

No. 104

**COUNTIES—CITIES AND TOWNS—DEPARTMENT OF
AGRICULTURE—INSECT PEST AND DISEASE,
eradication and control thereof**

Held: Cost of treating trees, shrubs, vines, etc., on property of a county, under Section 3617, Revised Codes of Montana, 1935, as amended by Chapter 86, Laws of 1939, is a proper charge against such a county.

April 29, 1941.

Mr. John D. French
County Attorney
Lake County
Polson, Montana

Dear Mr. French:

You have requested my opinion as to "whether claims presented by a city against a county for the spraying of trees under Section 3617, Revised Codes of Montana, as amended by Chapter 86, Laws of 1939, at page 181, are legal and proper claims against the county (1) when the Department of Agriculture has instructed such spraying, and (2) when there have been no such instructions."

Chapter 86, Laws of 1939, is as follows:

"Section 3617. If any person, firm or corporation, or the legal representative of any person, firm or corporation, owning any orchard, tree, shrub, plant or vines which is known to be infected or infested with any injurious insect pest or disease and which thereby becomes a menace to the agricultural or fruit industry, or a menace to ornamental trees, shrubs, plants or vines of this State, or any city or county thereof, shall fail, refuse or neglect to comply with the instructions of the Department of Agriculture, Labor and Industry, or its authorized representative, for the eradication or control of such injurious insect pest or disease, or the destruction of said infested or infected orchard, tree, shrub, plant or vines within the time specified by the said Department or its authorized representatives, if in the judgment of said department or authorized representatives such treatment or destruction shall be deemed necessary, said Department or its authorized representative is empowered to condemn, remove or destroy any such orchard, tree, shrub, plant or vines or treat such orchard, tree, shrub, plant or vine, with a proper remedy, and if such owner, or his legal representative shall fail, neglect or refuse to pay the cost of such removal, treatment, or destruction of such orchard, tree, shrub, plant, or vines within thirty days after due notice has been given by mailing to the owner, or his legal representative, at his last known postoffice address, then said cost and expense shall become a lien on the land of the owner and shall be added by the County Treasurer to the taxes upon said property and collected as other taxes."

This Section authorizes the Department of Agriculture to require "any person, firm or corporation" or the legal representatives of either, owning any orchard, tree, shrub, plant or vine which is known to be infected or infested with any injurious insect or pest or disease and which thereby becomes a menace to the agriculture or fruit industry, or a menace to ornamental trees, shrubs, plants or vines of this State, or any city or county thereof, to comply with its instructions for the eradication or control of such insect or disease. The section provides that, upon failure of such owner to so comply, the department, or its legal representative, is empowered to condemn, remove, destroy or treat the same and the cost thereof is chargeable to such owner. It further provides that, if such costs are not paid, they become a lien against the property of the owner and directs the Treasurer to add such cost to the taxes upon the property of such owner and collect the same as other taxes are collected.

It is very apparent the purpose of this provision is the protection of orchards, shrubs, vines, plants, etc., from disease and pests and to prevent the spread thereof. The county is empowered to own real property and may expend county funds for the maintenance and beautification of such property by planting lawns, shrubs, trees, vines, etc. (Section 4465.7, Revised Codes of Montana, 1935). Hence, if county property within a city has such vines, shrubs, etc., around or on its property, such diseases or insects may affect them and spread to the vines, trees, etc., of other land owners. To say, therefore, that this section does not apply to counties would, I think, be unreasonable. While the provision of the statute relative to charging the property of the owner with a lien for the cost could not be enforced against the county, yet it is my opinion that a claim for such costs incurred under direction of the Department of Agriculture in compliance with the provisions of the Act would be a proper and legal claim.

The city, of course, could not on its own initiative incur such expense and charge the county therefor.

Sincerely yours,

JOHN W. BONNER
Attorney General