

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
P.O. BOX 20207
NASHVILLE, TENNESSEE 37202

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Opinion No. 07-143

Soil Conservation Committee's and Districts' Status as State Agencies

QUESTIONS

1. Are the State Soil Conservation Committee and Soil Conservation Districts state entities for liability purposes?
2. If so, are they eligible for participation in the insurance programs, insurance pools, special funds, or reserve funds available to state entities for liability purposes?

OPINIONS

1. Yes. It is the opinion of this Office that the State Soil Conservation Committee and Soil Conservation Districts are state entities.
2. Yes. As members of the Committee and District Supervisors are state employees, and to the extent that the State Soil Conservation Committee and Soil Conservation Districts employ other state employees, the State Soil Conservation Committee and Soil Conservation Districts are eligible for liability coverage and participation in the relevant risk management programs.

ANALYSIS

1. Determining whether or not an entity is a state agency for liability purposes can be "a close question." Op. Tenn. Att'y Gen. No. 02-077 (June 28, 2002). For example, in *Hastings v. South Central Human Resource Agency*, 829 S.W.2d 679, 680-81 (Tenn. Ct. App. 1992), the trial court had reviewed and reversed a decision by the South Central Human Resource Agency (SCHRA) to terminate an employee, finding SCHRA had terminated the employee without affording him prior notice and an opportunity to be heard. On appeal, SCHRA argued that its actions were not subject to judicial review because it was not a state agency. *Id.* at 681. SCHRA relied upon Op. Tenn. Att'y Gen. No. 77-198 (June 22, 1978), in which this Office had previously opined that SCHRA's sister agency, the Upper Cumberland Human Resource Agency, was not a state agency. *Id.*

Employing the same test that this Office had used to determine that SCHRA was not a state agency, the Court of Appeals came to the opposite conclusion. The court listed the factors to be weighed:

1. Whether the enabling statute exhibits a legislative intent to regard the agency as a state agency.
2. Whether the State or political subdivision thereof is directly involved in the operation, supervision and control of the entity.
3. “Whether the entity serves as a conduit through which the State acts . . . to carry out . . .” a public or governmental function.
4. Whether the state appropriates funds to the entity.

Id. at 682 (quoting Op. Tenn. Att’y Gen. No. 77-198). The court noted at the outset that while the legislation creating human resource agencies, the Human Resource Agency Act of 1973 (“Act”), had not explicitly labeled them as state agencies, the Act evinced a legislative intent that they be regarded as such because the State controlled and monitored the agencies. *Id.* at 683. The Act mandated a governing board; set out the powers of the agencies; and required yearly reports to the Governor, Legislature, and Commissioner of Finance and Administration. *Id.* State funds appropriated to implement the Act were subject to approval of the Governor and the Commissioner of Finance and Administration, and then only after the Governor reviewed the agencies’ annual work program. *Id.* Uniform statewide travel regulations applied. *Id.* The State Board of Standards oversaw the agencies’ bidding system. *Id.* Personnel procedures had to be filed with the Commissioner of Finance and Administration. *Id.*

The court rejected SCHRA’s argument that because it was controlled and supervised by a policy council consisting of providers and consumers of human resource services, it was therefore not a state agency. *Id.* The court noted that the policy council itself merely acted on behalf of the governing board, which was comprised of elected state and local officials.

Examining SCHRA’s funding, the court noted that it was funded by a combination of public and private moneys. *Id.* at 683-84. The Legislature clearly intended state financial assistance to the agency, and had prescribed a formula for state to local funding. *Id.* at 684.

Examining SCHRA’s purpose, the court found that the agency was a nonprofit organization devoted primarily to promoting the public welfare. *Id.* SCHRA’s bylaws explicitly stated that the agency’s purpose was to act as a conduit for various human resource program funding streams. *Id.*

Finally, the court observed that SCHRA held itself out as a state agency. *Id.* It had vehicles bearing the state seal, its employees carried badges stating that SCHRA was established under state

law, and it performed governmental functions through assistance programs. *Id.* at 684-85. For all these reasons, the court concluded that SCHRA was a state agency. *Id.* at 685.

Applying *Hastings'* analysis to your questions, it is clear that the Soil Conservation Committee is a state agency for liability purposes. The enabling legislation for both the statewide Soil Conservation Committee ("Committee") and the localized Soil Conservation Districts ("Districts" or, individually, "District") may be found at Tenn. Code Ann. §§ 43-14-201 through 223, collectively entitled the "Soil Conservation Districts Law" ("Law"). The nomenclature employed within the Law signals an explicit legislative intent that the Committee be considered a state agency: the Law establishes the Committee as the "state soil conservation committee," Tenn. Code Ann. § 43-14-203, and specifically labels the Committee as a "state agency," Tenn. Code Ann. § 43-14-206(6). The Committee's membership includes the Commissioner of the Department of Agriculture, the Commissioner of the Department of Environment and Conservation, and the Dean of the College of Agricultural Sciences and Natural Resources of the University of Tennessee, as well as District Supervisors and private farmers appointed by the Governor. Tenn. Code Ann. § 43-14-203. Pursuant to Tenn. Code Ann. § 43-14-205, the Committee may request legal services from the Attorney General, who, with limited exceptions not relevant here, represents only "the state of Tennessee or any officer, department, agency, board, commission or instrumentality of the state." Tenn. Code Ann. § 8-6-109(b)(1). The Law sets out the Committee's powers and duties. Tenn. Code Ann. § 43-14-206(1) through (9). The Committee is required to submit yearly to the Commissioner of Agriculture not only an annual report but also a budget request to allow for the implementation of soil conservation programs. Tenn. Code Ann. § 43-14-206(9). Taken together, these statutes evince a clear legislative intent that the Committee be regarded as a state agency for liability purposes.

The Districts' status is a closer question. A District is initiated by petition to the Committee of twenty-five landowners within the proposed District. Upon a hearing, the Committee decides whether there is a need for a District. Tenn. Code Ann. § 43-14-208(a). If the Committee determines there is no need for a District, its decision is unreviewable, although a new petition may be filed within six months. Tenn. Code Ann. § 43-14-208(b). If the Committee decides there is a need for a District, it then must determine whether the operation of the District is administratively feasible and practical. Tenn. Code Ann. § 43-14-209(a). To aid in the latter determination, the Committee must hold a referendum of landholders within the proposed District. Tenn. Code Ann. § 43-14-209(b). The Committee may thereafter reject the proposed District as not administratively practical and feasible, or, if a majority of the votes cast in the referendum are in favor of the District, the Committee may determine that the District is administratively practical and feasible and proceed to organize the District. Tenn. Code Ann. § 43-14-211.

The Committee appoints two of the District's Supervisors, and upon proper application to the Secretary of State, the District is considered "a subdivision of this state and a public body corporate and politic." Tenn. Code Ann. § 43-14-212(d). The Secretary of State must record and issue to the Supervisors a certificate of organization. *Id.* Thereafter, the Committee supervises the election by landowners within the District of three additional Supervisors.

Ultimately, then, the governing body of the District consists of five Supervisors, two appointed by the Committee and three elected by the landowners. 43-14-214(a). Supervisors are paid a nominal sum to attend District meetings. Tenn. Code Ann. § 43-14-217(b). Supervisors may call upon the Attorney General for legal services. Tenn. Code Ann. § 43-14-217(c). Supervisors are required upon request to furnish the Committee copies of various regulations and documents they adopt or deploy. *Id.* The Committee may remove a Supervisor for neglect of duty or malfeasance. Tenn. Code Ann. § 43-14-217(d). The Committee keeps Supervisors of the various Districts informed of activities of other Districts, facilitates interchange of advice and cooperation between Districts, and publishes an annual report. Tenn. Code Ann. § 43-14-2056(2).

Termination of a District is initiated by petition to the Committee of any twenty-five landowners within the District. Tenn. Code Ann. § 43-14-223(a). The Committee thereafter conducts a referendum of the District's landowners. Tenn. Code Ann. § 43-14-223(a). The Committee may determine after the referendum that the District is no longer administratively feasible and practical. Tenn. Code Ann. § 43-14-223(b). In doing so, it must consider the proportion of votes cast in favor of discontinuance, but it is not bound by the referendum's outcome. *Id.* On the other hand, only if the majority of the voters favor continuance of the District may the Committee determine that the District remains administratively feasible and practical. *Id.* If the Committee determines that the District is no longer administratively feasible and practical, the Supervisors must dispose of all District property at public auction and pay over the proceeds to the State Treasury. Tenn. Code Ann. § 43-14-223(c).

We are informed by the Department of Agriculture that the Districts receive the bulk of their funding in the form of grants from the Department made pursuant to Tenn. Code Ann. § 67-4-409(l). That statute erects the Agricultural Resources Conservation fund and allows for grants to preserve and protect soil, among other natural resources. Tenn. Code Ann. § 67-4-409(l)(3). No expenditure may be made from that fund without the approval of several state officials: the Commissioner of Agriculture, the Commissioner of Environment and Conservation, and the Director of the Wildlife Resources Agency. Tenn. Code Ann. § 67-4-409(l)(2).

Given that the Committee is clearly a state agency for liability purposes, that the Committee and the Districts are created and bound together under an act entitled the "Soil Conservation Districts Law," that the Districts may call upon the Attorney General for legal representation, that the Committee organizes and coordinates the Districts' creation and termination, that the Committee may remove a Supervisor for cause, and that the Districts are largely funded through grants depending upon the approval of state officials, this Office concludes that the Districts are state agencies for purposes of liability.

In two opinions published prior to the 1992 *Hastings* decision, the Office indicated that the Districts were not state agencies, opining that they were subject to the Governmental Tort Liability Act ("GTLA"). *See* Op. Tenn. Att'y Gen. Nos. U86-79 (April 30, 1986) and 87-131 (August 4, 1987). The GTLA applies not to state agencies but only "to municipal, county and local governments." *Spurlock v. Sumner County, Tennessee*, 42 S.W.3d 75, 80 (Tenn. 2001). However, neither opinion addressed the question of whether the Districts are state agencies as opposed to some

other form of governmental entity. More importantly, *Hastings* disapproved our 1977 opinion that a Human Resource Agency was not a state agency. 829 S.W.2d 679, 681-85. Soil Conservation Districts are, if anything, more entangled with and directed by the State, its agencies and its purse than was the Human Resource Agency whose status was determined in *Hastings*. Accordingly, we believe that notwithstanding our pre-*Hastings* opinions, a court would likely find the Districts to be state agencies for purposes of liability.

2. In Op. Tenn. Att’y Gen. No. 91-48 (May 13, 1991), we considered a nearly identical question, namely whether the Tennessee Elk River Development Agency (“TERDA”) qualified as a state agency for purposes of participating in the State’s property and liability insurance programs. First we looked at whether TERDA qualified as a state agency, concluding that it was a hybrid entity, displaying characteristics of both a state and a private entity. *Id.* We then turned to the question of liability coverage, noting that “liability coverage for the State is addressed by Tenn. Code Ann. § 9-8-307.”¹ That statute waives the State’s immunity for acts or omissions of state officers and employees as defined in Tenn. Code Ann. § 8-42-101(3). Tenn. Code Ann. § 9-8-307(a)(1). It further provides that state officers and employees are themselves immune from liability for acts or omissions within the scope of their employment. Tenn. Code Ann. § 9-8-307(a)(1)(h). The statute also fixes the dollar amounts that may be recovered in tort claims against the State and provides that the Board of Claims may purchase insurance for any class of claim. Tenn. Code Ann. § 9-8-307(e).

A separate statutory scheme authorizes the Board of Claims to review and recommend to the Legislature and the Commissioner of Finance and Administration funding of various risk management and insurance funds and to approve insurance policies to protect the State. Tenn. Code Ann. § 9-8-108(3) and (4). It also establishes a risk management fund. Tenn. Code Ann. § 9-8-109. The Board of Claims is authorized to recommend to the Commissioner of Finance and Administration the contribution required of each participating agency. Tenn. Code Ann. § 9-8-109(b).

The TERDA opinion noted that an agency’s qualification for the liability coverage under § 9-8-307 depended upon whether its employees are “state employees.” Op. Tenn. Att’y Gen. No. 91-48. The term “state employee” includes any “state official.” *Id.* (citing Tenn. Code Ann. § 8-42-101(3)(A)). A governmental official is generally defined to include “an individual who has been appointed or elected in a manner defined by law.” *Id.* (citing *Sitton v. Fulton*, 566 S.W.2d 887, 889 (Tenn. Ct. App. 1978)). Because TERDA’s Board of Directors were duly appointed by the Governor and it appeared that TERDA’s other employees were employed by the State, we opined that TERDA was a state agency for purposes of liability coverage. *Id.*

Members of the Committee and District Supervisors are appointed and elected officials of state agencies pursuant to Tennessee’s Soil Conservation Districts Law. Therefore, at least as to the acts and omissions of these individuals, the Committee and the Districts are state agencies for purposes of liability coverage and eligibility to participate in related insurance and risk management

¹Subsequent amendments to the statute are irrelevant to the analysis of this question; therefore all citations will be to the current (2007) version of the statute.

funds. We do not possess information sufficient to determine whether other Committee and District staff and employees qualify as “state employees.”

ROBERT E. COOPER, JR.
Attorney General & Reporter

MICHAEL E. MOORE
Solicitor General

DOUGLAS EARL DIMOND
Senior Attorney General

Requested by:

The Honorable Ken Givens
Commissioner
TN Department of Agriculture
Ellington Agricultural Center
Box 40627
Nashville, TN 37204