

Opinion No. 5.**Weeds—Noxious Weeds—Constitutional Law—State Owned Land.**

Held: Under the provisions of Chapter 195, Laws of 1939, as amended by Chapter 90, Laws of 1941, the supervisors of a weed control district may file a claim, for two-thirds of the charges for work done by the district on state owned lands with the State Board of Examiners who must, if they approve the claim, transmit it to the legislative assembly with a statement of their approval. Thereafter, the legislature may act upon the claim.

December 15, 1942.

Mr. Theodore Fosse
County Extension Agent
Cascade County
Great Falls, Montana

Dear Mr. Fosse:

You have asked if, under the provisions of Chapter 195, Laws of 1939,

as amended by Chapter 90, Laws of 1941, a weed control and weed seed extermination district has the power and right to recover the proportionate charges for noxious weed and weed seed extermination from the State of Montana for weed control work done on state owned lands.

Section 11 of Chapter 195, Laws of 1939, as amended by Chapter 90, Laws of 1941, provides that if, after notice, the owner of land does not exterminate weeds the supervisors of the weed district may enter upon the land and destroy and exterminate such weeds. This section also provides the owner shall be taxed for the expense of the work done and states, "but if the land for any reason be exempt from general taxation, the amount of such charge may be recovered by direct claim against the state or the county for state or county owned lands."

Payment from the state cannot be made without an appropriation as Section 34 of Article V of the Constitution of the State of Montana provides:

"No money shall be paid out of the treasury except upon appropriations made by law, and on warrant drawn by the proper officer in pursuance thereof, except interest on the public debt."

It is provided in Section 10 of Article XII of the State Constitution:

"All taxes levied for state purposes shall be paid into the state treasury, and no money shall be drawn from the treasury but in pursuance of specific appropriations made by law."

No appropriation was made by the legislature to pay these claims and the remedy for the district is to file claim with the Board of Examiners as Section 241, Revised Codes of Montana, 1935, provides:

"If no appropriation has been made for the payment of any claim presented to the board, the settlement of which is provided for by law, or if an appropriation made has been exhausted, the board must audit the same, and if they approve it, must transmit it to the legislative assembly with a statement of their approval."

It is to be noted under the terms of Section 16 of Chapter 195, Laws of 1939, as amended by Chapter 90, Laws of

1941, a claim for only two-thirds of the charges for the work done may be made against the state.

It is my opinion that, under the provisions of Chapter 195, Laws of 1939, as amended by Chapter 90, Laws of 1941, the supervisors of a weed control district may file a claim for two-thirds of the charges for the work done by the district on state owned lands with the State Board of Examiners who must, if they approve the claim, transmit it to the Legislative Assembly with a statement of their approval. Thereafter, the legislature may act upon the claim.

Sincerely yours,
R. V. BOTTOMLY
Attorney General