

**Opinion No. 209.****Weed Control District—District, Weed Control—Funds—Cities and Towns—Counties.**

Held: A city or town does not have authority to appoint its own supervisor and provide funds for a weed control and weed seed extermination district, under the provisions of Section 8, Chapter 195, Laws of 1939.

May 11, 1944.

Mr. J. E. McKenna  
County Attorney  
Fergus County  
Lewistown, Montana

Dear Mr. McKenna:

You have requested an opinion of this office relative to whether a city would have a right to set up its own supervisor and provide its own funds for the extermination of weeds under Section 8 of Chapter 195, Laws of 1939.

Chapter 195, Laws of 1939, repeals Section 4506 to and including Section 4513.2, which statutes of the Revised Codes of Montana, 1935, together with the amendment thereto by Chapter 41, Laws of 1937, constituted the law in this state on weed control prior to the enactment of said Chapter 195. It is to be noted under the former laws, the counties and cities could have separate supervisors, but also that the only funds made available were through county assessments. See Section 4513.1 and 4513.2, Revised Codes of Montana, 1935. Section 4513.2 specifically provides that the equipment bought by the counties may be used by any person employed under the provisions of Section 4508, Revised Codes of Montana, 1935, which section provides for both county and municipal supervisors.

Section 5 of Chapter 195, Laws of 1939, provides the method of setting up weed control districts outside incorporated cities or towns. That section provides for the presentation of the petition to the county commissioners. Section 8 provides specifically as follows:

"Weed control and weed seed extermination districts within corporate limits of cities and towns. Twenty-five landowners within the incorporated limits of any city or town may present a like petition to the council of said city or town, and the said city or town council shall have authority to create weed control and weed seed extermination districts within the city or town in like manner as herein provided for in the creation of weed control and weed seed extermination districts with the county."

Section 9 of said Chapter 195 provides for the appointment of weed control and weed seed extermination supervisors and particularly states in part as follows:

"The county commissioners shall have authority to appoint a board of weed control and weed seed extermination supervisors, consisting of three members, who shall be appointed annually for each county in which a city, town or county weed control and weed seed extermination district is created . . . It shall be the duties of said supervisors to supervise within the districts of their county the extermination or control program as promulgated by the commissioners."

Section 13 of said Chapter 195 provides how money may be raised to operate the program, and it specifically delegates to the board of county commissioners the power to use part of the general fund of the county or make a county-wide assessment to pay the costs of operation of all the districts within the county.

Section 17 of said Chapter 195, provides for cooperation with any state or federal aid program. Most definitely if the legislature intended that the city should have a separate program, provisions would have been made for the county cooperating with the city or at least the city would have been given the opportunity of cooperating with some other agency in the event additional funds were available. Those taxpayers within the city limits should have had the same opportunity to cooperate as the county taxpayers.

It is my opinion from a reading of said Chapter 195, and the former law, which in reality is very similar to said Chapter 195, that the city or town council has the right to determine if

a weed district is necessary, in that they have the right to handle the hearing on which such necessity is determined. But after the district is once set up, the county commissioners, through the county supervisors, control and provide for the functioning of the districts, and the county commissioners make the levies for all districts in the county, under the provisions of Section 13 of Chapter 195, Laws of 1939. Therefore, the city would have no authority to set up its own supervisor or provide its own funds.

Sincerely yours,  
R. V. BOTTOMLY  
Attorney General