

MAINE STATE LEGISLATURE

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JB J.W. yes 1
April 11, 1973

Charles L. Boothby, Exec. Director

Soil & Water Conservation Comm.

Lee M. Schepps, Assistant

Attorney General

Election of Supervisors of Soil and Water Conservation Districts

SYLLABUS:

The method of nomination and election of District Supervisors of Soil and Water Conservation Districts, including the requirement that only occupiers of land lying within the District may nominate or vote, does not violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

FACTS:

Soil and Water Conservation Districts ("Districts") are created pursuant to the provisions of Title 12 M.R.S.A., Chapter 1, § 1, et seq. for the purpose, among other things, of controlling and preventing soil erosion, controlling floods and preventing impairment of dams and reservoirs. Districts receive and expend public funds for such purposes and have the power to carry out preventive and control measures designed to accomplish those purposes. Each District is governed by a District Supervisor who is nominated by "occupiers of land" within the District and who is elected in an election provided for in Title 12 M.R.S.A. § 101, in which only "occupiers of lands lying within the district" are eligible to vote. The term "land occupier" is defined in Title 12 M.R.S.A. § 4 to include the owner or possessor of lands lying within a District.

QUESTION:

Does the requirement that voters for District Supervisor be occupiers of land within the District comport with applicable constitutional requirements?

ANSWER:

Yes.

OPINION:

The Equal Protection Clause of the Fourteenth Amendment ordinarily proscribes methods of elections and criteria for voter eligibility for political subdivisions of the State which result in discrimination in favor of certain classes of citizens. While this "popular election" requirement applies to general political subdivisions of the State, it does not apply to special-purpose units of government as defined

April 11, 1973

in Avery v. Midland County, 390 U.S. 474 (1968) and Sayler Land Company v. Tulare Lake Basin Water Storage District, ___ U.S. ___ (1973). Districts are special-purpose units of government. As the United States Supreme Court noted in the last cited case, special-purpose districts (like Water Storage Districts and Soil and Water Conservation Districts) "do not exercise what are normally thought of as 'normal governmental' authority," and their actions disproportionately affect the occupiers of land within the District. The requirement that voters for District Supervisors be "land occupiers", therefore, does not violate the Fourteenth Amendment of the United States Constitution.. Cf. Sayler Land Company, supra. In the language of your memorandum of February 23, 1973, Districts may receive and disburse public funds. Since the method of election is lawful, we express no preference or opinion with respect to whether or not the method of election should be changed.

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LMS:mfe