Opinion No. 140.

County Commissioners—Weed Control District—Petition, Creation of Weed Control District—Districts, Weed Control.

Held: When a petition for a weed control and weed seed extermination district is presented to a board of county commissioners, is noticed for hearing, and the board takes definite action upon it as provided in Sections 6 and 7 of Chapter 195, Laws of 1939, such commissioners may not, after denying such petition, rescind their action and reconsider that petition. Under the legislative act, in order for the board to have something to consider and act upon, it would be necessary to present another petition.

March 26, 1946.

Mr. Homer A. Hoover
County Attorney
McCone County
Circle, Montana

Dear Mr. Hoover:

You have requested an opinion of this office on the following facts:

> After the board of county commissioners has once acted upon a petition for the formation of a weed control and weed seed extermination district and has refused to form such a district, could it then reconsider the petition, rescind its action denying a district, and make an order creating a district without the presentation of a new petition?

Sections 5, 6 and 7 of Chapter 195, Laws of 1939, sets forth the procedure for forming such districts. The authority of the county commissioners in considering and forming such districts is purely statutory; thus the powers of the board in proceedings pertaining thereto must be expressly conferred by the statute, or necessarily implied from those expressed.

Section 5 of said Chapter 195 provides for the filing of a petition. Section 6 of said chapter provides for notice of hearing, and setting the date of such hearing. Section 7 of said chapter pertains to the conducting of a

hearing, considering objections, consent of land owners to the formation, and provides for the exercise of judgment on the part of the board of county commissioners in the creation of the district.

The duties of the board of county commissioners in conducting the proceedings and deciding the merits of such petition are semi-judicial in character, and the formation of the district is within the discretion of such board presumably to be exercised by it as the principal executive body of the county for the best interest of all persons concerned.

The enumerated sections of said chapter are very explicit as to the proceedings to be had and action to be taken. There are no provisions made for reconsideration of any previous action. It is well settled law of this state that county commissioners have no power other than those expressly given by statute or necessarily implied from those given, and if there is a doubt as to an existing power, the doubt must be resolved against their having the power. (See Lewis v. Petroleum County, 92 Mont. 563, 17 Pac. (2d) 60.)

It is quite generally held that in proceedings of this nature, there is no implied power to reconsider previous actions. See in this respect 46 Corpus Juris 1033, as follows:

> ". . . and when the judgment or discretion of an executive officer has been completely exercised in the performance of a specific duty, the act performed is beyond his review or recall, although the statute confering authority expressly makes his determination discretionary."

See also Cress v. State, 152 N. E. 822, as follows:

> "But an act once done, or a contract entered into, whether by an individual or by a municipal corporation on behalf of the public cannot be undone and nullified unless the power to undo it has been reserved, and a township trustee will not be held to possess implied power to disestablish a high school whenever he may wish to do so merely because the statute expressly gives him power in his discretion to establish such a school, where nothing is said in the statute about conferring a discretionary power to undo what he may have done."

People v. Canter, 180 N. Y. S. 155, and People ex rel. Wimple, 39 N. E. 397, substantiate in substance the above citation from Corpus Juris and the Cress v. State case, supra.

It is therefore my opinion that, when a petition for a weed control and weed seed extermination district is presented to a board of county commissioners, is noticed for hearing, and the board takes definite action upon it as provided in Sections 6 and 7 of Chapter 195, Laws of 1939, such commissioners may not after denying such petition, rescind their action and reconsider that petition. Under the legislative act, in order for the board to have something to consider and act upon, it would be necessary to present another petition.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General