

No. 237

**COUNTY COMMISSIONERS—
NOXIOUS WEED CONTROL**

Held: In the case where perennial weed control work is enforced on a canal, where the canal did not own any right-of-way, the owners of the land through which the canal passes are liable for the two-thirds of the cost for such work as provided by Chapter 90, Laws of 1941.

September 9, 1941.

Mr. E. P. Conwell
County Attorney
Carbon County
Red Lodge, Montana

Dear Mr. Conwell:

You have advised this office you prepared the following opinion for Mr. O. P. Roberts, County Extension Agent, at Joliet, Montana:

“You have submitted two questions, the first of which is, ‘In the case where perennial weed control work is enforced on a canal, where

the canal did not own right-of-way, how could the law be enforced, as far as the collection of the two-thirds for it is concerned, since evidently the canal would not have any taxes through which it could be collected?

"ANSWER: The law which you seek to have interpreted is found in Chapter 90, page 148, Laws of the 27th Session, 1941. So far as I know, the Attorney General has not rendered an opinion as to any part or section of said Chapter, but it is my opinion from a careful reading of it that whoever owns the land through which the canal right-of-way extends would be responsible and that two-thirds of the costs of the control of noxious weeds or their extermination on said right-of-way should be charged to such land owner through whose land the canal aforesaid extends.

"Your second question: 'In the case where we have a small budget and the necessary weed control would amount to more, could the weed situation be called an emergency, similar to insects and pests, and an additional amount of money be used over what the budget allowed? As an example, the Carbon weed budget for 1940 was \$13,012.50. The amount actually used was \$7,311.33. We presume that by the weed law this may be increased for 1941 by 10%, which would make it around \$8,000.00. Since this is the second year of weed work and it is getting started and should be carried out with a greater scope than in 1940, will they be held down to the use of \$8,000.00, or could an emergency be declared so they could perhaps use more?'

"ANSWER: The law covering your question is found in Section 4613.6, Revised Codes of Montana, 1936, which reads in part as follows:

'In a public emergency, other than such as are hereinafter specifically described, and which could not reasonably have been foreseen at the time of making the budget, the board of county commissioners, by unanimous vote of the members present at any meeting, the time and place of which all of the commissioners shall have had reasonable notice, shall adopt and enter upon their minutes a resolution stating the facts constituting the emergency and the estimated amount of money required to meet such emergency, and shall publish the same, together with a notice that a public hearing will be held thereon at the time and place designated therein, but which shall not be less than one week after the date of said publication, at which any taxpayer may appear and be heard for or against the expenditure of money for such alleged emergency, etc.'

"It is my opinion that the emergency budget law would not apply to weed eradication and control as it does insects and pests. It is my further opinion that, should the County Commissioner declare such an emergency, it would simply be the means of crippling the budget to be used for that purpose next year as the amount spent under emergency must necessarily be deducted from next year's budget, since the County Commissioners are limited in the amount of money that can be placed in a 'noxious weed fund' in accordance with the provisions of Section 13 of Chapter 90 aforementioned."

You have asked we study this opinion and let you know whether we believe you have correctly stated the law.

It is my opinion you were correct in advising Mr. Roberts the owners of the land through which the canal right-of-way extends would be responsible for their two-thirds of the costs, inasmuch as the canal does not own any right-of-way over such land.

As to your opinion the county commissioners could not declare an emergency, I am not at this time prepared to comment. The question of the existence of an emergency is one of fact and therefore it cannot properly be answered until all of the facts are known. Until such time as

the so-called emergency has actually arisen and all of the facts are known, this office does not consider itself in a position to express an opinion as to whether an emergency could be declared by the county commissioners at some future date.

Sincerely yours,

JOHN W. BONNER
Attorney General