

**OPINION  
52-101**

November 28, 1952        (OPINION)

SOIL CONSERVATION DISTRICTS

RE: Who May Vote to Enlarge

Reference is made to your letter of November 10, 1952, wherein you state that farmers and ranchers in the eastern portion of Sioux County are interested in being within the boundaries of a soil conservation district and the Cedar District of the western portion of the county would like to enlarge their present district to include all of Sioux County.

A question has been raised as to the eligibility of the voters and specifically you would like to know which Indians are eligible to vote on the inclusion of the additional territory.

Section 4-2210 of the North Dakota Revised Code of 1943 provides that "Only occupiers of land within the boundaries of the proposed district shall be entitled to vote in such referendum." Section 4-2202 (8) defines "land occupier" or "occupier of land" as follows:

"'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 chapter, whether as owner, lessee, renter, tenant, or cropper."

The Bureau of Indian Affairs advises that Indian interest in land falls into three general categories:

1. Where fee patent to the land has been granted to the individual Indian--under this circumstance he has unrestricted ownership of land as would be the case of any individual holding a deed, and in many instances he has sold the land to some other individual under this right.
2. The United States Government holds the land in trust for the individual Indian and any revenues derived from its use go to the individual Indian.
3. We have tribal lands which are held in trust by the United States Government for the tribe--this in comparison to the second category where the lands are held in trust for the individual Indian. In the instance of "tribal lands," revenue from the lands goes to a tribe and they have their own tribal counsel for administrative purposes.

It is our opinion that the individual Indian holding land under category 1 or 2, as given above, would come within the definition of land occupier as defined by section 4-2202 (8) and also that the individual Indian who holds land either under category 1 or 2 has a definite personal interest in the land such as would allow him to

vote in the matter of organizing or enlarging soil conservation districts. We have also been informed that under category 3, as outlined above, the land also falls into two sub-categories, namely, sub-category 1, land that is leased to non-Indians and land which is leased to an Indian. If the land is leased to an Indian, it is ordinarily leased on a crop-share basis. Sub-category 2, fractional interests held by individual Indians may be deeded to the tribe and definite acreage are given to the Indian in exchange for his deeding his fractional interest. The Indian may use and occupy this land during his lifetime and may also designate a beneficiary to whom the land shall pass after his death. If no beneficiary has been designated, then the land reverts to the tribe.

It is our further opinion that where land is either leased to the individual Indian under sub-category 2, in either case, the Indian would come within the definition of "land occupier" as defined above and would be eligible to vote in the matter of reorganizing or enlarging soil conservation districts under the North Dakota districts law.

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