

**State Land—Extermination of Gophers Thereon—Power of Board of Land Commissioners—Expenditure of Money by County Commissioners.**

The County Commissioners may expend county money in exterminating gophers on unoccupied State land lying within the county, but there is no provision of law authorizing the State of Montana, through the State Board of Land Commissioners, to expend money for that purpose.

C. C. Davis, Esq.,  
Commissioner of Agriculture,  
Helena, Montana.

My dear Mr. Davis:

You have requested my opinion on the law for extermination of gophers, which is Chapter 96 of the Laws of 1917, as amended by Chapter 153 of the Laws of 1919, as again amended by Chapter 130 of the Laws of 1921.

Your question is as follows:

“Is the State of Montana, through the State Board of Land Commissioners, in the same position as other non-resident land owners in the enforcement of this law?”

Section 3 of Chapter 96, Laws of 1917 provides for the collection of tax against the land of persons who do not comply with the law, thereby allowing the county to enter upon such land for the purpose of exterminating the gophers thereon. In the latter part of this section is the following provision: “except the expenses of exterminating gophers on state lands, which shall be paid by the county.”

When Chapter 96, above, was amended by Chapter 153, Laws of 1919, which was practically a repeal of the former and a reenactment of the law, the above quoted clause was eliminated from the Act, but a provision for the creation of a “Gopher Extermination Fund” was enacted. Under this provision the fund was to be created either by appropriating money from the general fund of the county, or by a levy of a tax upon all horticultural, farming and grazing lands of the county, which was to be expended by the Board of County Commissioners as by said Board deemed best for the extermination of the gopher pest. (Section 4, Chapter 153, Laws of 1919.)

Chapter 130, Laws of 1921, amended Section 3 of Chapter 153, above, but does not affect Section 4, above.

There is nothing in the law that puts the State of Montana on the same basis as a non-resident land owner, so as to require the State Board of Land Commissioners to take steps to exterminate gophers on State lands. On the other hand, the Board of County Commissioners may, under the provisions of Section 4, Chapter 153,

above, expend money from the "Gopher Extermination Fund" for the purpose of exterminating gophers within the county as said Board may deem best.

Section 2 of Article XII, Constitution of Montana, exempts from taxation the property of the United States, the State, counties, cities, towns, school districts, municipal corporations and public libraries. Therefore, the tax provided for in Chapter 153, above, could not be levied upon either State or Government land for failure to exterminate gophers thereon, even if there was any provision for serving the notice, provided for non-resident land owners, upon the State or Government.

In my opinion, the County Commissioners, under the authority of said Section 4, may expend county money in exterminating gophers on either unoccupied State or unappropriated Government land lying within the county, but there is no provision for the State of Montana, through the State Board of Land Commissioners, or otherwise, expending money for that purpose.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.