

2. The county may pay its share of the expense of weed control on highways and county owned land either out of the noxious weed fund or out of the general fund.

September 13, 1940.

Mr. Claude A. Johnson
County Attorney
Red Lodge, Montana

My dear Mr. Johnson:

You have asked if equipment purchased with funds raised by taxation in a weed-control district for the purpose of control and extermination of noxious weeds, and surplus funds of such district can be used outside the district to control weeds on county roads.

The statute, Chapter 195, Laws of 1939, provides for the creation of a weed control and weed extermination district when twenty-five per cent. (25%) of the freeholders present a petition to the county commissioners for the creation of such a district (Sec. 5).

After a hearing, if land owners owning fifty-one per cent. (51%) of the agricultural land within the proposed district file written consent, and the county commissioners deem it desirable and for the best interests of all concerned to create such a district, an order is made establishing the district and setting its boundaries. (Sec. 7.)

The board of county commissioners may appropriate money from the general fund of the county, or levy a tax not exceeding one mill on the dollar, to be used for control of noxious weeds and placed in a fund to be designated "noxious weed fund." "This fund shall be kept separate and distinct by the county treasurer and shall be expended by the commissioners at such time and in such manner as is by said supervisors deemed best to secure the control and extermination of noxious weeds and weed seed. Warrants upon such funds may be drawn by the supervisors and countersigned by the commissioners." (Sec. 13). This is a fund created for a special purpose and the county commissioners and supervisors make a substantial approximation of the cost of controlling noxious weeds and the people of the district pay in the form of a tax their aliquot share of the remaining expenses. Exact

Opinion No. 258.

Weed Control—Noxious Weeds—Taxation—County Commissioners.

HELD: 1. Equipment purchased from the Noxious Weed Fund and surplus funds may not be used outside the district.

equality of taxation is not possible but substantial equality may be achieved and the tax apportioned according to the benefit rendered.

When there is a surplus in the fund, such money becomes a trust fund to be used only for the purpose for which it was raised and cannot be used for any other purpose. (*Spitzer v. El Reno* (Okla.), 138 Pac. 797.)

It is my opinion that money raised within a district must be expended entirely within that district and surplus funds or equipment purchased for that district cannot be used in other parts of the county not included in a weed control district.

The use of such equipment and funds on county roads raises another question entirely. The statute does provide, in Section 15, that,

“It shall be the duty of the commissioners to control noxious weeds and exterminate noxious weed seed on the highways and county owned land within the confines of the district. The total cost of such control and extermination shall be paid from the “noxious weed fund.”

The county could require that a general fund of the county bear two-thirds of the expense of county owned land and public highway in the same way that individuals must bear two-thirds of the expense in controlling weeds on their land, but the statute does not provide for this. So such procedure is discretionary with the county commissioners. The county commissioners, however, are required to control noxious weeds and exterminate weed seed on county land and highways and may pay for the cost of this control either from the noxious weed fund entirely or partly from the noxious weed fund and partly from the general fund of the county.