

**Opinion No. 109****Weed Control—Destruction of Weeds  
—Charges for—Assessment Lists—  
Taxes—Collection of Taxes.**

- Held:** 1. Charges incurred in the destruction of weeds by county supervisors in a weed control district become a special tax on the land involved, after a notice has been given to the persons permitting the growth of weeds on their land and where such notice is not obeyed.
2. The power of the state to collect taxes is not diminished by failure of a public official to collect the tax in the year when it was originally assessed.
3. Where there has been a failure to collect the tax in the year assessed, the same may be extended to a subsequent year.

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August 14th, 1952.

Mr. Pershing D. Hanifen  
County Attorney  
Granite County  
Philipsburg, Montana

Dear Mr. Hanifen:

You have requested my opinion as to whether the uncollected charges imposed under the provisions of Section 16-1715, Revised Codes of Montana, 1947, for Weed Control purposes may

be collected by extending the same to the assessment list for a subsequent year.

Section 16-1715, Revised Codes of Montana, 1947, reads as follows:

"Destruction of weeds by supervisors if notice not observed—collection of cost. If the notice be not obeyed within the time specified in the notice the supervisors shall forthwith institute control measures and make report thereof to the county clerk, with a verified, itemized account of their services, and expenses in so doing, and a description of the lands involved, and shall include in said account the necessary cost and expense of chemicals, man hours of labor and equipment employed, at a rate paid, in the immediate vicinity, for labor per day and for equipment used for an eight hour day. Such expenses shall be paid by the county out of the "noxious weed fund", and unless the sum, to be repaid by the owner or occupant is not repaid before October 15th next ensuing, the county clerk shall certify the amount thereof, with the description of the premises to be charged, and shall extend the same to the assessment list of the said county, as a special tax on said land, but if the land for any reason be exempt from general taxation, the amount of such charge may be recovered by direct claim against the lessee and collected in the same manner as personal taxes . . ."

It will be noted that part of the above cited statute reads . . . and unless the sum, to be repair by the owner or occupant, is not repaid before October 15th next ensuing, the county clerk shall certify the amount thereof, with the description of the premises to be charged, and shall extend the same to the assessment list of the said county as a special tax on said land . . ."

The above cited language places a limitation on the owner or occupant as to the time when the sum should be

repaid, but it is not a limitation on the county clerk.

It is a matter of public policy that the collection of taxes should, if possible, be made in the year in which the taxes are assessed. Where, however, there is a failure to collect the tax within the year, there is no diminishment of the power and authority of the state to collect it. (51 Am. Jur. Taxation, p. 838). As was stated in a recent opinion issued by my office on May 2, 1952, "It is only reasonable to collect taxes which have been levied and if the error, as here, is a failure of a public official to make the proper book-keeping entries, the taxpayers should not be penalized for the failure of a public official." (See Opinion No. 83, Opinions of Attorney General, Volume 24).

By statute the charge incurred by the destruction of weeds by the supervisors, where notice has been given to the person permitting the growth and where such notice is not obeyed, becomes a special tax on the land involved. Where the property is exempt from general taxation, the charges are collectible as personal taxes. The charge for the destruction of the noxious weeds, where the land is not exempt becomes a special assessment on the land, and becomes collectible as are special assessments generally.

The tax imposed is not in the nature of a penalty but rather as a legitimate charge to the land for services rendered.

It is my opinion that charges for weed control purposes against taxpayers in weed control districts may be collected by extending the same to a subsequent year. It is further my opinion that the statute is mandatory in requiring the County Clerk to extend the charge to the assessment list of the said county and that it is not within the contemplation of the statute that this act be done by one other than the County Clerk.

Very truly yours,  
ARNOLD H. OLSEN  
Attorney General