

## No. 205

**COUNTY COMMISSIONERS—WEED CONTROL AND  
WEED SEED EXTERMINATION DISTRICTS, Creation  
of—DUTY OF COUNTY COMMISSIONERS**

**Held:** It is not mandatory on the county commissioners to create a weed control or weed seed extermination district. The county commissioners may only consider protest of landowners owning land within the proposed district.

August 13, 1941.

Mr. Bert W. Kronmiller  
County Attorney  
Big Horn County  
Hardin, Montana

Dear Mr. Kronmiller:

You have requested an opinion relative to the provisions of Chapter 195, Laws of 1939, as amended by Chapter 90, Laws of 1941.

You advise that land-owners and freeholders, owning more than fifty-one per cent of the agricultural lands within a proposed district outside of an incorporated town or city, in Big Horn County, made and filed a petition and presented the same to the County Commissioners, asking for the creation of a weed control and weed seed extermination district; that the commissioners set a date for the hearing of the same and gave notice as provided by Section 7 of said chapter; that, at the hearing, land-owners and taxpayers owning land outside the proposed district appeared and made objections to the creation of the district; there were no objections made and filed by any person owning land within the boundaries of the proposed district.

On the above facts you ask my opinion on the following questions:

1. Is it mandatory on the commissioners to make an order declaring the district created?
2. Can the board of county commissioners consider written objections made and filed by land-owners owning land outside the proposed district?

The act provides that, when a petition signed by twenty-five per cent (25%) of the freeholders of any proposed district outside of any incorporated town or city of the county is presented to the commissioners of the county, asking for the creating of a district, the commissioners shall set a day for hearing and give notice to all persons interested (Section 5).

Section 6 of the act provides notice of the hearing shall be mailed, by registered letter to each land-owner within the proposed district, and further said notice shall be posted in three public places within the district and published in the newspaper published nearest the district for two weekly issues, and such posting, mailing and first publication shall be at least ten days before the date of the hearing.

Then, Section 7 provides:

"At such hearing, any land-owner may file his written objections to the creation of the district. If land-owners, owning fifty-one per cent (51%) of the agricultural land within the district, shall file written consent for the creation of the district, the commissioners shall proceed to hear the said petition, and if, in their judgment, the creation of the said district is desirable and for the best interest of all persons interested, they shall, by an order duly made and entered on their minutes, declare the district created, setting forth the name and boundaries of the district and the land contained therein." (Emphasis mine.)

As to your first question, it may be pointed out Section 7, supra, provides specifically that if, in their judgment, the creation of the said district is desirable and for the best interest of all persons interested, they (the commissioners) shall create the district. This language plainly indicates the commissioners shall, after a full hearing on the matter, exercise their discretion in the creation of the district. If the legislature had intended otherwise, it could easily have provided that, upon the filing of consent by fifty-one per cent of the landowners of the proposed district, they must create the district. With such a provision in the statute, there would be no reason for a hearing. The only reasonable interpretation of the language used is that the commissioners are given a discretion.

Your second question, we think, should be answered in the negative.

A reading of the entire act leads to the conclusion only those land-owners owning land within the boundaries of the proposed district are most vitally interested in the creation of the district. It is true the control of noxious weeds and seeds in any particular portion of a county is of benefit to the whole county and all lands of the county are benefited and hence all land-owners are interested. However, the burden of the expense falls most heavily upon those land-owners within the district. Section 16, as amended by Chapter 90, Laws of 1941, provides one-third only of the cost shall be taken from the noxious weed fund created under Section 13, into which are placed the proceeds of the county-wide tax therein provided for, while the land-owners within the district must pay two-thirds. Again, the statute provides personal notice by registered mail be given to each land-owner **within the district**, and such notice be posted in three public places within the district, and such notice be published in the newspaper published **nearest the district**. No provision is made for notice to land-owners of the whole county. Had the legislature intended all land-owners of the county should be heard at such hearing, it could easily have provided the notice given be county-wide by posting or publishing generally throughout the county.

It is therefore my opinion it is not mandatory on the county commissioners to create a weed control or weed seed extermination district. The commissioners may consider only protests made by land-owners owning land within the proposed district.

Sincerely yours,

JOHN W. BONNER  
Attorney General