VOLUME NO. 36 Opinion No. 103

WEED CONTROL — DISTRICTS — Power to enter private and government owned lands — WEED CONTROL — DISTRICTS — Power to require governmental agencies to control noxious weeds on government owned lands — WEED CONTROL — Power to enter government owned land to control weeds and assess government agencies for work performed — WEED CONTROL — DISTRICTS — Power to control nuisance weeds not classified as noxious — WEED CONTROL — DISTRICTS — Power to establish fund to control non-noxious nuisance weeds — WEED CONTROL — DISTRICTS — May not operate ourside county boundaries; Sections 16-1701, 16-1706, 16-1709.1, 16-1714, 16-1715, 16-1717, 16-1719, Revised Codes of Montana 1947.

HELD: 1. A county weed control district must serve a written notice pursuant to §16-1714, R.C.M. 1947, prior to entering land within the county for weed control purposes and comply with §16-1715, R.C.M. 1947, prior to actual entry, unless it is in receipt of a prior written permission from the person owning, occupying, or controlling the land to enter said land.

2. A county weed control district may enter state and local lands or highway lands to control noxious weeds, but not federal lands without permission of the federal government unless there is a private lessee on the land. It may not assess a local, state, or federal government agency for weed control work unless the agency voluntarily offers to pay for the work performed.

3. A county weed control district may not expend noxious weed fund monies to control weeds not classified as noxious pursuant to §16-1701, R.C.M. 1947.

4. A county weed control district may not establish a fund to use for the direct control of nuisance weeds, not classified as noxious.
5. A county weed control district may not directly control weeds outside the boundary of the county.

October 7, 1976

Mr. George Lackman, Commissioner
Department of Agriculture
1300 Block, Cedar Street
Airport Way Building West
Helena, MT 59601

Dear Commissioner Lackman:

You have requested my opinion concerning the Montana Weed Control Law, Title 16, Chapter 17, R.C.M. 1947.

More specifically you ask:

1. Whether a county weed control district may legally perform noxious weed control on private, state, or federal land without serving a written notice or obtaining permission from the person owning, leasing, or administering the land?

2. May a county weed control district require local, state, or federal agencies to control noxious weeds on their respective lands within the district?

a. May a district enter local, state, or federal lands to perform control of noxious weeds and assess the local, state, or federal agencies for control work performed?

b. If a district cannot assess state or federal entities for weed control work performed, can weed control districts enter such lands to perform control work and accept responsibility for all expenses of the operation?

3. May weed control districts directly control, through expenditure of noxious weed funds, "weeds" which are not classified as noxious by the Weed Control Law or designated by the county commissioners with the approval of the county extension agent or the agriculture experiment station at Montana State University?

4. May counties establish, in addition to the noxious plant management fund, another fund to control nuisance weeds not defined as noxious?

5. Is it legal for a weed control district to directly control noxious weeds on lands outside the boundary of the county?

6. If the present weed law is revised to include a definition of the word "person", would the definition set forth below include local, state, and federal agencies?

> "Person" means any natural person, individual, firm, partnership, association, or body politic or any organized group of persons, whether incorporated or not, and includes any trustee, receiver, assignee, or similar representative thereof.

You ask whether a county weed control district may perform noxious weed control procedures without serving a notice on the person owning, occupying, or controlling lands within the district.

Section 16-1714, R.C.M. 1947, requires a county weed control district to inspect land within the district if a complaint is received that noxious weeds are present on the land. If an inspection finds such weeds a written notice must be served on the person allowing the weeds to be present, directing him to comply with the Weed Control Law within a specific period of time. If the notice is not obeyed within the time specified the supervisors of the district shall institute control measures. §16-1715, R.C.M. 1947.

Unless the county weed control district has received permission to enter the land to perform weed control procedures from the person owning, occupying or controlling the land, a notice under §16-1714, R.C.M. 1947, must be presented to that person and non-conformance within the specified time, must precede any entry onto the land for the performance of weed control measures. In the alternative, obtaining the written permission of the person owning, occupying, or controlling the land prior to entry for weed control purposes would suffice for a legal entry to the land.

Your next general question deals with the authority of county weed control districts on land owned by local, state, or federal agencies within the district. Any discussion of authority over government owned lands must be divided into two categories: (1) authority on state and local government lands; (2) authority on federal government owned lands.

Section 16-1706, R.C.M. 1947 provides it is unlawful to willfully permit noxious weeds to go to seed. This provision specifically applies to state lands and all county, state, and federal owned and controlled highways. It is a rule of statutory construction that acts must be read and considered in their entirety and the legislative intent may not be gained from the wording of any particular section or sentence, but only from a consideration of the whole. **State ex rel. Jones v. Giles**, ___ Mont. ______, 541 P.2d 355 (1975); **Home Building & Loan Ass'n of Helena v. Bammel**, 106 Mont. 407, 81 P.2d 673 (1938). Following the rules stated above the inclusion of state lands and the county, state and federal highways in §16-1706, R.C.M. 1947, would include these lands under the coverage of all of Title 16, Chapter 17, R.C.M. 1947. As all counties and other local form of government are subdivisions or agencies of the state, **Roosevelt County v. State Board of Equalization**, 118 Mont. 31, 162 P.2d 887 (1945); **Dietrich v. City of Deer Lodge**, 124 Mont. 8, 218 P.2d 708 (1950), the inclusion of "state lands" would also include lands of local governmental entities. These subdivisions of the state are permitted by statute to own land pursuant to §§16-804 and 11-104, R.C.M. 1947. Therefore, county weed control districts may enter state and local government lands in compliance with the entry requirements of the Weed Control Law.

Federal government owned lands, with the exception of federal highways, are not included in the coverage of the Montana Weed Control Law. County weed control districts may only enter such lands for weed control purposes after first obtaining permission from the proper federal agency owning, occupying, or controlling said land within the boundaries of the county.

The federal government has exclusive jurisdiction over these lands, unless it has ceded concurrent jurisdiction to the state government. **Valley County v. Thomas**, 109 Mont. 345, 97 P.2d 345 (1940); **Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation v. Calvert Exploration Co.**, 223 F. Supp. 909 (D. Mont. 1963). Such prohibition does not extend to lessees of the land from the federal government, if the lease provides for such an exception.

If a weed control district enters state land pursuant to the provisions of the Weed Control Law or federal land by specific grant of permission to enter for weed control purposes, the government entity owning, occupying, or controlling the land may not be assessed for work done. Unless Congress consents thereto, all property belonging to the federal government, devoted to public uses, is immune from state taxation. **First National Bank of White Sulphur Springs v. Bergan**, 119 Mont. 1, 169 P.2d 233 (1946). Ever since **McCulloch v. Maryland**, 4 Wheat. 316, 436, 4 L.Ed. 579 (1819), a state, or subdivision thereof, may not tax the federal government or an instrument, means or agency thereof, without the consent of Congress, if such tax would interfere with the governmental functions.

Section 84-202, R.C.M. 1947, specifically exempts property of the federal, state, county, etc. governments from taxation. Section 16-1715, R.C.M. 1947 provides that assessments for weed control procedures shall be considered as personal property subject to property taxation; such assessments may not be made against the governmental agency. There is one exception to this rule as §16-1719, R.C.M. 1947 specifically provides that the state highway fund shall be used to pay for the cost of controlling noxious weeds along the right of way of state or federal highways.

If state owned agricultural land is leased to a private individual,§16-1715, R.C.M. 1947 states that the lease shall provide that the lessee shall be liable for weed extermination and shall be assessable, as a personal tax, for any weed control procedures undertaken pursuant to the Weed Control Law.

Section 16-1719, R.C.M. 1947 provides that the weed district supervisors shall control all noxious weeds within the confines of the district with the cost of such control paid from the "noxious weed fund". Section 16-1715, R.C.M. 1947 provides the taxes assessed pursuant to that section shall go into said fund, along with monies either appropriated from the general fund or a special levy on all taxable property in the county. §16-1717, R.C.M. 1947. Therefore, reading the plain language of these portions of the Weed Control Law together, the county may perform work on local, state or federal lands — after receiving the proper permission or compliance with entry requirements — and pay for such work out of the noxious weed fund. Of course, the local, state, or federal government may offer to pay for such weed control work on a voluntary basis upon the approval of Congress, the Legislature or the proper local governing body.

You ask whether weed control districts may expend monies from the "noxious weed fund" to directly control weeds not classified as noxious by the Weed Control Law or designated as noxious by the county commissioners pursuant to §16-1701, R.C.M. 1947.

Section 16-1717, R.C.M. 1947 specifically states proceeds going into the "noxious weed fund" shall be used "solely for the promoting of control of noxious weeds or extermination of weed seed" in the county. The section goes on to say the fund may be expended by the county commissioners in "such manner, as is by said supervisors deemed best to secure the control and extermination of noxious weed and weed seed". The plain language of the statute states only weeds classified as noxious may be controlled using funds from the "noxious weed fund".

You ask whether a county may establish a fund other than the noxious weed fund, to control nuisance weeds not defined as noxious. The noxious weed fund is specifically set up in §16-1717, R.C.M. 1947, but no mention is made of a fund to control nuisance weeds, not classified as noxious. In fact, no mention is made of such other weeds. It is a rule of statutory construction that express mention of one matter in a statute excludes other similar matters under the maxim "expressio unius est exclusio alterius". **Helena Valley Irrigation District v. State Highway Commission,** 150 Mont. 192, 433 P.2d 791 (1967). Therefore, the specific mention of the noxious weed fund, with the absence of mention of other weed control funds, indicates the intent of the legislature that no such funds would be established.

You ask whether it is legal for a weed control district to directly control noxious weed outside the boundaries of the county. Section 16-1709.1, R.C.M. 1947, specifically limits the jurisdiction of a county weed control district to "all land within the boundaries of the county."

You ask whether the proposed statutory definition of "person" set forth in question #6, supra, would include local, state, and federal agencies. As stated above in this opinion, the inclusion of these governmental agencies in such a definition would have no effect on the powers that a weed control district might have over lands owned, occupied, or controlled by these agencies. Furthermore, there are inconsistencies, redundancies, ambiguities, and omissions in the proposed definition which would make it inadvisable for presentation to the legislature in its present form.

THEREFORE, IT IS MY OPINION:

1. A county weed control district must serve a written notice pursuant to §16-1714, R.C.M. 1947, prior to entering land within the county for weed control purposes and comply with §16-1715, R.C.M. 1947, prior to actual entry, unless it is in receipt of a prior written permission from the person owning, occupying, or controlling the land to enter said land.

2. A county weed control district may enter state and local lands or highway lands to control noxious weeds, but not federal lands without permission of the federal government unless there is a private lessee on

the land. It may not assess a local, state, or federal government agency for weed control work unless the agency voluntarily offers to pay for the work performed.

3. A county weed control district may not expend noxious weed fund monies to control weeds not classified as noxious pursuant to §16-1701, R.C.M. 1947.

4. A county weed control district may not establish a fund to use for the direct control of nuisance weeds, not classified as noxious.

5. A county weed control district may not directly control weeds outside the boundary of the county.

Very truly yours,
ROBERT L. WOODAHL
Attorney General