

No. 340

WEED CONTROL ACT, expenditures—COUNTY COMMISSIONERS, duties—WEED CONTROL ACT

Held: Countersigning of warrants by County Board of Commissioners under Weed Control Act (Chapter 195, Laws of 1939; Chapter 90, Laws of 1941) not mere ministerial function but board has same responsibilities over fund as other county funds.

January 9, 1942.

Mr. C. M. Yerrington
County Commissioner
Yellowstone County
Billings, Montana

Dear Mr. Yerrington:

You ask, with reference to your duties as County Commissioner, whether, after providing funds under the Weed Control Act (Chapter 195, Laws of 1939, as amended by Chapter 90, Laws of 1941), you have "any further responsibilities in connection with this fund," other than countersigning warrants.

Reference to the act discloses that, under Section 9 thereof, you may appoint a board of three supervisors for the prosecution of weed control.

It is the duty of the supervisors "to supervise within their county the extermination or control program as promulgated by the county commissioners."

Under Section 13 of the act, the county commissioners may create a "noxious weed fund" by appropriation or tax and warrants on the fund "may be drawn by the supervisors and countersigned by the commissioners."

Section 11 of the act provides for weed destruction by the supervisors and payment for such expenses out of the "noxious weed fund." Where the owner of weedy land desires to do the work, he may be furnished the materials by the county commissioners upon certification as to amount of materials needed by the supervisors under Section 14 of the act.

Important in consideration of the question are the provisions of Section 16 stating the county commissioners "shall determine and fix the cost" of weed control in weed districts, whether the same be performed by the individual land owners or by the supervisors.

The board of county commissioners is the executive body of the county. It cannot delegate the exercise of judgment and discretion, for they are in the nature of public trusts. (State ex rel. Nelson v. Timmons, 57 Mont. 602, 189 Pac. 871.) Although the fund created is for a special purpose, it is nevertheless a county fund. The promulgation of the weed control program under Section 9 of the act and the fixing of its cost are the direct responsibilities of the county commissioners.

I am, therefore, of the opinion the county commissioners must assume the responsibility over the fund as in the case of other county funds. The countersigning of warrants must not be deemed a ministerial function.

Sincerely yours,

JOHN W. BONNER
Attorney General