphere of central government; it finds little observance in municipal corporations, or in other units of local government; thus, a commission form of government with blended powers may be established by statute unless otherwise prohibited by the constitution"); *State* v. *Lane*, 181 Ala. 646, 62 So. 31 (1913); *Ford* v. *Mayor and Council of Brunswick*, 134 Ga. 820, 68 S. E. 733 (1910); *City of Spartanburg* v. *Parris*, 85 S. C. 227, 67 S. E. 246 (1910); *State ex rel Simpson* v. *City of Mankato*, 117 Minn. 458, 136 N. W. 264 (1912); *People* v. *Provines*, 34 Cal. 520; *Eckerson* v. *City of Des Moines*, 137 Iowa 452, 115 N. W. 177 (1908); *Kaufman* v. *Tallahassee*, 84 Fla. 634, 94 So. 697, 30 A. L. R. 471 (1922); *Sarlls* v. *State ex rel Trimble*, 201 Ind. 88, 166 N. E. 270 (1929); cf. *Bryan* v. *Voss*, 143 Ky. 422, 136 S. W. 884; *State ex rel Baughn* v. *Ure*, 91 Neb. 31, 135 N. W. 224 (1912); *Barnes* v. *City of Kirksville*, 266 Mo. 270, 180 S. W. 545 (1915); *Brown* v. *City of Galveston*, 97 Tex. 1, 75 S. W. 488 (1903); *Mayor, etc. City of Jackson* v. *State ex rel Howie*, 102 Miss. 663, 59 So. 873 (1912); *Larsen* v. *Salt Lake City*, 44 Utah 437, 141 Pac. 98 (1914); *State ex rel Hunt* v. *Tausick*, 64 Wash. 69, 116 Pac. 651 (1911).

It is common, in practice, for such governing bodies to exercise both legislative and executive powers, but a separate agency is generally established to exercise judicial powers within the subdivision. The standard act observes this prevailing practice. The boards of supervisors of the districts are authorized to act as both the legislative body and the executive officers of the district. For exercise of judicial power within the district, it is provided that recourse is to be had to the existing local courts. (Compare secs. 10 and 12 of the act.) Inasmuch as legal problems arising out of the operations of the districts will necessarily be problems arising out of the operation of a State statute under which the districts will have been organized, the courts of the States and localities will be able to exercise their usual jurisdiction over the interpretation and enforcement of State legislation.

4. CONSTITUTIONAL VALIDITY OF THE PROCEDURES SPECIFIED FOR ORGANIZING THE DISTRICTS.

The two basic steps involved in the organization of districts of any kind in the several States are: the determination of what lands shall be included within the boundaries of the district and the determination whether the district, once the boundaries have been properly defined, shall be created. On the basis of the due process clause, the courts have surrounded the making of these two determinations with constitutional safeguards. I shall discuss (1) the requirements with reference to the fixing of boundaries for districts and (2) the allowable procedures for determining whether a district shall be created.

It is now well settled that, if the legislature is itself willing to prescribe what shall be the boundaries of a district or other subdivision which it wishes to create, due process of law does not require that the landowners affected be given notice and an opportunity to be heard on the question whether their lands shall be included within, or excluded from, the defined boundaries: *Browning* v. *Hooper*, 269 U. S. 396 (1926); *Oregon Short Line* v. *Clark County Highway District*, 22 F. (2d) 681 (D. Ida. 1927); *Valley Farms Co.* v. *Westchester*, 261 U. S. 155 (1923); *Hancock* v. *Muskogee*, 250 U. S. 454 (1919). Where, however, a tax or assessment district is to be created and the legislature has not, in the statute providing for creation of such districts, itself defined the boundaries of the district, the owners of the property affected must be given notice and an opportunity for a hearing on the inclusion of their property within the proposed boundaries, before an administrative official who is authorized to determine the relevant questions, either before the boundaries are fixed or before the tax or assessment is levied upon any property by virtue of its inclusion within the

boundaries: *Fallbrook Irrigation District* v. *Bradley*, 164 U. S. 112 (1896); *Browning* v. *Hooper*, 269 U. S. 396 (1926); *Connor* v. *Board of Commissioners of Logan County*, 12 F. (2d) 789 (D. Ohio 1926); *Oregon Short Line* v. *Clark County Highway District*, 17 F. (2d) 125 (D. Idaho 1927); *Elliott* v. *Wille*, 112 Neb. 78, 86, 198 N. W. 861, 200 N. W. 347 (1924); *Ruwe* v. *School District*, 120 Neb. 668, 234 N. W. 789 (1931); *State ex rel Merriman* v. *Ball*, 116 Tex. 527, 296 S. W. 1085 (1927); *In re Bonds of Orosi*, 235 Pac. (Calif. 1004) (1925); *Embree* v. *Kansas City & Liberty Boulevard Road District*, 240 U. S. 242 (1916).

There is some ground for the contention that where the entity to be created is not to be a tax or assessment district but a municipal corporation, due process does not require that notice and an opportunity for hearing be extended on the question of where the boundaries shall be laid. (See *Ford* v. *Incorporated Town of North Des Moines*, 80 Ia. 626, 45 N. W. 1031 (1890); *Goodrich Falls Electric Co.* v. *Howard*, 86 N. H. 512, 171 Atl. 761 (1934); *Fallbrook Irrigation District* v. *Bradley*, 164 U. S. 112 (1896); but compare *People ex rel Shumway* v. *Bennett*, 29 Mich. 451 (1874); *Territory ex rel Kelly* v. *Stewart*, 1 Wash. 98, 23 Pac. 405 (1890); *Ruwe* v. *School District*, 120 Neb. 668, 234 N. W. 749 (1931); *In re Bonds of Orosi Public Utility District*, 196 Cal. 43, 235 Pac. 1004 (1925)). It is difficult to determine whether the districts provided for in the standard act are to be considered assessment districts or municipalities for the purposes of the rule under discussion. The soil conservation districts are not given authority to levy any property taxes or assessments. However, the scope of the land-use regulations which they are authorized to enact into law is sufficiently broad so that it may be anticipated that particular landowners may be required to undertake operations upon their lands which may prove expensive. While this is not strictly an "assessment" yet in its economic effects it may be said to be analogous to an assessment. It is worth noting that in some cases the courts have drawn analogies between compulsory road labor and special assessments levied for the maintenance of roads: *Cooper* v. *Ray*, 148 Ind. 328, 47 N. E. 668 (1897); *Pleasant* v. *Kost*, 29 Ill. 490 (1863); *Fox* v. *Rockford*, 38 Ill. 451 (1865); *Amenia* v. *Stanford*, 6 Johns (N. Y.) 92 (1810); *Starksborough* v. *Hinesburgh*, 13 Vt. 215 (1841). It should be noted, too, that while the soil conservation districts are governmental subdivisions of the State rather than mere administrative boards, their legislative and other governmental powers extend only over the field of control of soil erosion. It may well be argued, therefore, that they are not municipalities in the full sense, since it is common for true municipalities to have general governmental power over the territory within their boundaries. For all of these reasons it seems to me the part of wisdom to regard these districts as subject to the same requirements as to procedural due process to which they would be subject if they had authority to levy taxes and assessments in the strict sense.

The procedure prescribed in the standard act observes the requirements summarized above in determining the location of the boundaries. Section 5 of the act provides that any 25 land occupiers may file a petition with the State soil conservation committee asking that a soil conservation district be organized to function in the territory described in the petition. Within 30 days after such

a petition has been filed, the State committee is required to give notice of a proposed hearing upon all questions in connection with the petition. After such hearing, the State committee is required to determine whether there is need in the public interest for a district to function in the territory considered and, if it should determine this question in the affirmative, the committee is required to define the boundaries of the proposed district. The statute thus provides notice and opportunity for hearing upon the question of location of the boundaries, and provides for administrative determination of where the boundaries shall lie.

It is important, however, that the statute shall not involve an improper delegation of legislative power to the State committee. To avoid falling into that difficulty, it is necessary that the statute contain an explicit standard which is to guide the State committee in making its administrative determinations. Such a standard is provided in the present act. Section 5 provides, in part, that: "In making such determination and in defining such boundaries, the committee shall give due weight and consideration to the topography of the area considered and of the State, the composition of soils therein, the distribution of erosion, the prevailing land-use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits such lands may receive from being included within such boundaries, the relation of the proposed area to existing watersheds and agricultural regions, and to other soil conservation districts already organized or proposed for organization under the provisions of this act, and such other physical, geographical, and economic factors as are relevant, having due regard to the legislative determinations set forth in section 2 of this act."

The courts have divided on the question whether, assuming the boundaries of a proposed district are properly determined, the issue of whether the district shall come into existence may be submitted to a referendum of the appropriate persons in the district, the result of such referendum to determine the issue. (See *State ex rel County Attorney* v. *Lamont*, 105 Kan. 134, 181 Pac. 617 (1919): *People ex rel Unger* v. *Kennedy*, 207 N. Y. 533, 101 N. E. 442 (1913); *Johnson* v. *Park Commissioners*, 202 Ind. 282, 174 N. E. 91 (1930); *Commonwealth* v. *Judges*, 8 Pa. St. 391 (1848); *People ex rel Caldwell* v. *Reynolds*, 10 Ill. 1 (1848); *Ford* v. *North Des Moines*, 80 Iowa 626, 45 N. W. 1031 (1891); *Bray* v. *Stewart*, 239 Mich. 341, 214 N. W. 193 (1927); *Goodrich Falls* v. *Howard*, 86 N. H. 512, 171 Atl. 761 (1934).) In most of the States the question has not been directly passed upon. However, even in the States in which it has been held that the determination of this issue may not be left to those eligible to vote in a referendum on the question, it seems, nevertheless, to be the rule that it is legitimate to provide for a referendum if the result of such referendum is merely made advisory to a designated administrative board, so that such board must itself determine whether the district shall come into existence, subject to a standard to be stated in the statute, giving due consideration to the result of the referendum, but not being bound thereby. It is clear, therefore, that if the statute is drawn in accordance with this formula it will be deemed valid in all of the States,

whatever their rule may be on the power to make the referendum conclusive. The standard act has been drawn so as to comply with this formula and it is therefore anticipated that the procedure should be held valid in all States.

Subsection B of section 5 of the standard act, thus requires the State committee to determine whether there is need for the organization of a district, and to define the boundaries of the district in accordance with the standard quoted above. Subsection C of section 5 then provides that thereafter the committee shall consider the question whether the operation of a district within such boundaries is administratively practicable and feasible. It is provided that to assist the committee in the determination of such administrative practicability and feasibility it shall be the duty of the committee to hold a referendum within the proposed district upon the proposition of the creation of the district. After such referendum, the committee is directed to determine whether the operation of the district within the defined boundaries is adminitsratively practicable and feasible, and the statute provides that "In making such determination the committee shall give due regard and weight to the attitudes of the occupiers of lands lying within the defined boundaries, the number of land occupiers eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the proposed district, the probable expense of carrying on erosion-control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative determinations set forth in section 2 of this act; provided, however, that the committee shall not have authority to determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible unless at least a majority of the votes cast in the referendum upon the proposition of creation of the district shall have been cast in favor of the creation of such district". Under this provision, the State committee will have power to decide that the district shall not be created even though the referendum yields a majority vote in favor of such creation. The committee will not, however, have authority to decide that the district shall be created where the referendum has yielded a majority of the votes opposed to such creation.

The courts have in some cases indicated that they will not assume that the discretion to be exercised by an administrative board after such a referendum will not be the exercise of genuine discretion, or that the entire procedure is a subterfuge to avoid the effect of the rule against delegation of legislative power to those eligible to vote in the referendum. In the present case, however, there is no room for argument that the procedure is intended merely as a subterfuge. If we assume, for example, that within a proposed district, 500 land occupiers are eligible to vote but only 40 of them do in fact vote in the referendum on the creation of the district, and that the result of the vote in that referendum is 22 in favor of creation and 18 opposed, the State committee may very well decide that despite the technically affirmative majority vote, the result of that referendum should be regarded as adverse and may decide that operation of the district

is not administratively feasible. It should be noted, also, that the standard quoted above requires the State committee to consider not alone the vote in the referendum but also such other relevant matters as the attitudes of land occupiers, whether or not they have voted, the probable expense of carrying on erosion-control operations within the district, the approximate wealth and income of the land occupiers and other relevant economic and social data.

For all of these reasons it is my opinion that the procedures prescribed in section 5 of the standard act for creating the districts and fixing their boundaries are valid, in that they do not involve improper delegations of legislative power and they conform to the safeguards required by the due process guaranty.

5. CONSTITUTIONAL VALIDITY OF THE PROCEDURES SPECIFIED FOR ADOPTING AND ENFORCING LAND-USE REGULATIONS.

The question of the constitutional power of the State legislature to require by law modifications in land-use practices of the type provided for in the standard act, in the interest of erosion control, has been considered above and we have concluded that the enactment of such regulations is within the police power (pp. 36, 44). The validity of the procedures specified in the act for adoption and enforcement of such regulations may, however, likewise be challenged. It is my opinion that the procedures provided in the standard act do not violate any constitutional requirements or guaranties.

Section 9 of the act provides that the supervisors of any district may formulate tentative land-use regulations for the conservation of soil and soil resources and the prevention and control of erosion. They may conduct hearings upon the tentative regulations to assist them in this work. It is provided that the supervisors shall not have authority to enact the land-use regulations into law until after the regulations have been submitted to a referendum of the land occupiers on the question of approval of the regulations. The approval of the proposed regulations by a majority of the votes cast in the referendum does not make the adoption of the regulations compulsory upon the supervisors. The supervisors may not, however, enact the proposed regulations into law unless at least a majority of the votes cast in the referendum have been cast for approval of the regulations.

The supervisors of the soil conservation districts in adopting land-use regulations under this procedure will be acting as legislative bodies. Provisions against delegation of legislative power to administrative boards are hence wholly inapplicable. There is no provision in any of the State constitutions, and certainly none in the Federal Constitution, prohibiting the holding of referenda or plebiscites upon particular issues on any subject whatsoever where a legislative body may wish to ascertain the state of public opinion upon an issue or program which is under consideration by the legislature.

It has, indeed, been held that a provision for submission of a regulatory statute to a referendum, the statute not to go into effect unless it is approved by a stated number of votes in such referendum, is an improper delegation of legislative power to the eligible voters. (See *Weir* v. *Cram*, 37 Iowa 649

(1873); *Lammert* v. *Lidwell*, 62 Mo. 188 (1876); *Wright* v. *Cunningham*, 115 Tenn. 445, 91 S. W. 293 (1905).) The cases are in considerable confusion on this point so that it is very difficult to ascertain what is the rule even in particular States, and it is almost impossible to determine whether there is a general rule and if so, what that is. However, the procedure prescribed in section 9 of the standard act makes it unnecessary to determine what the rule may be, since the statute expressly provides that the vote in the referendum shall not be conclusive upon the supervisors. The referendum is, therefore, advisory merely and the authority to enact land-use regulations into law will have been conferred by the State legislature (upon its adoption of the standard act) upon the supervisors of the districts in their capacities as the legislative bodies of such districts. That the State legislatures have power to create new subdivisions to exercise legislative power within designated boundaries has been shown earlier herein (p. 47).

Two constitutional questions may be raised concerning the procedures provided for enforcement of the land-use regulations. These may be briefly here considered.

(1) Section 10 of the act provides that the supervisors shall have authority to go upon any lands within the district to determine whether land-use regulations adopted under section 9 of the act are being observed. The provision in the Fourth Amendment to the Federal Constitution that "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated * * *" is binding only upon the Federal Government and is hence inapplicable to State legislation. Similar provisions are, however, common in State constitutions which, in fact, frequently copy the precise wording of the Fourth Amendment. (Cf. Minnesota Constitution, art. I, sec. 10; Colorado Constitution, art. II, sec. 7; Florida Constitution, "Declaration of Rights", sec. 22; Georgia Constitution, art. II, sec. 1, par. XVI.) It is generally held that lands and open fields are not within the protection of the "search and seizure" clauses: *Hester* v. *United States*, 265 U. S. 57 (1924); *United States* v. *Western & Atlantic R. Co.*, 297 F. 482 (D. C. Ga. 1924) cf. *Smith* v. *United States*, 2 F. (2d) 714 (C. C. A. 4th, 1924); *Boyd* v. *United States*, 286 F. 930 (C. C. A. 4th, 1923); *Koscielski* v. *State*, 199 Ind. 546, 158 N. E. 902 (1927); *State* v. *Quinn*, 111 S. C. 174, 97 S. E. 62, 3 A. L. R. 1500 (1918); *Brent* v. *Commonwealth*, 194 Ky. 504, 240 S. W. 45 (1922); *State* v. *Arnold*, 84 Mont. 348, 275 Pac. 757 (1929); *State* v. *George*, 32 Wyo. 223, 231 Pac. 683 (1924).

The constitutions of some of the States add the word "possessions" to the list of things protected by the search and seizure clause. Mississippi has held that open fields are included within the word "possessions": *Falkner* v. *State*, 134 Miss. 253, 98 So. 691 (1924). It is generally held, however, that lands and fields are not included within the term "possessions": *Brent* v. *Commonwealth*, 194 Ky. 504, 240 S. W. 45 (1922); *Melton* v. *State*, 49 S. W. (2d) 803, (Tex. Cr. App. 1932); *Wolfe* v. *State*, 110 Tex. Cr. App. 124, 9 S. W. (2d) 350 (1928); *McTyre* v. *State* 113 Tex. Cr. App. 31, 19 S. W. (2d) 49 (1929); *Cotton* v. *Commonwealth*, 200 Ky. 329, 254 S. W. 1061 (1923); *Simmons* v. *Commonwealth*, 210 Ky. 33, 275 S. W. 369 (1925). It should be noted, however, that the lot or portion of land adjacent to the dwelling and other buildings occupied, generally referred to as the "curtilage", is within the protection of the search and seizure clause. (See *Mullen* v. *Commonwealth*, 220 Ky. 656, 295 S. W. 987 (1928); *Welch* v. *State*, 154 Tenn. 60, 289 S. W. 510 (1926).)

The search-and-seizure prohibition should not, however, raise any serious difficulty. If in any State a court should hold that the provision for inspection of lands violates that prohibition, this provision of the act will fall, but it is separable from the remaining provisions. (Compare sec. 17 of the act.) In a State in which such a decision has been rendered, the supervisors will be required to secure a search warrant before inspecting lands, but this requirement should not be difficult to comply with. It is apparently well established that public officers entering private lands in the performance of public functions, where the entry is authorized by statute and is made in good faith, are not liable in trespass. (See cases collected in note in 90 A. L. R. 1481 (1934); *Wallace* v. *Feehan*, 190 N. E. 438 (Ind. 1934). Nor may their entry be enjoined. (*Ryan* v. *Amazon Petroleum Co.*, 71 F. (2d) 1, (C. C. A. 5th, 1934); *Van Gunten* v. *Worthley, Administrator of the European Corn Borer Control*, 25 Ohio App. 496, 159 N. E. 326 (1927); *Wallace* v. *Donher*, 89 Ind. App. 416, 165 N. E. 552 (1929).) Nor do the courts recognize a right of privacy in open fields. (Cf. *People* v. *Ring*, 267 Mich. 657, 255 N. W. 373 (1935).)

(2.) Section 11 of the act provides that upon the failure by any land occupier to perform any work upon his lands required under the regulations, the supervisors may file a petition with the local courts upon the basis of which the court may order the land occupier to perform the work in accordance with the regulations within a time to be specified in the order of the court, and may authorize the supervisors to enter upon the lands involved and perform the work if the land occupier shall fail so to perform within the time specified. When the work has been completed, the court may enter judgment for the cost of the work, with interest at the rate of 5 percent, against the occupier. The supervisors may collect the amount of such judgment in the usual manner and, further, they may certify such amount to the appropriate local officials who will collect the amount of the judgment in the same way as are taxes against such lands.

The cases sustaining the power of a State under its police power to require landowners to carry on operations upon their own lands at their own expense have been summarized above (p. —). It is not uncommon for statutes to provide that upon failure by the landowner to abide by the statutory requirements, administrative officers may perform the work at the owner's expense. Such enforcement procedures are sustained where the regulation istelf is held to be within the police power: *Lawton* v. *Steele*, 152 U. S. 133 (1894); *Eccles* v. *Ditto*, 23 N. M. 235, 167 Pac. 726 (1917); *City of Salem* v. *Eastern Railroad Co.*, 98 Mass. 431 (1868). An illustrative case is *First State Bank of Sutherlin* v. *Kendall Lumber Corporation*, 107 Ore. 1, 213 Pac. 142 (1923). An Oregon statute (Laws 1913, ch. 247, p. 483) required owners of timberland to set up adequate

patrols during the dry season and empowered the State forester to furnish a patrol in the event of failure of a landowner so to do. The expense of the patrol furnished by the forester was to be reported by him to the appropriate county court, and the amount extended on the assessment roll of the county, to be collected as are taxes. The defendants attacked the constitutionality of this statute on the ground that the procedure for the collection of expenses was an exercise of the taxing power and as such invalid for failure to provide for a uniform and equal rate of taxation. The court sustained the statute against this attack and concluded that it did not involve exercise of the tax power but was, rather, a reasonable and proper police regulation designed to protect the forests of the State from destruction by fire. Similar conclusions were reached as to similar procedures in *State* v. *Pape*, 103 Wash. 319, 174 Pac. 468 (1918), and *Chambers* v. *McCollum*, 47 Idaho 74, 274 Pac. 707 (1928).

There can be no doubt that adequate notice, opportunity for hearing, and opportunity for judicial review are provided, since the supervisors may not perform the work at the expense of the owner except by filing a petition to such effect with the local court, and securing a court order authorizing them to perform the work, after appropriate judicial hearing. Similarly, the costs to be recovered from the owner are to be determined by the court after the work has been completed and after a hearing thereon by the court. (Compare *Miller* v. *Schoene*, 276 U. S. 272, at 281 (1928).)

6. CONSTITUTIONALITY OF SECTION 12, PROVIDING FOR BOARDS OF ADJUSTMENT.

It is anticipated that the land-use problems on different tracts of land within a district will differ sufficiently so that it may become undesirable to enforce the provisions of land-use regulations to the strict letter upon all tracts within the district. It has therefore been considered important to provide a procedure whereby variances may be permitted from the strict terms of the regulations in cases where application of the letter of the regulations would result in great practical difficulties or unnecessary hardship. As a first step toward meeting this difficulty, section 9 of the act provides that the supervisors may classify the lands within the district with reference to such factors as soil type, degree of slope, degree of erosion threatened or existing, cropping and tillage practices in use, and other relevant factors and may provide regulations varying with the type or class of land affected but uniform as to all lands within each class or type. Members of the Land Policy Committee and the Soil Conservation Service have felt, however, that it is further necessary to provide for making variances in the terms of the regulations in the case of particular tracts. It will be obvious that the procedure designed to meet this difficulty will almost certainly be subjected to severe scrutiny and constitutional attack.

Section 12 provides that where the supervisors of a district have adopted an ordinance prescribing land-use regulations under section 9 of the act, they shall further provide by ordinance for the establishment of a board of adjustment. The board of adjustment is to consist of three members holding office for terms of three years and appointed by the State committee with the advice and approval of the supervisors. The members are to be removable for neglect of duty or malfeasance in office, after notice and hearing, but for no other reason. They are to receive compensation on a per diem basis for time spent on the work of the board. Subsection C provides that any land occupier may file a petition with the board of adjustment alleging that there are great practical difficulties or unnecessary hardship in the way of his carrying out upon his lands the strict letter of the land-use regulations, and praying the board to authorize a variance. The board must hold a public hearing upon the petition, and is authorized, where it shall find "great practical difficulties or unnecessary hardship" to exist, to permit "such variance from the terms of the land-use regulations, in their application to the lands of the petitioner, as will relieve such great practical difficulties or unnecessary hardship and will not be contrary to the public interest, and such that the spirit of the land-use regulations shall be observed, the public health, safety, and welfare secured, and substantial justice done". The board is required to record, in addition to its determination of the case, "findings of fact as to the specific conditions which establish such great practical difficulties or unnecessary hardship". The petitioner, intervening parties, or the supervisors are permitted (in subsec. D) to appeal to the local courts for review of the order of the board. Such review is not to be *de novo*, but only of the record made before the board, and the findings of the board as to the facts, if supported by evidence, are to be conclusive. This procedure will probably be challenged on several grounds, which will be here briefly considered in turn.

(1.) In order that the procedure shall not involve an improper delegation of legislative power to the board of adjustment, it is necessary that the statute define a standard which shall state the policy to be observed by the board in its adjudications, and shall draw the line to be observed by the board in distinguishing between the properties which are to be required to conform to the strict letter of the regulations and those in favor of which variances may be allowed. In the present instance, it is literally impossible to state in the statute a standard which shall not leave quite a field open for the judgment and discretion of the board of adjustment. The very nature of the case is such that a legislature cannot define all the varying circumstances which shall be considered to present "great practical difficulties or unnecessary hardship." It is precisely because of this inability under the circumstances that it is necessary to provide for a board of adjustment. Where the legislature has been as specific as the particular subject under regulation will permit, the statute is generally held not to involve an improper delegation of legislative power. (See *Buttfield* v. *Stranahan*, 192 U. S. 470 (1904).)

A statutory precedent closely similar to the present provision is available. In 1926 the Advisory Committee on Zoning, appointed by the Secretary of Commerce of the United States, recommended to the State legislatures for adoption a standard State zoning enabling act to enable municipalities to adopt zoning regulations. Section 7 of that act provided for a board of adjustment which was empowered "to authorize upon appeal in specific cases such variance

from the terms of the [zoning] ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done." A large number of States have adopted zoning enabling acts closely following the form of that recommended act and including the recommended section 7. In many of the States this provision has not been involved in litigation. Some of the States have varied the wording of the provision somewhat from the form quoted above. The question of the power of the State legislatures to confer such power upon boards of adjustment in these zoning enabling acts has been passed upon by the highest courts of nine States. In the following, the provision has been sustained as not involving an improper delegation of legislative power: *Georgia:* *McCord* v. *Ed. Bond & Condon Co.*, 175 Ga. 667, 165 S. E. 590 (1932); *Montana: Freeman* v. *Board of Adjustment*, 34 Pac. (2d) 534 (1934); *Ohio: L & M Investment Co.* v. *Cutler*, 125 Ohio St. 12, 180 N. E. 379 (1932); *Oklahoma: Re Dawson*, 136 Okla. 113, 277 Pac. 226 (1928); *Tennessee: Spencer-Sturla Co.* v. *Memphis*, 155 Tenn. 70, 290 S. W. 608 (1927); *Wyoming: In re McInerney* 34 Pac. (2d) 35 (1934). In the following, the provision has been held invalid for improper delegation: *Illinois: Welton* v. *Hamilton*, 344 Ill. 82, 176 N. E. 333 (1931); *Maryland: Lewis* v. *Baltimore*, 164 Md. 146, 164 Atl. 220 (1933); *Goldman* v. *Crowther*, 147 Md. 282, 128 Atl. 50 (1925), but see *R. B. Construction Co.* v. *Jackson*, 152 Md. 671, 137 Atl. 278 (1927); *Oregon: Roman Catholic Archbishop* v. *Baker*, 140 Ore. 600, 15 Pac. (2d) 391 (1932). In the following cases the constitutionality of similar provisions for boards of adjustment was involved, but the question was not considered in the opinion: *Connecticut: Thayer* v. *Board of Appeals*, 114 Conn. 15, 157 Atl. 273 (1931); *Indiana: Board of Zoning Appeals* v. *Waintrup*, 193 N. E. 701 (1935); *Iowa: Zimmerman* v. *O'Mera*, 215 Iowa 1140, 245 N. W. 715 (1932); *Call Bond & Mortgage Co.* v. *Sioux City*, 259 N. W. 33 (Iowa 1935); *Kentucky: Gumm* v. *Lexington*, 247 Ky. 139, 56 S. W. (2d) 703 (1932); *Michigan: Beardsley* v. *Evangelical Lutheran Bethlehem Church*, 261 Mich. 458, 246 N. W. 180 (1930); *Missouri: State ex rel Nigro* v. *Kansas City*, 325 Mo. 95, 27 S. W. (2d) 1030 (1930); *New Jersey: Bellofatto* v. *Board of Adjustment* 6 N. J. Mis. Rep. 512, 141 Atl. 781 (1928); and cases cited in note, 86 A. L. R. 695 (1933); *North Dakota: Livingston* v. *Peterson*, 59 N. Dak. 104, 228 N. W. 816 (1930); *Rhode Island: Harrison* v. *Hopkins*, 48 R. I. 42, 135 Atl. 154 (1926).

In *L. & M. Investment Co.* v. *Cutler*, 125 Ohio St. 12, 180 N. E. 379 (1932), the Supreme Court of Ohio held that the board must be required to make specific findings of fact as to the hardship and difficulties which may be involved. It is believed that such a provision would be an important improvement over the provision recommended in the standard State zoning enabling act. The standard State soil conservation districts law, in section 12 C, expressly requires such findings of fact to be made.

Section 12 of the standard act differs sufficiently, in the direction of greater particularity and detailed specification, from the statutes disapproved in the

States of Oregon, Maryland, and perhaps Illinois, as indicated above, to present room for belief that the courts which decided those cases may nevertheless sustain the present provision. It should be noted, also, that the present act prescribes with some detail a special procedure for judicial review of the action of the board of adjustment. This procedure may in itself be sufficient to induce the courts to regard with less disfavor the powers to be exercised by the board of adjustment.

If, in a particular State, the court should hold that the procedure in section 12 improperly delegates legislative power to the board of adjustment, section 12 must be deemed separable from the remainder of the act. In such State, therefore, after such decision, the statute may be enforced without recourse to a board of adjustment to make variances in cases of special hardship.

(2) The Fourteenth Amendment to the Federal Constitution and parallel provisions in State constitutions provide that no State shall "deny to any person within its jurisdiction the equal protection of the laws." Under this provision it has become established that State statutes must operate with geographical uniformity and that, while the legislature may make classifications in accordance with actual differences of fact or of situation, the laws must operate equally upon all members of the same class. The provision in section 9 of the standard act authorizing the supervisors to classify lands within the district and to provide different regulations for the different types or classes of land, does not violate the "equal protection" clause, since this is but an exercise of the legislative power to make reasonable classifications and the section expressly requires that the regulations shall be "uniform as to all lands within each class or type."

A more difficult problem under the "equal protection" clause is presented by the provision in section 12 authorizing the board of adjustment to permit variations in the regulations under the circumstances discussed above. I am of the opinion, however, that this power should not be deemed to violate the equal protection guaranty inasmuch as this is but a further exercise of the power to make reasonable classifications. The provisions in section 12 amount in substance to an attempt by the legislature to erect a special class of lands which shall cut across the other classifications, this special class being defined as those lands which are so peculiarly circumstanced that, in order to avoid unusual difficulty or hardship, special provision must be made for them. (See *Borden's Farm Products Co., Inc.* v. *Ten Eyck*, — U. S. —, 56 Sup. Ct. 453, decided Feb. 10, 1936.)

(3) I believe it is clear that the requirements of due process of law are complied with in the procedural safeguards which are thrown about the action of the board of adjustment. The board may act only upon presentation of a petition to it and after notice to the parties concerned. Its meetings are required to be public and the record of its proceedings is a public record. The method provided for appointing, compensating, and removing members of the board is such as to assure them an independent status. The board is required to enter its determinations upon the record and to make and record specific find-

ings of fact to support its determinations. The standard stated to guide the action of the board is as specific as the nature of the facts will permit. Procedure is provided whereby anyone aggrieved by an order of the board may obtain immediate review of the order in the local courts.

The hearing is not to be *de novo* but is upon the record made before the board, with the board's findings of fact conclusive, if supported by evidence. Although there was, for a time, doubt as to the constitutionality of conferring upon an administrative board the power to make such conclusive findings of fact because of the decision in *Ohio Valley Water Co.* v. *Ben Avon Borough*, 253 U. S. 287 (1920), it seems to be now established that such power may validly be conferred: *Federal Trade Commission* v. *Pacific States Paper Trade Ass'n*, 273 U. S. 52 (1927); *Tagg Bros. & Moorhead* v. *U. S.*, 280 U. S. 420, at 443 to 444 (1930); *Voehl* v. *Indem. Ins. Co. of North America*, 288 U. S. 162, at 166 (1933); *Federal Radio Commission* v. *Nelson Bros. B. & M. Co.*, 289 U. S. 266, at 276 (1933); *Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U. S. 67, at 73 (1934); *Helfrick* v. *Dahlstrom Metallic Door Co.*, 256 N. Y. 199, 176 N. E. 141 (1931), aff'd 284 U. S. 594 (1932). Cf. *N. Y. Central Railway Co.* v. *White*, 243 U. S. 188, 194, 207; *Mountain Timber Co.* v. *Wash.*, 243 U. S. 219. It seems likely that the rule of the decision in *Ohio Valley Water Co.* v. *Ben Avon Borough*, cited above, is limited to cases involving determination by administrative commissions of rates to be charged by utility companies. Here again, however, it should be noted that the provision making the board's findings of fact conclusive if supported by evidence is separable and hence the rest of the statute will be unaffected by a decision that the court may award a trial *de novo*, or may, on the record, make its own findings of fact despite this provision in the statute.

7. THE STANDARD ACT IS DEVOTED TO A SINGLE SUBJECT AND THAT SUBJECT IS ADEQUATELY EXPRESSED IN THE TITLE OF THE ACT.

While the Federal Constitution contains no such provision with reference to legislation by the Congress, it is common for State constitutions to require that acts of the State legislature shall be limited to a single subject and that such subject shall be adequately expressed in the title of the act. The provision in the Minnesota Constitution (art. IV, sec. 27) may be quoted as typical: "No law shall embrace more than one subject, which shall be expressed in its title."

It should be noted that we are here dealing with two distinct constitutional requirements, inasmuch as a statute may be limited to one subject but that subject may not be adequately expressed in the title; similarly, a statute may have all of its subjects adequately expressed in its title and yet contain legislative provisions on distinct subjects.

With reference, first, to the requirement that a statute be limited to a single subject, it is settled that the provision is not violated where the statute deals with one central subject matter, and every provision of the act is germane to such subject matter. (*First State Bank of Sutherlin* v. *Kendall Lumber Corp.*, 107 Ore. 1, 213 Pac. 142 (1923); *State* v. *Gerhardt*, 145 Ind. 439, 44 N. E. 469 (1896); *State ex rel Bigham* v. *Powers*, 124 Tenn. 553, 137 S. W. 1110 (1911); *Reclamation District No. 1500* v. *Superior Court*, 171 Cal. 672, 154 Pac. 845 (1916); *Blake* v. *People*, 109 Ill. 504 (1884); *Sny Island Levee Drainage District* v. *Shaw*, 252 Ill. 142, 96 N. E. 984 (1911); *Missouri K. & T. R. Co.* v. *Rockwall County Levee District*, 117 Tex. 34, 297 S. W. 206 (1927); *Boise City* v. *Baxter*, 41 Idaho 368, 238 Pac. 1029 (1925); *Pioneer Irrigation District* v. *Bradley*, 8 Idaho 310, 68 Pac. 295 (1902); *Banks* v. *State*, 124 Ga. 15, 52 S. E. 74 (1905).)

The standard act is entirely devoted to the single subject of the organization of soil conservation districts and the conferring upon such districts of appropriate powers for the conservation of soil and soil resources and the prevention and control of soil erosion. While the powers conferred fall into the two large classes of spending money in conducting erosion-control operations and projects, and legislating to regulate land use in the interest of erosion control, nevertheless both of these classes of powers are to be exercised by the same governmental subdivisions and for a single set of closely related purposes. It has been held that a statute which authorized the creation of new reclamation districts may also validate the bonds of existing districts: *Missouri K. & T. R. Co.* v. *Rockwall County Levee District*, 117 Tex. 34, 297 S. W. 206 (1927); that in a statute providing for the organization of drainage and levee districts provision may be made for the levying of certain taxes, for the creation of several distinct types of districts, for several methods of establishing districts, for exercise by the districts of the power of eminent domain, and for a grant of authority to districts to build bridges: *State ex rel Bigham* v. *Powers*, 124 Tenn. 553, 137 S. W. 1110 (1911); that a statute providing for the organization of reclamation districts may authorize the building of levees: *Reclamation District. No. 1500* v. *Superior Court*, 171 Cal. 672, 154 Pac. 845 (1916); that criminal and other penalties may be included in a general regulatory statute: *State* v. *Gerhardt*, 145 Ind. 439, 44 N. E. 469 (1896); and that a statute creating the commission form of government for cities may contain provisions on all matters usually connected with a comprehensive plan of city government, and may confer various types of powers upon the cities: *Boise City* v. *Baxter*, 41 Idaho 368, 238 Pac. 1029 (1925). Statutes providing for the establishment and operation of levee and flood control districts, which are in many respects similar to the soil conservation districts to be organized under the standard act, have been attacked as embracing more than one subject, because of the comprehensive scope of the powers conferred and procedures prescribed in the statutes, in a number of States and have been uniformly sustained: *Arkansas: Dickinson* v. *Cypress Creek Drainage Dist.*, 139 Ark. 76, 213 S. W. 1 (1919); *California: Reclamation District No. 1500* v. *Superior Court*, 171 Cal. 672, 154 Pac. 845 (1916); *Illinois: Blake* v. *People*, 109 Ill. 504 (1884); *Sny Island Levee Drainage District* v. *Shaw*, 252 Ill. 142, 96 N. E. 984 (1911); *Indiana: Marion, B. & E. Traction Co.* v. *Simmons*, 180 Ind. 289, 102 N. E. 132 (1913); *Newtson* v. *Kline*, 185 Ind. 63, 113 N. E. 376 (1916); *Iowa: Richman* v. *Muscatine County*, 77 Iowa 513, 42 N. W. 422 (1889); *Louisiana: Excelsior Planting & Mfg. Co.* v. *Green*, 39 La. Ann. 455, 1 So. 873 (1887); *Dehon* v. *LaFourche Basin Levee Bd.*,