Memorandum for the Secretary

UNITED STATES DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SOLICITOR,
Washington, D. C., February 26, 1936.

submitted, after it has received your approval, as the recommendation of the Department of Agriculture regarding appropriate State legislation in this field.

In the balance of this memorandum I shall briefly summarize the accompanying standard act and shall indicate my opinion upon the major objections which may be raised against its validity under the Federal Constitution and under typical

invite the Secretary of Agriculture of the United States to appoint one person to serve on the committee. This committee is to administer the procedures involved in establishing districts, assist the supervisors of the various districts, encourage the organization of districts where needed, facilitate an interchange

that the regulations may include requirements for the carrying on of necessary engineering operations including the construction of terraces, check dams and similar work, specifications of cropping programs, requirements with reference to methods of cultivation, provisions for retirement from cultivation of highly

CONSTITUTIONALITY OF THE STANDARD ACT

It has been anticipated that some of the land occupiers in any State in which the standard act above summarized may be adopted may challenge the constitu-

stitution, however, in the Fourteenth Amendment provides that no State shall deprive any citizen of his liberty or property without due process of law. Almost identical guaranties are contained in every State constitution, and the

neither property rights nor contract rights are absolute; for government cannot exist if the citizen may at will use his property to the detriment of his fellows, or exercise his freedom of contract to work them harm.

dust storms; the deposit of subsoil over alluvial plains, and the reduction in productivity or outright ruin of rich bottom lands by overwash of poor subsoil

Regulations of land use in the interest of preserving fish and wildlife have been sustained under the police power: *Geer* v. *Connecticut*, 161 U. S. 519 (1895); *State* v. *Southern Coal & Transportation Co.*, 71 W. Va. 470, 76 S. E. 970 (1912); *Commonwealth* v. *Sisson*, 189 Mass. 247, 75 N. E. 619 (1905); *Connolly* v. *Standard Oil Co. of N. Y.*, 264 Fed. 383 (D. R. I. 1920); *State* v. *Rodman*, 58 Minn. 393, 59 N. W. 1098 (1894); *Gentile* v. *State*, 29 Ind. 409 (1868). Legislation directed to assuring adequate drainage of farm lands has been sustained: *Eccles* v. *Ditto*, 23 N. M. 235, 167 Pac. 726 (1917); *Wurts* v. *Hoagland*, 114 U. S. 606 (1885); *Hagar* v. *Reclamation District No. 108*, 111 U. S. 701 (1884); *Houck* v. *Little River Drainage District*, 239 U. S. 254 (1915); *O'Neill* v. *Leamer*, 239 U. S. 244 (1915); *Hagar* v. *Supervisors of Yalo County*, 47 Cal. 222 (1874); *O'Reiley* v. *Kankakee Valley Draining Co.*, 32 Ind. 169 (1869); *In re Bonds of Madera Irrigation District*, 92 Cal. 296, 28 Pac. 272, 675 (1891). But cf. *Sundquist* v. *Fraser*, 191 N. W. 931 (Minn. 1923). In *Chicago & Alton Railroad Co.* v. *Tranbarger*, 238 U. S. 67 (1915) and *Peterson* v. *Northern Pac. Ry. Co.*, 132 Minn. 265, 156 N. W. 121 (1916) it was held that railroad companies may constitutionally be required to maintain ditches to prevent the flooding of adjoining property that would otherwise result from their erection of embankments. In the following cases legislation providing for the organization of irrigation districts to assure an adequate supply of water and protect against drought was sustained: *Board of Directors of Modesto Irrigation Dist.* v. *Tregea*, 88 Cal. 334, 26 Pac. 237 (1891), dismissed on other grounds in 164 U. S. 179 (1896); *Turlock Irrigation Dist.* v. *Williams*, 76 Cal. 360, 18 Pac. 379 (1888); *In re Bonds of Madera Irrigation District*, 92 Cal. 296, 28 Pac. 272, 675 (1891); *Hagar* v. *Supervisors of Yalo County*, 47 Cal. 222 (1874); *Billings Sugar Co.* v. *Fish*, 40 Mont. 256, 106 Pac. 565 (1910); cf. *Eden Irrigation Co.* v. *District Court of Weber County*, 61 Utah 103, 211 Pac. 957 (1922). The establishment of river regulating districts and conservancy districts to prevent and control floods has been sustained: *Orr* v. *Allen*, 245 Fed. 486 (D. Ohio 1917); *Miami County* v. *City of Dayton*, 92 Ohio St. 215, 110 N. E. 726 (1915); *People* v. *Lee*, 72 Col. 598, 213 Pac. 583 (1923); *Board of Black River Regulating Dist.* v. *Ogsbury*, 203 A. D. 43, 196 N. Y. S. 281 (1922); *Board of Hudson River Regulating Dist.* v. *Fonda, J. & G. R. Co.*, 127 Misc. 866, 217 N. Y. S. 781 (1926), affirmed on appeal in 249 N. Y. 445, 164 N. E. 541 (1928); cf. *State ex rel. Skordahl* v. *Flaherty*, 140 Minn. 19, 167 N. W. 122 (1918).

Statutes intended to conserve the water supply of cities have repeatedly been sustained: *Bountiful City* v. *De Luca*, 77 Utah 107, 292 Pac. 194 (1930) (regulated grazing of livestock within 300 feet of streams from which a municipal water supply was taken); *Topeka Supply Co.* v. *City of Potwin Place*, 43 Kan. 404, 23 Pac. 578 (1899); *Town of Shelby* v. *Cleveland Mill & Power Co.*, 155 N. C. 196, 71 S. E. 218 (1911); *State* v. *Wheeler*, 44 N. J. L. 88 (1882) (the foregoing

cemetery within half mile of source of water supply); *Perley* v. *North Carolina* 249 U. S. 510 (1919) (regulating forestry practices). The Supreme Court of Kansas upheld in *Chaput* v. *Demars*, 120 Kan. 273, 243 Pac. 311 (1926), 244 Pac. 1042 (1926), a statute requiring property owners to trim hedges bordering on public highways upon the order of the road commissioners, the court saying as justification for the statute that: "High hedges obstruct the highway, causing snow to drift in them, prevent their drying out quickly after heavy rains, render the highways more difficult to keep in proper condition, obstruct the view, and render them more dangerous."

The appositeness of the cases above discussed is obvious. Regulation of land use in the interest of erosion control is, at one and the same time, regulation to conserve natural resources, to conserve the food supply, to aid in preserving wildlife, to improve farm lands, to prevent and control floods, to protect public lands and public highways, to conserve the water supply of cities, to prevent impairment of dams and reservoirs. It is regulation in the interest of protecting and promoting the health, safety, prosperity, and general welfare of the people of the State.

Not all of the instances of legislation above discussed have required private landowners to perform particular operations, or refrain from performing particular operations, upon their own lands at their own expense, but it is important to note that the courts have repeatedly sustained land-use regulations under the police power which have done precisely that, where the purpose to be achieved was deemed sufficiently important and the interference with private right deemed necessary to accomplish the purpose. In the cedar rust cases discussed above (p. 40) the owner of the infested cedar trees was left no choice but to cut down his trees, though they possessed considerable sentimental value, and though their market value might greatly increase with further growth. Similarly, in the corn borer cases (p. 41) the property owners were required to destroy their wheat fields without compensation, to eliminate cornstalks which were prospective hosts for the corn borer. It is worth noting that the Ohio and Indiana corn borer statutes (112 Ohio Laws, 1927, p. 83; Indiana Acts, 1927, ch. 56, p. 146) in addition to authorizing the administrative destruction of agricultural products, also authorized the administrative specification of tillage practices insofar as necessary to accomplish the purpose of the legislation. The Supreme Court of California in *Graham* v. *Kingwell*, 218 Cal. 658, 24 Pac. (2d) 488 (1933) sustained a statute conferring power to prescribe broad regulations governing the conduct of the bee industry insofar as necessary to eradicate bee diseases.

It may, indeed, now be regarded as definitely established that the legislatures may, when acting in defense of the public health, safety, prosperity, or general welfare, require the carrying on by landowners of particular operations upon

Crouch, 68 Wash. 14, 122 Pac. 366 (1912); *Commonwealth* v. *Watson*, 223 Ky.

within the police power of the States. See *Neal* v. *Boog-Scott*, 247 S. W. 689

Michigan Sugar Co. v. *Auditor General*, 124 Mich. 674, 83 N. W. 625 (1900): *Minnesota Sugar Co.* v. *Iverson*, 91 Minn. 30, 97 N. W. 454 (1903) (the three foregoing cases involving sugar bounties); *Deal* v. *Mississippi County*, 107 Mo. 464, 18 S. W. 24 (1891) (bounty for planting trees). On the related question of whether loans to farmers to purchase seed and for other relief purposes in times of emergency are appropriations for a public purpose the courts have divided, such appropriations having been sustained in: *Cobb* v. *Parnell*, 183 Ark. 429, 36 S. W. (2d) 388 (1931); *State ex rel. Cryderman* v. *Wienrich*, 54 Mont. 390, 170 Pac. 942 (1918); and *State* v. *Nelson County*, 1 N. D. 88, 45 N. W. 33 (1890), and having been disapproved in *William Deering & Co.* v. *Peterson*, 75 Minn. 118, 77 N. W. 568 (1898); *Patty* v. *Colgan*, 97 Cal. 251, 31 Pac. 1133 1893); *State ex rel. Griffith* v. *Osawkee Tp.*, 14 Kans. 418 (1875), and *In re Opinion of the Judges*, 59 S. D. 469, 240 N. W. 600 (1932).

General expenditures for the benefit of agriculture have been upheld on the specific ground that they tend to preserve farm lands from erosion: *Kroon* v. *Jones*, 198 Iowa 1270, 201 N. W. 8 (1924) (see discussion of this case herein, p. 39); *Perkins* v. *Board of Comr's of Cook County*, 271 Ill. 449, 111 N. E. 580 (1916); but cf. *State* v. *Donald*, 151 N. W. 331 (Wis. 1915). In *Scott* v. *Frazier*, 258 Fed. 669 (D. N. Dak. 1919) and *Green* v. *Frazier*, 44 N. D. 395, 176 N. W. 11, affirmed in 253 U. S. 233 (1920), the entry of the State into the warehouse and grain elevator business was sustained in part on the ground that the State purpose was to protect farmers from manipulative marketing practices, and in part on the ground that soil conservation would be thereby promoted. It is important to recognize that both on the question earlier considered as to the limits of the police power, and on the present question of what appropriations may be said to be for a public purpose, the reported decisions must be considered in the light of the year in which they were decided. There is considerable movement in the judicial decisions in these fields. Thus, the courts originally divided sharply on the question of the constitutional propriety of using public funds for the drainage of lands for agricultural purposes. The following cases held such expenditures to be for a public purpose: *Hagar* v. *Reclamation District No. 108*, 111 U. S. 701 (1884); *Houck* v. *Little River Drainage District*, 239 U. S. 254 (1915); *Miller & Lux* v. *Sacramento and San Joaquin Drainage District*, 256

Blaine, 42 Ohio App. 177, 181 N. E. 269 (1931). Similarly, the validity of expenditures of public money for irrigation projects is established: *Fallbrook Irrigation District* v. *Bradley*, 164 U. S. 112, 163 (1896); *In re Madera Irrigation District*, 92 Cal. 276, 28 Pac. 272 (1891); *McMahan* v. *Olcott*, 65 Ore. 537, 133 Pac. 836 (1913); *Cummings* v. *Hyatt*, 54 Neb. 35, 74 N. W. 411 (1898); cf. *Billings Sugar Co.* v. *Fish*, 40 Mont. 256, 106 Pac. 565 (1910).

Section 2 of the standard act recites the numerous ways in which public purposes are advanced by the conduct of erosion-control operations. It seems to me to be difficult to escape the conviction that since the present appropriations have for their tendency and object the control and prevention of soil erosion, the preservation of natural resources, the control of floods, the prevention of the impairment of dams and reservoirs, the preservation of wildlife, the protection of the tax base, and the promotion of the health and general welfare of the people of the State, they are for a public purpose. The benefits received by individuals from operations upon their lands are incidental to these public benefits precisely because the harm sustained by the public from uncontrolled erosion so far exceeds the decline in the value of agricultural lands which a single farmer may sustain from mining his soil and permitting his topsoil to wash and blow away.

The discussion thus far brings us to the conclusion that it is within the power of the State legislatures to provide for regulation of private land-use in the manner specified in the standard act in the interest of erosion control and, further, that it is within their power to appropriate funds out of the State treasuries to finance the establishment and operation of erosion-control projects. The present inquiry into the constitutionality of the standard act would terminate here, therefore, if that act itself contained the land-use regulations, enacted into law by the State legislature and made applicable over the entire State, and if the statute, similarly, itself defined what projects should be established and delegated appropriate authority to State officials to establish and administer them. That is not, however, what the standard act does. In order to realize the maximum amount of local participation in, and control of, erosion-control operations, the statute provides instead for the organization, in accordance with specified procedures, of soil conservation districts. It is the governing bodies of the districts which are authorized to enact land-use regulations into law and to

district organized under the provisions of this act shall constitute a governmental subdivision of this State and a public body, corporate and politic, exercising public powers". (To the same effect is sec. 3 (1)). Section 9 of the act confers upon the supervisors of the districts authority to act as a legislative body for the district, and as such legislative body to enact into law land-use regulations which will govern land-use operations upon lands within the districts. Similarly, section 12 directs the supervisors under certain circumstances to establish a board of adjustment as an administrative agency, such establishment to be effected by an ordinance to be adopted by the supervisors. It is important that there be kept clearly in mind the distinction between a governmental subdivision of a State, familiar instances of which are the county, town, city, and incorporated village, and an administrative board or agency, such as a railroad commission, a bureau of the State government, an election board, and the like. The State soil conservation committee provided for in section 4 of the standard act is, for example, an administrative board and is not a governmental subdivision of the State. It should be noted, too, that the "districts" now commonly provided for in State legislation, such as sanitary, power, road, reclamation, irrigation, and drainage districts, are generally established merely as administrative agencies to operate particular engineering or other properties, without legislative or other powers within the "district". The soil conservation districts are more closely similar to cities and counties than to such "districts".

The first question which confronts us at this point is: Do the State legislatures have authority to provide for the creation of new governmental subdivisions, to function in addition to the traditional governmental subdivisions such as the county, town, city, and the like? While this question has been directly passed upon by the highest courts of only a few States, it seems clear that, with the possible exception of New York, the State legislatures will be held to have power to create the soil conservation districts as new governmental subdivisions of the respective States, as provided for in the standard act. In the following States it has been directly held that the State legislature may, in its discretion, create such additional municipalities or other governmental subdivisions of the State as it shall deem necessary or appropriate: *California: In re Bonds of Madera Irrigation District*, 92 Cal. 296, 28 Pac. 272, 675 (1891); *Illinois: Board of Education of Chicago* v. *Upham*, 357 Ill. 263, 191 N. E. 876 (1934); *People ex rel Weis* v. *Bowman*, 247 Ill. 276, 93 N. E. 244 (1910); *West Chicago Park Commission* v. *City of Chicago*, 152 Ill. 392, 38 N. E. 697 (1894); *Wilson* v. *Board of Trustees of Sanitary District of Chicago*, 133 Ill. 443, 27 N. E. 203 (1890); *Maine: Kennebec Water District* v. *City of Waterville*, 96 Me. 234, 52 Atl. 774 (1902); *Eaton* v. *Thayer*, 128 Atl. 475 (Me. 1925); *Michigan: Kuhn ex rel McRae* v. *Thompson*, 168 Mich. 511, 134 N. W. 722 (1912); *Missouri: Harris* v. *William R. Compton Bond & Mortgage Co.*, 244 Mo. 664, 149 S. W. 602 (1912); *North Carolina: Newsom* v. *Earnheart*, 86 N. C. 391 (1882); *Oregon: Shaw* v. *Harris*, 54 Ore. 424, 103 Pac. 777; *Washington: Paine* v. *Port of Seattle*, 70 Wash. 294, 126 Pac. 628, 127 Pac. 580 (1912). Cf. *Kentucky: Board of Trustees of Town of New Castle* v. *Scott*, 125 Ky. 545, 101 S. W. 944 (1907); *South Carolina: Briggs* v. *Greenville County*, 135 S. E. 153 (S. C. 1926).

While the decisions available in the States of New Jersey and Pennsylvania raise some doubt, it is probable that in these States as well it will be held that the legislature may create new governmental subdivisions of the type provided for in the standard act: See *Van Cleve* v. *Passaic Valley Sewerage Com'rs.*, 71 N. J. L. 574, 60 Atl. 214 (1905); *Lydecker* v. *Drainage & Water Com'rs. of Englewood*, 41 N. J. L. 154 (1878); Dillon, Municipal Corporations (5th ed. 1911) sec. 1434; *In re Corporation of Wyoming Valley Water Supply District*, 27 Luzerne Legal Register (Pa.) 191 (1932). It may well be, however, that if the Court of Appeals of New York will adhere to its decisions in *People ex rel Yost* v. *Becker*, 203 N. Y. 201, 96 N. E. 381 (1911) and *Miller* v. *Cavana*, 223 N. Y. 601, 119 N. E. 1059 (1918), then the present constitution of New York will be held to prohibit the legislature of that State from organizing governmental subdivisions within the State other than counties, towns, cities, and villages. In the *Becker* case the New York court held that the recognition given in the State constitution to counties, towns, cities, and villages is an implied prohibition against the creation of other subdivisions vested with similar powers. However, the New York courts have sustained the organization of districts given power only to administer certain engineering or other properties and not given general governmental powers: *Village of Kensington* v. *Town of N. Hempstead*, 236 App. Div. 340, 258 N. Y. Supp. 355 (1932), aff'd 261 N. Y. 260, 185 N. E. 94 (1933), sustaining collection of taxes by park district; *People ex rel Desiderio* v. *Conolly*, 238 N. Y. 326, 144 N. E. 629 (1924), sustaining issuance of bonds to finance operations of sewer district; *Kenwell* v. *Lee*, 261 N. Y. 113, 184 N. E. 692 (1933), involving creation of water supply district. In the last two cited cases the court stated that the territories of the sewer and water supply districts were "special administrative areas" and hence not within the doctrine of the *Becker* case.

There is no way of determining in advance what the New York court will answer to this question. I believe that in the case of New York the difficulty should be pointed out to the legislative committees of the State legislature. If they should determine that the precedent of the *Becker* case will make an adverse decision almost certain, then the statute can be readily revised to meet the special situation in New York. The revised statute can authorize the existing counties of the State to undertake the erosion-control programs specified in the act and to exercise the powers granted in sections 8 to 12 inclusive. It will still be possible to provide that the governing bodies of the counties shall adopt land-use regulations only after advisory referenda and in accordance with the other procedures specified in the act. The standard act as now submitted provides for the organization of new districts rather than for utilizing existing counties, because of the opinion held by members of the Land Policy Committee and of the Soil Conservation Service that it will be best to organize the districts on a watershed or other appropriate basis rather than in accordance with highly arbitrary county boundary lines. Because of the *Becker* decision it

may, however, be necessary to organize the districts on a county basis in the State of New York.

We come next to the question whether, in those States in which new governmental subdivisions may be organized, the doctrine of separation of governmental powers will be held to be applicable to such subdivisions. Governmental subdivisions of the States may be authorized to exercise, over the territory committed to them, the complete range of governmental powers which the State itself may exercise over the territory of the State. It is within the power of the State legislature to confer upon governmental subdivisions broad or narrow powers as the legislature shall see fit. Additional powers may be conferred upon such governmental subdivisions from time to time and powers formerly exercised may be taken away. (A familiar instance of the grant of new powers to governmental subdivisions is the movement now under way for State legislatures to adopt enabling acts conferring upon counties of the State the power to zone rural areas within the county.) The standard act specifies in detail what powers the soil conservation districts may exercise. (See particularly secs. 8 to 12, inclusive.)

Governmental powers are traditionally considered to be divisible into three types: Legislative, executive, and judicial. Since the soil conservation districts are to be governmental subdivisions and not merely administrative boards, the three types of powers may be conferred upon them. Most, if not all, of the State constitutions establish a separation of powers among the legislature, the executive, and the courts and forbid delegations of power by one of these agencies to another. It has become well established, however, that the requirement of separation of powers contained in the respective State constitutions is applicable only to the State government, and is not applicable to governmental subdivisions of the several States. A single governing body of such a governmental subdivision may, therefore, be authorized to exercise legislative, executive, and judicial powers: Charles W. Tooke, Construction and Operation of Municipal Powers, 7 Temple Law Quarterly 267 at 283, April 1933 (in which the author says: "The constitutional doctrine of the separation of the powers of government does not apply to the subordinate agencies of the state and therefore the authority to enact ordinances or to do other acts within the scope of municipal powers may be conferred upon local administrative bodies"); 12 Corpus Juris [illegible]

Ind. 88, 166 N. E. 270 (1929); cf. *Bryan* v. *Voss*, 143 Ky. 422, 136 S. W. 884; *State ex rel Baughn* v. *Ure*, 91 Neb. 31, 135 N. W. 224 (1912); *Barnes* v. *City of Kirksville*, 266 Mo. 270, 180 S. W. 545 (1915); *Brown* v. *City of Galveston*, 97 Tex. 1, 75 S. W. 488 (1903); *Mayor, etc. City of Jackson* v. *State ex rel Howie*, 102 Miss. 663, 59 So. 873 (1912); *Larsen* v. *Salt Lake City*, 44 Utah 437, 141 Pac. 98 (1914); *State ex rel Hunt* v. *Tausick*, 64 Wash. 69, 116 Pac. 651 (1911).

It is common, in practice, for such governing bodies to exercise both legislative and executive powers, but a separate agency is generally established to exercise judicial powers within the subdivision. The standard act observes this prevailing practice. The boards of supervisors of the districts are authorized to act as both the legislative body and the executive officers of the district. For exercise of judicial power within the district, it is provided that recourse is to be had to the existing local courts. (Compare secs. 10 and 12 of the act.) Inasmuch as legal problems arising out of the operations of the districts will necessarily be problems arising out of the operation of a State statute under which the districts will have been organized, the courts of the States and localities will be able to exercise their usual jurisdiction over the interpretation and enforcement of State legislation.

4. CONSTITUTIONAL VALIDITY OF THE PROCEDURES SPECIFIED FOR ORGANIZING THE DISTRICTS.

The two basic steps involved in the organization of districts of any kind in the several States are: the determination of what lands shall be included within the boundaries of the district and the determination whether the district, once the boundaries have been properly defined, shall be created. On the basis of the due process clause, the courts have surrounded the making of these two determinations with constitutional safeguards. I shall discuss (1) the requirements with reference to the fixing of boundaries for districts and (2) the allowable procedures for determining whether a district shall be created.

It is now well settled that, if the legislature is itself willing to prescribe what shall be the boundaries of a district or other subdivision which it wishes to create, due process of law does not require that the landowners affected be given notice and an opportunity to be heard on the question whether their lands shall be included within, or excluded from, the defined boundaries: *Browning* v.

whatever their rule may be on the power to make the referendum conclusive. The standard act has been drawn so as to comply with this formula and it is therefore anticipated that the procedure should be held valid in all States.

Subsection B of section 5 of the standard act, thus requires the State committee to determine whether there is need for the organization of a district, and to define the boundaries of the district in accordance with the standard quoted above. Subsection C of section 5 then provides that thereafter the committee shall consider the question whether the operation of a district within such boundaries is administratively practicable and feasible. It is provided that to assist the committee in the determination of such administrative practicability and feasibility it shall be the duty of the committee to hold a referendum within the proposed district upon the proposition of the creation of the district. After such referendum, the committee is directed to determine whether the operation of the district within the defined boundaries is adminitsratively practicable and feasible, and the statute provides that "In making such determination the committee shall give due regard and weight to the attitudes of the occupiers of lands lying within the defined boundaries, the number of land occupiers eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the proposed district, the probable expense of carrying on erosion-control operations within such district, and such other economic and social factors as may be rele-

is not administratively feasible. It should be noted, also, that the standard quoted above requires the State committee to consider not alone the vote in the referendum but also such other relevant matters as the attitudes of land occupiers, whether or not they have voted, the probable expense of carrying on erosion-control operations within the district, the approximate wealth and income of the land occupiers and other relevant economic and social data.

For all of these reasons it is my opinion that the procedures prescribed in section 5 of the standard act for creating the districts and fixing their boundaries are valid, in that they do not involve improper delegations of legislative power and they conform to the safeguards required by the due process guaranty.

5. CONSTITUTIONAL VALIDITY OF THE PROCEDURES SPECIFIED FOR ADOPTING AND ENFORCING LAND-USE REGULATIONS.

The question of the constitutional power of the State legislature to require by law modifications in land-use practices of the type provided for in the standard act, in the interest of erosion control, has been considered above and we have concluded that the enactment of such regulations is within the police power (pp. 36, 44). The validity of the procedures specified in the act for adoption and enforcement of such regulations may, however, likewise be challenged. It is my opinion that the procedures provided in the standard act do not violate any constitutional requirements or guaranties.

Section 9 of the act provides that the supervisors of any district may formulate

(1873); *Lammert* v. *Lidwell*, 62 Mo. 188 (1876); *Wright* v. *Cunningham*, 115 Tenn. 445, 91 S. W. 293 (1905).) The cases are in considerable confusion on this point so that it is very difficult to ascertain what is the rule even in particular States, and it is almost impossible to determine whether there is a general rule and if so, what that is. However, the procedure prescribed in section 9 of the standard act makes it unnecessary to determine what the rule may be, since the statute expressly provides that the vote in the refer-

Commonwealth, 200 Ky. 329, 254 S. W. 1061 (1923); *Simmons* v. *Commonwealth*, 210 Ky. 33, 275 S. W. 369 (1925). It should be noted, however, that the lot or portion of land adjacent to the dwelling and other buildings occupied, generally referred to as the "curtilage", is within the protection of the search and seizure clause. (See *Mullen* v. *Commonwealth*, 220 Ky. 656, 295 S. W. 987 (1928); *Welch* v. *State*, 154 Tenn. 60, 289 S. W. 510 (1926).)

The search-and-seizure prohibition should not, however, raise any serious

patrols during the dry season and empowered the State forester to furnish a patrol in the event of failure of a landowner so to do. The expense of the patrol furnished by the forester was to be reported by him to the appropriate county court, and the amount extended on the assessment roll of the county, to be collected as are taxes. The defendants attacked the constitutionality of this statute

proval of the supervisors. The members are to be removable for neglect of duty or malfeasance in office, after notice and hearing, but for no other reason. They are to receive compensation on a per diem basis for time spent on the work of the board. Subsection C provides that any land occupier may file a petition with the board of adjustment alleging that there are great practical diff-

from the terms of the [zoning] ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done." A large number of States have adopted zoning enabling acts closely following the form of that recommended act and including the recommended section 7. In many of the States this provision has not been involved in litigation. Some of the States have varied the wording of the provision somewhat from the form quoted above. The question of the power of the State legislatures to confer such power upon boards of adjustment in these zoning enabling acts has been passed upon by the highest courts of nine States. In the following, the provision has been sustained as not involving an improper delegation of legislative power: *Georgia: McCord* v. *Ed. Bond & Condon Co.*, 175 Ga. 667, 165 S. E. 590 (1932); *Montana: Freeman* v. *Board of Adjustment*, 34 Pac. (2d) 534 (1934); *Ohio: L & M Investment Co.* v. *Cutler*, 125 Ohio St. 12, 180 N. E. 379 (1932); *Oklahoma: Re Dawson*, 136 Okla. 113, 277 Pac. 226 (1928); *Tennessee: Spencer-Sturla Co.* v. *Memphis*, 155 Tenn. 70, 290 S. W. 608 (1927); *Wyoming: In re*

States of Oregon, Maryland, and perhaps Illinois, as indicated above, to present room for belief that the courts which decided those cases may nevertheless sustain the present provision. It should be noted, also, that the present act prescribes with some detail a special procedure for judicial review of the action of the board of adjustment. This procedure may in itself be sufficient to induce the courts to regard with less disfavor the powers to be exercised by the board of adjustment.

If, in a particular State, the court should hold that the procedure in section 12 improperly delegates legislative power to the board of adjustment, section 12 must be deemed separable from the remainder of the act. In such State, therefore, after such decision, the statute may be enforced without recourse to a board of adjustment to make variances in cases of special hardship.

(2) The Fourteenth Amendment to the Federal Constitution and parallel provisions in State constitutions provide that no State shall "deny to any person within its jurisdiction the equal protection of the laws." Under this provision it has become established that State statutes must operate with geographical uniformity and that, while the legislature may make classifications in

ings of fact to support its determinations. The standard stated to guide the action of the board is as specific as the nature of the facts will permit. Procedure is provided whereby anyone aggrieved by an order of the board may obtain immediate review of the order in the local courts.

The hearing is not to be *de novo* but is upon the record made before the board, with the board's findings of fact conclusive, if supported by evidence. Although there was, for a time, doubt as to the constitutionality of conferring upon an administrative board the power to make such conclusive findings of fact because of the decision in *Ohio Valley Water Co.* v. *Ben Avon Borough*, 253 U. S. 287 (1920), it seems to be now established that such power may validly be conferred: *Federal Trade Commission* v. *Pacific States Paper Trade Ass'n*, 273 U. S. 52 (1927); *Tagg Bros. & Moorhead* v. *U. S.*, 280 U. S. 420, at 443 to 444 (1930); *Voehl* v. *Indem. Ins. Co. of North America*, 288 U. S. 162, at 166 (1933); *Federal Radio Commission* v. *Nelson Bros. B. & M. Co.*, 289 U. S. 266, at 276 (1933); *Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U. S. 67, at 73 (1934); *Helfrick* v. *Dahlstrom Metallic Door Co.*, 256 N. Y. 199, 176 N. E. 141 (1931), aff'd 284 U. S. 594 (1932). Cf. *N. Y. Central Railway Co.* v. *White*, 243 U. S. 188, 194, 207; *Mountain Timber Co.* v. *Wash.*, 243 U. S. 219. It seems likely that the rule of the decision in *Ohio Valley Water Co.* v. *Ben Avon Borough*, cited above, is limited to cases involving determination by administrative commissions of rates to be charged by utility companies. Here again, however, it should be noted that the provision making the board's findings of fact conclusive if supported by evidence is separable and hence the rest of the statute will be unaffected by a decision that the court may award a trial *de novo*, or may, on the record, make its own findings of fact despite this provision in the statute.

7. THE STANDARD ACT IS DEVOTED TO A SINGLE SUBJECT AND THAT SUBJECT IS ADEQUATELY EXPRESSED IN THE TITLE OF THE ACT.

While the Federal Constitution contains no such provision with reference to legislation by the Congress, it is common for State constitutions to require that acts of the State legislature shall be limited to a single subject and that such subject shall be adequately expressed in the title of the act. The provision in the Minnesota Constitution (art. IV, sec. 27) may be quoted as typical: "No law shall embrace more than one subject, which shall be expressed in its title."

It should be noted that we are here dealing with two distinct constitutional requirements, inasmuch as a statute may be limited to one subject but that subject may not be adequately expressed in the title; similarly, a statute may have all of its subjects adequately expressed in its title and yet contain legislative provisions on distinct subjects.

With reference, first, to the requirement that a statute be limited to a single subject, it is settled that the provision is not violated where the statute deals with one central subject matter, and every provision of the act is germane to such subject matter. (*First State Bank of Sutherlin* v. *Kendall Lumber Corp.*, 107 Ore. 1, 213 Pac. 142 (1923); *State* v. *Gerhardt*, 145 Ind. 439, 44 N. E. 469 (1896); *State ex rel Bigham* v. *Powers*, 124 Tenn. 553, 137 S. W. 1110 (1911); *Reclamation District No. 1500* v. *Superior Court*, 171 Cal. 672, 154 Pac. 845 (1916); *Blake* v. *People*, 109 Ill. 504 (1884); *Sny Island Levee Drainage District* v. *Shaw*, 252 Ill. 142, 96 N. E. 984 (1911); *Missouri K. & T. R. Co.* v. *Rockwall County Levee District*, 117 Tex. 34, 297 S. W. 206 (1927); *Boise City* v. *Baxter*, 41 Idaho 368, 238 Pac. 1029 (1925); *Pioneer Irrigation District* v. *Bradley*, 8 Idaho 310, 68 Pac. 295 (1902); *Banks* v. *State*, 124 Ga. 15, 52 S. E. 74 (1905).)

The standard act is entirely devoted to the single subject of the organization of soil conservation districts and the conferring upon such districts of appropriate powers for the conservation of soil and soil resources and the prevention and control of soil erosion. While the powers conferred fall into the two large classes of spending money in conducting erosion-control operations and projects, and legislating to regulate land use in the interest of erosion control, nevertheless both of these classes of powers are to be exercised by the same governmental subdivisions and for a single set of closely related purposes. It has been held that a statute which authorized the creation of new reclamation districts may also validate the bonds of existing districts: *Missouri K. & T. R. Co.* v. *Rockwall County Levee District*, 117 Tex. 34, 297 S. W. 206 (1927); that in a statute providing for the organization of drainage and levee districts provision may be made for the levying of certain taxes, for the creation of several distinct types of districts, for several methods of establishing districts, for exercise by the districts of the power of eminent domain, and for a grant of authority to districts to build bridges: *State ex rel Bigham* v. *Powers*, 124 Tenn. 553, 137 S. W. 1110 (1911); that a statute providing for the organization of reclamation districts may authorize the building of levees: *Reclamation District. No. 1500* v. *Superior Court*, 171 Cal. 672, 154 Pac. 845 (1916); that criminal and other penalties may be included in a general regulatory statute: *State* v. *Gerhardt*, 145 Ind. 439, 44 N. E. 469 (1896); and that a statute creating the commission form of government for cities may contain provisions on all matters usually connected with a comprehensive plan of city government, and may confer various types of powers upon the cities: *Boise City* v. *Baxter*, 41 Idaho 368, 238 Pac. 1029 (1925). Statutes providing for the establishment and operation of levee and flood control districts, which are in many respects similar to the soil conservation districts to be organized under the standard act, have been attacked as embracing more than one subject, because of the comprehensive scope of the powers conferred and procedures prescribed in the statutes, in a number of States and have been uniformly sustained: *Arkansas: Dickinson* v. *Cypress Creek Drainage Dist.*, 139 Ark. 76, 213 S. W. 1 (1919); *California: Reclamation District No. 1500* v. *Superior Court*, 171 Cal. 672, 154 Pac. 845 (1916); *Illinois: Blake* v. *People*, 109 Ill. 504 (1884); *Sny Island Levee Drainage District* v. *Shaw*, 252 Ill. 142, 96 N. E. 984 (1911); *Indiana: Marion, B. & E. Traction Co.* v. *Simmons*, 180 Ind. 289, 102 N. E. 132 (1913); *Newtson* v. *Kline*, 185 Ind. 63, 113 N. E. 376 (1916); *Iowa: Richman* v. *Muscatine County*, 77 Iowa 513, 42 N. W. 422 (1889); *Louisiana: Excelsior Planting & Mfg. Co.* v. *Green*, 39 La. Ann. 455, 1 So. 873 (1887); *Dehon* v. *LaFourche Basin Levee Bd.*,