

Opinion No. 220.

**Agricultural Lands—Weed Control—
County Commissioner.**

HELD: 1. "Agricultural land" is land capable of being plowed and from which crops can be produced which does not lie within the limits of a city or town and which is not mineral or timber land.

2. Chapter 195, Laws of 1939, is an additional method providing a means for weed control when the county is unable to finance it from the general fund.

March 27, 1940.

Mr. Phil G. Greenan
County Attorney
Great Falls, Montana

My dear Mr. Greenan:

You have asked for a definition of "Agricultural Land" as that term is used in Chapter 195, Laws of 1935, and particularly Section 7 thereof.

This term has been defined as "synonymous with 'land of an agricultural character,' that is, land susceptible of being plowed and seeded, or from which crops can be produced." (3 C. J. S. 361.) The authors of *Corpus Juris Secundum* cite the case of *State ex rel Lyman v. Stewart*, 58 Mont. 1,

as authority for this definition. There the Court was confronted with the problem of defining the meaning of the phrase "lands agricultural in character" as used in a tax statute. But the Court said "that the term 'agricultural lands' * * * may be used in a broad or in a restricted sense, depending upon the intention of the legislature in the use of the term." In the cited case the act before the Court was passed "for the benefit of those owning lands susceptible of being plowed and seeded." The Court declared that the purpose of the act should be taken into consideration in order to determine the legislative intent.

In providing for the control of noxious weeds by Chapter 195, Laws of 1939, it was the intention of the legislature to protect all lands that were capable of being used for agricultural purposes. The need for such protection is felt by all landowners who have land "susceptible of being plowed and seeded or from which crops can be produced."

Therefore, all land capable of being plowed and from which crops can be produced, which does not lie within the limits of a city or town and which is not mineral or timber land is to be classified as agricultural. Such a definition would include a good deal of land that is commonly termed grazing land.

You have also asked if the county is prohibited from expending money for weed control until the statutory steps have been taken for complying with Chapter 195, Laws of 1939.

The passage of that act does not prevent the board of county commissioners from destroying noxious weeds providing the welfare of the county demands it and there is money with which to carry on the work. Chapter 195 provides an additional method for weed control to be used when the county commissioners are unable to finance weed control from the general fund.