

**OPINION
52-158**

March 27, 1952 (OPINION)

SOIL CONSERVATION DISTRICTS

RE: Committee Members, Election

Your letter under date of March 20, 1952, addressed to Attorney General E. T. Christianson, has been referred by him to me for consideration and reply. In your letter to the Attorney General you say:

Inquiry has been made as to whose responsibility it is to appoint the Judges of Election who will act in the election of Supervisors in the November election. The law reads that the board of supervisors of the district shall act as the election officials. However, in a great many cases, one or more of the present supervisors may be candidates for election, and I take it for granted that they will be disqualified from acting as Judges of Election. In this connection the question arises: Will the Board of Supervisors have authority to appoint the election board for the November election?"

You say further:

The last election was held in each of the districts in March, 1950. The supervisors elected at that time were elected for a term of three years. When will that term expire, and will those supervisors have to run for reelection in 1952?"

Examination of Chapter 99 of the 1951 Session Laws reveals that this act is incomplete and confusing. The purpose and intent of this measure is obvious. The sponsors of H. B. 649, enacted into law as Chapter 99 of the Laws of 1951, evidently desired to accomplish three things: first, to increase the membership of the State Committee by appointment thereto of four district supervisors; second, to change the date of the regular election of soil conservation districts from the township election in March of each year to the regular state-wide election in November of even numbered years; and third, to change the term of office of district supervisors elected after a soil conservation district has been established to six years instead of three years.

With reference to district election officers, H. B. 649, as introduced in the House of Representatives, provided that "The judges and election officers at such district general election shall be appointed by the officers of the soil conservation district." In your letter to the Attorney General under date of June 21, 1951, you stated that the bill was amended in the Senate so as to provide that the "judges and election officers at such district election shall be officers conducting the state general election"; that the House refused to agree to such amendment and that the bill was then sent to a Conference Committee; that the Conference Committee recommended that the Senate recede on the amendment, which the senate did, and

that H. B. 649 as finally passed by both houses of the legislature restored the provision in the bill when introduced, namely, that "The judges and election officers at the district election shall be appointed by the officers of the soil conservation district."

But through oversight or error in preparing the engrossed bill for approval by the Governor the provision with reference to election officers in Sec. 2 of Chapter 99, Laws 1951 reads: "The judges and election officers at such district general election shall be the regularly appointed officers of the soil conservation district." This provision is virtually meaningless because the only appointive officers of a soil conservation district are the secretary and treasurer thereof. District Supervisors are elective, not appointive officers.

Attorney General E. T. Christianson, in an opinion given to you under date of July 2, 1951, held that H. B. 649 as finally passed by the House and Senate should be given the force and effect of law, and in support of his opinion cited a number of court decisions. Since, as stated above, the provision in Sec. 2 of Chapter 99 of the 1951 Session Laws is patently impracticable and unworkable, it is my conclusion that the Attorney General's opinion is the only logical decision that can be made.

Therefore, since H. B. 649, as finally passed by the legislature, provided that the judges and election officers of a soil conservation district shall be appointed by the officers of the district it is my opinion that it was clearly the intent of the legislature that such election officers shall be appointed by the board of supervisors of the district.

With reference to the terms of office of district supervisors, Sec. 4-2222 of the 1943 Revised Code, as amended by Sec. 3 of Chapter 99 of the 1951 Session Laws, provides that "All supervisors elected at other than the first election shall hold office for a term of six years beginning January 21, following the election at which he was elected". Sec. 3 further provides that "the present soil district supervisors whose terms expire in March, 1951, shall hold office until January 1, 1953".

Chapter 99 of the Session Laws of 1951 was enacted as an emergency measure. It became effective on March 5, 1951, when it was approved by the Governor.

Now, as hereinbefore mentioned, it was plainly the intention of the Legislature to extend the term of office of a district supervisor elected at a regular election held subsequent to the so called "first election," to six years and to provide for the election of one supervisor in every district at the state wide general election in each even numbered year, thereby staggering the terms of office so that the term of one supervisor will expire as of January 1 of each odd-numbered year. But the Legislature evidently did not realize, and failed to recognize, that in this respect H. B. 649 was incomplete when introduced and was likewise incomplete when enacted into law.

Sec. 2 of Chapter 99 of the 1951 Session Laws provides that supervisors whose terms expired in March, 1951, shall hold office

until January 1, 1953. The office of supervisors whose terms expire January 1, 1953, must of course be filled at the general election of this year (1952). If the provisions of the law in effect prior to March 5, 1951, had not been changed the supervisors elected in 1948 would have held office until in March 1951; supervisors elected in 1949 would have held office until in March 1952; the term of office of supervisors elected in 1950 would not expire until 1953, and the term of office of supervisors elected in 1951 would not expire until in 1954.

There was, of course, no district election in 1951. And since Sec. 3 of said Chapter 99 provides, in effect, that a supervisor elected in 1948 shall hold office until January 1, 1953, it is obvious that in order to give Sec. 3 of Chapter 99 the force and effect intended by the legislature it will be necessary to elect three district supervisors in every soil conservation district at the general election in November of this year, (1952), and to determine the term of office of each elected supervisor on the same basis provided in Sec. 3 of said chapter for determining the terms of office of supervisors elected at a so-called "first election," that is to say, the election establishing a district and selecting the first board of directors. In other words, in order to carry out the manifest intention of the legislature it is my opinion that Sec 3 of Chapter 99 of the 1951 Session Laws must be so construed as to hold that the soil conservation district election in 1952 must be regarded as a "first election."

When the Legislature meets in 1953, Chapter 99 should be revised to definitely conform with the foregoing opinion and the Legislature should be requested to validate the election and terms of office of supervisors elected in 1952.

ELMO T. CHRISTIANSON

Attorney General