

**Opinion No. 254.****Weed Control Districts—Lands—  
Districts, Weed Control.**

Held: The petition for weed control and weed seed extermination district must contain description of each piece of land within the same, together with name of record owner thereof, and if one or more persons owning lands within said district object the hearing on the creation of the district must be postponed until the owners of 51% of the agricultural lands within the district have filed with the commissioners their written consent to the formation of such district.

October 7, 1944.

Mr. H. O. Vralsted  
County Attorney  
Judith Basin County  
Stanford, Montana

Dear Mr. Vralsted:

You have requested an opinion of this office pertaining to the formation of a county wide weed control district under the provisions of Chapter 195, Laws of 1939, as amended by Chapter 90, Laws of 1941.

You state that it is desired to form one district composing the entire county, and wish to know if the legal description of each piece of land within the district must set forth in the petition and also if upon the objection of one land owner whether there must be filed the written consent of fifty-one per cent of the land owners within the proposed district.

In answer to your first inquiry, I refer you to Sections 5 and 8 of said Chapter 195, Laws of 1939. Said Section 5 specifically provides as follows:

"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 such county, asking for the creation of a weed control and weed seed extermination district, the commissioners shall set a day for a hearing of the same and order notice thereof to be given to all persons interested, as is hereinafter provided. Said petitions shall set forth the boundaries of the district and **the legal description of each piece of land within the same, together with the record owner thereof.**" (Emphasis mine.)

Said Section 8 provides as follows:

"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 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 within the county."

From a reading of these two sections of said Chapter 195, it clearly appears that the legislature intended that there should be a difference between weed control and weed seed extermination districts in unincorporated and incorporated areas. Thus, if it were desired to make a district consisting of the entire county, all incorporated cities and towns would have to be excluded from such district. Therefore, it would be impossible to have any solid district unless there were no incorporated municipal bodies within the county. As incorporated cities and towns must be excluded, it is only reasonable that the various pieces of lands within the district should be fully described as required by Section 5 of said Chapter 195.

In answer to your second inquiry, I refer you to the specific provisions of Section 7 of Chapter 195, wherein it states that if any one within the district makes an objection, the commissioners must not proceed further until the written consent of fifty-one per cent of the owners within said proposed district submit their written consent to the formation of the dis-

trict. Upon the receiving of such consent, then the commissioners may proceed with the hearing, and if they determine that the formation of such district is desirable and in the best interests of the people interested, they shall declare the district created by an order fully entered in the minutes. This office, in Opinion No. 205, Volume 19, Report and Official Opinions of the Attorney General, held that the creation of the district was within the discretion of the commissioners and that the objection or objections must come from landowners within the proposed district.

Therefore, it is my opinion that a petition for the formation of a weed control and weed extermination district must contain the legal description of each piece of land within the said proposed district, together with the names of the record owners of each piece and that if there is one or more objections from landowners within the proposed district, the hearing on the creation of such district must be postponed until the owners of fifty-one per cent of the agricultural land within the proposed district have filed with the commissioners their consent to the formation of such a district.

Sincerely yours,  
R. V. BOTTOMLY  
Attorney General