

No. 153

STATE HIGHWAY COMMISSION—WEED CONTROL DISTRICTS

Held: Under Chapter 90, Laws of 1941, primary duty of weed control and extermination on state and federal highway rights-of-way rests on State Highway Commission, but is proper charge of county against State Highway Commission, if that body fails to perform such duty within said control districts.

June 30, 1941.

Mr. W. H. Holmes
State Highway Engineer
Helena, Montana

Dear Mr. Holmes:

You have requested a ruling upon the following fact statement and questions:

"House Bill No. 330, passed by the recent session of the legislature, purports to amend Sec. 15 of Chapter 195 of the Session Laws of Montana, 1939. Said Sec. 15 was amended by adding the following:

'Provided that the cost of exterminating such weeds growing along the right of way of a State or Federal Highway shall upon the presentation by the Commissioners of a verified account of the expenses incurred, be paid from the State Highway Fund.'

"The law, as it now reads and as it will become effective on July 1, 1941, raises the following inquiries:

- "1. Does it mean that the State Highway Commission will have to relinquish jurisdiction of its rights of way to the counties for weed extermination purposes and thereby incur the chances of having its bridges, cattleguards and fences burned?
- "2. Would the law conflict with the State Highway Commission's agreements with the Federal Government relative to rights of way upon which Federal Aid has been expended?
- "3. Would the payment to the counties, as contemplated by said law, be a diversion of the State gasoline tax funds?
- "4. May the State Highway Commission continue its old weed extermination plan as outlined in the memorandum which is herewith enclosed?"

It is well established where a statute is capable of two constructions, one of which would render it invalid and the other valid, the construction which will uphold its validity must be adopted.

State v. Bowker, 63 Mont. 1, 205 Pac. 961;

Hale v. County Treasurer of Mineral County, 82 Mont. 98, 265 Pac. 6.

A reading of Chapter 195, Laws of 1939, as amended by Chapter 90, Laws of 1941, will reveal that, of course, the general purpose of the act was to control and exterminate noxious weeds. The primary duty of

performing this work in all cases falls upon the person owning, occupying or controlling the land. It is only when this duty is not performed by such person that the special tax accrues. (See Section 11, Chapter 195, Laws of 1939, as amended.)

Guided by these general observations, it is apparent it is likewise the duty of public and quasi-public ownership of land or easements to perform a like duty of weed control and extermination within the weed districts. (Section 2, Chapter 195, Laws of 1939.) It follows if the State Highway Commission, having jurisdiction over rights-of-way for state and federal highways, performs the duty of weed control and extermination imposed by Chapter 195 through its own instrumentality, no occasion can arise whereby Section 15, Chapter 195, Laws of 1939, as amended, will become operative. The new matter added to Section 15 by Section 5, Chapter 90, Laws of 1941, quoted above in your inquiry, only provides a method of paying for weed extermination on state and federal highway rights-of-way if such extermination is not taken care of by the State Highway Commission. It affords a practical method of furnishing complete eradication within the district.

This conclusion must, of necessity, be true especially in the case of federal highways. Pursuant to agreement between the state and federal governments, the state must maintain control and jurisdiction over highways constructed in part by federal aid. Should the 1941 amendment be construed to vest the primary duty of maintaining the federal highway rights-of-way clear of noxious weeds in the boards of county commissioners, and not the state, violation of obligation of contract between the state and federal government would be the inevitable result.

The construction I have given to the 1941 amendment closes the door to such constitutional objection.

Under Section 2381.22 of the Revised Codes of Montana, 1935, there can be no question but that weed control and extermination fall within the phrase "construction, reconstruction, betterment, maintenance, administration and engineering" on the highway systems. Whether the funds are expended directly by the Highway Commission or paid to the board of county commissioners for weed extermination, the object of the expenditures remains the same and falls within the scope of purposes above defined. I conclude, therefore, such expenditures would not constitute a diversion of the state gasoline tax fund.

Specifically answering your questions in their respective order, my answer is in the negative as to the first three questions and in the affirmative as to the fourth.

Sincerely yours,

JOHN W. BONNER
Attorney General