



JOHN W. SUTHERS
Attorney General

CYNTHIA H. COFFMAN
Chief Deputy Attorney General

DANIEL D. DOMENICO
Solicitor General

STATE OF COLORADO
DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STATE SERVICES BUILDING
1525 Sherman Street - 7th Floor
Denver, Colorado 80203
Phone (303) 866-4500

December 7, 2011

Tony Hernandez
Director, Division of Local Government
1313 Sherman Street
Denver, Colorado 80203

RE: Cooperation Between Eligible Entities and Conservation Districts or Noxious Weed Control Programs

Dear Mr. Hernandez:

I write in response to your request for an informal opinion concerning agreements of cooperation or contracts between eligible entities with conservation trust funds under § 29-21-101, C.R.S. (2011) and conservation districts or noxious weed control programs. This memorandum contains only my opinion and is not an official opinion of the Attorney General.

QUESTION PRESENTED FOR REVIEW AND ANSWER

Question: May an eligible entity grant money to a conservation district or noxious weed program from its conservation trust fund to control noxious weeds on private property in conservation districts or on behalf of noxious weed programs outside its jurisdiction?

Answer: No. An eligible entity may not grant conservation trust fund monies to control noxious weeds on private property in conservation districts or for noxious weed control programs. However, it may use funds to control noxious weeds on land which is owned by a government entity or in which a government entity has an interest.

ANALYSIS

Background

The Colorado Department of Local Affairs, through its Division of Local Government (DLG), administers the Conservation Trust Fund (CTF). Section 29-21-101(2)(a)(I), C.R.S. (2011). DLG annually distributes money from the CTF to eligible entities, which include counties, municipalities and special districts. Section 29-21-101(1)(b) and -101-(2)(b)(I),

C.R.S. (2011). Eligible entities receiving funds from the CTF must account for such funds “separately from any other source of moneys available to the entity for the acquisition of new conservation sites or recreational facilities as defined in this article.” Section 29-21-101(2)(b)(II), C.R.S. (2011). The moneys “shall be expended only for the acquisition, development, and maintenance of new conservation sites or for capital improvements or maintenance for recreational purposes on any public site.” Section 29-21-101(4), C.R.S. (2009). Prior to 2010, eligible entities were authorized to “cooperate or contract with any other government or political subdivision pursuant to part 2 of article 1 of this title.” In addition, eligible entities could share “moneys held by such entities in their respective conservation trust funds for joint expenditures for the acquisition, development and maintenance of new conservation sites.” Section 29-21-101(5), C.R.S. (2009)

In 2010, the General Assembly enacted S.B. 10-98, which amended subsection (5) to include a reference to conservation districts and noxious weed control programs and a reiteration of the definition of “new conservation sites.” Subsection (5) now states:

In the utilization of moneys received pursuant to this section, each eligible entity may cooperate or contract with any other government or political subdivision, including a conservation district established in accordance with the provisions of article 70 of title 35, C.R.S., or a local noxious weed control program, pursuant to part 2 of article 1 of this title. Subject to the separate accounting requirement of subparagraph (II) of paragraph (b) of subsection (2) of this section, such cooperation may include the sharing of moneys held by any such entities in their respective conservation trust funds for joint expenditures for the acquisition, development, and maintenance of new conservation sites, as defined in paragraph (e) of subsection (1) of this section in accordance with the provisions of article XXVII of the state constitution.

S.B. 10-98 included a legislative declaration. The declaration made the following findings:

- Noxious and invasive weeds are a threat to the conservation of the state’s natural resources
- In the Colorado Noxious Weed Act, the General Assembly mandated that the counties address the noxious weed infestation
- The majority of county governments have attempted to address the infestation
- The money to fund noxious weed programs comes from general fund dollars or assessments against taxable property
- Moneys used to create and fund conservation districts and the state conservation board come from the general fund
- A program to provide grants to conservation districts was eliminated in 2009 as a result of budget shortfalls

The General Assembly then declared the purpose of S.B. 10-98 is to allow counties to use moneys flowing into the CTF from Lottery proceeds to cooperate or contract with conservation districts and local noxious weed control programs in the utilization of moneys from the CTF, thereby assisting the districts and the programs “in developing, administering, and maintaining soil conservation and noxious weed control efforts, addressing small acreage management, protecting rangeland and wildlife habitat, improving water delivery systems, water quality, and forest health, and reducing soil erosion in parks, recreation areas and open space.” S.B. 10-98, section 1.

Various local and state officials administer the state noxious weed program. Sections 35-5.5-105, -106 and -108.5, C.R.S. (2011). The program encompasses enforcement provisions over both public and private lands. Section 35-5.5-108.5(4) and -110, C.R.S (2011). Likewise, conservation districts have broad authority over conservation matters involving both private entities and public agencies, with a particular emphasis on soil conservation. Section 35-70-108, C.R.S. (2011).

Standard of Review

When construing the applicable provisions of a law, the plain language of the statute must first be analyzed. If the language is clear on its face, then the statute will be applied as written. The words will be given their plain and ordinary meaning, and the statutory provisions will be construed as a whole. If the statutory language is ambiguous, it is appropriate to consider the legislative history, the state of the law prior to the enactment and the problem to be addressed. *Lombard v. Colorado Outdoor Education Center*, 187 P.3d 565, 570 (Colo. 2008).

Expenditure of Conservation Trust Funds on Noxious Weed Programs Within An Eligible Entity.

Money from the fund can “be expended only for the acquisition, development and maintenance of new conservation sites or for capital improvements or maintenance for recreational purposes on any public site.” Section 29-21-101(4), C.R.S. (2011).¹ “New conservation sites” means “interests in land and water, acquired after establishment of a conservation trust fund pursuant to this section, for park or recreation purposes, for all types of open space, including but not limited to floodplains, greenbelts, agricultural lands or scenic areas, or for any scientific, recreational, aesthetic, or similar purpose.” Section 29-21-101(1)(e), C.R.S. (2011).

The statute does not define who must have or hold the interests in land and water. However, based upon a plain reading of the entirety of the statute, the logical conclusion is that eligible entity must have or hold the interest in land and water. An “eligible entity” is “a

¹ The term “public site” is not defined. It appears that the General Assembly intended this term to be used in a manner consistent with “new conservation site.”

county, municipality, or special district which has created a conservation trust fund pursuant to this section and which has certified to the department of local affairs that it has created such fund. Section 29-21-101(1)(b), C.R.S. (2011) There is no mention of any private entities who may acquire an interest in land and water. Moreover the interest is “deemed to run with the land or water to which it pertains for the benefit of the citizens of the state.” Section 29-21-101(1)(c), C.R.S. (2011)

The eligible entity’s interest in the new conservation sight does not have to be absolute. Its interest can be a full fee interest or something less, including future interests, developmental rights, easements, covenants and contractual rights. Section 29-21-101(1)(c). Thus, the new conservation site can include those in which the eligible entity owns the land in fee simple or something less. This ownership interest may include properties with easements held by both public and private associations.

Activities of an eligible entity on behalf of conservation districts or noxious weed programs.

S.B. 10-98 amended subsection (5) to clarify that entities eligible to receive conservation trust fund money may cooperate or contract with “a conservation district established in accordance with the provisions of article 70 of title 35, or a local noxious weed program.” However, any agreement is still subject to part 2 of article 1 of title 29. Section 29-1-203(1) provides that “[g]overnments may cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each of the cooperating or contracting units.” The phrase “lawfully authorized to each” means “that each entity must have the authority to perform the subject activity within its jurisdictional boundaries.” *Durango Transportation, Inc. v. City of Durango*, 824 P.2d 48, 51 (Colo. App. 1992). An eligible entity can give money to, or perform services for, conservation districts or noxious weed programs outside the boundaries of the eligible entity, but only to the extent permitted within the boundaries of the eligible entity. In other words, the eligible entity can grant funds to a conservation district or to a noxious weed program only if a public entity has an interest in the land or water for which the money will be used. It cannot authorize funds for use on private property within a conservation district or on behalf of a noxious weed program.

CONCLUSION

An eligible entity may cooperate or contract with a conservation district or pay for expenses of a noxious weed program when a public entity with which the eligible entity cooperates or contracts has an interest in land and water as defined in § 29-21-101, C.R.S.

Sincerely,

FOR THE ATTORNEY GENERAL

/s/Maurice G. Knaizer

MAURICE G. KNAIZER
Deputy Attorney General
Public Officials
State Services Section
(303) 866-5380
(303) 866-5671 (FAX)
E-mail: maurie.knaizer@state.co.us



STATE OF COLORADO

John W. Hickenlooper, Governor

Department of Local Affairs
Reeves Brown, Executive Director

Division of Local Government
Tony Hernandez, Director

MEMORANDUM

To: Tony Hernandez, Director, Division of Local Government –
From: Tamra Hooper, Program Manager 
Date: December 28, 2011
Re: **Clarification of Informal Opinion**

The following is clarification, based on phone and email communication with Maurie Knaizer, on the informal opinion - **“Cooperation Between Eligible Entities and Conservation Districts or Noxious Weed Control Programs”**

- 1.) As stated in the informal opinion on page 4, 2nd paragraph, "The eligible entity's interest in the new conservation site does not have to be absolute. Its interest can be a full fee interest or something less, including future interests, development rights, easements, covenants and contractual rights." This means the "interest in" land or water does not have to be held by the eligible entity, but must be held by a public entity/local government in order to be an eligible property for CTF purposes.

“Interest in land and water means any and all rights and interests in land or water, or both, including fee interests and less than full fee interests such as future interests, developmental rights, easements, covenants, and contractual rights. Every interest in land or water may be in perpetuity or for a fixed term and shall be deemed to run with the land or water to which it pertains for the benefit of the citizens of this state.”

C.R.S. 29-21-101 (1)(c)

Examples of eligible and ineligible purposes:

- a) If a conservation district (or any other public entity, e.g. a local government) holds an easement for CTF purposes, a participating local government can spend their CTF dollars on the property with the easement for eligible CTF expenditures even if the local government does not have an interest in that land.
 - b) If a for-profit or non-profit organization holds an easement on a piece of property, a participating local government CANNOT spend their CTF dollars on that property if there is no public entity/local government “interest in” that land.
- 2.) The entity receiving the funds does not have to be an “eligible entity.” It must be a public entity or local government. The legislative declaration signifies intent to expand those entities authorized to use the funds to compensate for loss of funds appropriated to noxious weed programs.