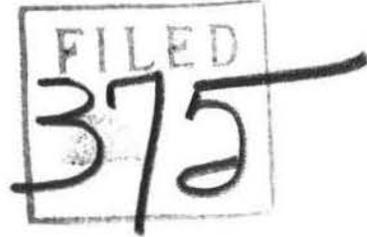


Opinion No. 375
Answered by Letter (Finnegan)

November 16, 1964



Mr. Harold Owens, Executive Secretary
Missouri State Soil and Water
Districts Commission
T-7 Building, University of Missouri
Columbia, Missouri

Dear Mr. Owens:

You recently asked two questions concerning the formation of a soil and water district. The questions involve the construction of Section 278.100, subsection 2, RSMo Cum. Supp. 1963, which reads as follows:

"If a majority of all land representatives voting in this referendum, do vote in favor of this establishment, and if in the judgment of the soil and water commission the total number of votes cast does amount to a substantial expression of opinion, the soil and water commission shall at once declare the county or township, or townships thereof, as specified by the referendum, to be established as a soil and water conservation district; but if these provisions are not met, the soil and water commission shall at once declare the question of establishment to have been lost, although another referendum on this question may be called by the soil and water commission for this area at any time after two years from the date of this declaration, provided the commission meanwhile has received evidence of a more general desire for the establishment of a soil and water district for this area. Subsequent to the establishment of a township or townships as a soil and water district any other township or townships in the same county may be added to this soil and water district by the procedure used for the first establishment."

Mr. Harold Owens

Your first question reads:

- "1. Do you have an opinion on what constitutes a 'substantial expression of opinion' at a referendum?"

We must decline answering this question. The question is phrased in abstract terms and we are unable to form an opinion as to the meaning of "substantial expression of opinion" without being informed as to the concrete facts involved in each referendum. There are too many variables involved which make it undesirable and impracticable to determine that a certain fixed percentage of eligible land representatives constitutes a "substantial expression of opinion."

Furthermore, any opinion of this office on this question would be purely advisory. The final judgment of what constitutes a "substantial expression of opinion" rests solely with the commission.

Your second question reads as follows:

- "2. If the referendum on forming a soil and water conservation district is voted favorably (majority), but is not a substantial vote, can another referendum be held without waiting two years?"

If the soil and water commission finds that the total number of votes cast at a referendum does not amount to a substantial expression of opinion, then it is necessary that there be a two year waiting period before another referendum can be held. This is specifically prescribed by Section 278.100 (2), supra, which requires both a majority of favorable votes of those voting for the establishment of a soil and water district and the commission's determination that the vote amounts to a substantial expression of opinion before the commission can declare the area to be established as a soil and water conservation district.

The statute then provides that if these provisions are not met, the commission shall declare the question of establishment as lost and may not hold another referendum until two years after the date of this declaration.

Very truly yours,

THOMAS F. EAGLETON
Attorney General