

Opinion No. 78

Weed Control & Weed Seed Extermination District—County, Weed Control District—City and Town, Weed

Control Districts—Costs, Weed Control District, Paid by—Noxious Weed Fund—County Commissioners—City and Town Councils.

Held: County Commissioners have no authority under the Noxious Weed Control Act to collect from a municipal corporation which has created a weed control district under Section 8 of the Act, the costs of weed control expended on streets and alleys of the city even though the city council has orally contracted to pay such costs. The Noxious Weed Control Act specifically provides such work be handled by the county commissioners and the total cost paid from the noxious weed fund.

The legislature has not granted to city or town councils the authority or power to make or enter into such a contract or contracts.

November 12, 1947

Mr. J. Chandice Ettien
County Attorney
Granite County
Philipsburg, Montana

Dear Mr. Ettien:

You have requested my opinion on the question: "Do the county commissioners have authority under the Noxious Weed Control and Weed Seed Extermination Act to collect from a municipal corporation, which has created a weed control district under Section 8 of the Act, its proportionate costs of weed control expended upon city streets and alleys, where the city council has orally contracted to pay such costs?"

The Noxious Weed Control Act is Chapter 195, Laws of 1939, as amended by Chapter 90, Laws of 1941, and Chapter 228, Laws of 1947. Chapter 228, Laws of 1947, is not pertinent since the agreement and acts involved in this question were prior to the effective date of the 1947 amendment. Section 8, Chapter 195, Laws of 1939, provides:

"Weed Control and Weed Seed Extermination Districts within Cor-

porate Limits of Cities and Towns. Twenty-five land-owners 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 within the county." (Emphasis mine).

This section gives the city council authority to create a district and nothing more.

Section 9, Chapter 195, Laws of 1939, as amended by Chapter 90, Laws of 1941, provides:

"The commissioners shall have authority to appoint a board of weed control and weed seed extermination supervisors, consisting of three (3) 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 duty of said supervisors to supervise within their county the extermination or control program so promulgated by the commissioners."

The supervisors are appointed for the entire county, including the city or town districts. This section places the commissioners in control of the weed program for the city and town districts as well as the county districts.

Opinion No. 209, Volume 20, Report and Official Opinions of the Attorney General, held:

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

Under the Noxious Weed Control Act, by the opinion of the Attorney General, supra, the city or town's authority ends with the creation of the district and the city or town council

has no authority to set up a fund or otherwise finance such a program under the Noxious Weed Control Act.

One dealing with the agents of a municipality is bound to know the limits of its power. (Lumberman's Trust Co. v. Town of Ryegate, (Mont.) 50 F. (2d) 219.) The municipality has no power to make the contract in question and the county commissioners are charged with knowledge of that limitation.

The city can have no noxious weed fund of its own and expenditures in town and city districts are a part of the county program and properly paid from the noxious weed fund set up by the county under Section 13, Chapter 195, Laws of 1939, as amended by Chapter 90, Laws of 1941, which provides:

"The board of county commissioners of any county in this state may create a noxious weed control and weed seed extermination fund, either by appropriating the money from the general fund of the county, or at any time fixed by law for levy and assessment of taxes, levy a tax not exceeding two (2) mills on the dollar of total taxable valuation in such county, the proceeds of which shall be used solely for the purpose of promoting the control of noxious weeds or extermination of weed seed in said county and shall be designated to 'noxious weed fund.' This fund shall be kept separate and distinct by the county treasurer, and shall be expended by the commissioners at such time, and such manner, as is by said supervisors deemed best to secure the control and extermination of noxious weeds and weed seed. Warrants upon such fund may be drawn by the supervisors and countersigned by the commissioners. . . ." (Emphasis mine).

By this section, the "noxious weed fund" is created either from the general fund of the county or by an overall tax of all taxable valuation in the county. Property within a city or town will be taxed in either case in like manner as property outside the incorporated districts. (Article XII, Section 11, Constitution of Montana).

Section 15, Chapter 195, Laws of 1939, as amended by Chapter 90, Laws of 1941, provides:

"It shall be the duty of the commissioners to control noxious weeds and exterminate noxious weed seed on the highways and county owned land within the confines of the district. The total cost of such control and extermination shall be paid from the 'noxious weed fund.' . . ." (Emphasis mine).

This section makes it the duty of the county commissioners to take whatever action is necessary to control and exterminate noxious weeds and weed seed on the highways within the confines of the district. If the district be a city or town district, this act still puts the duty on the county commissioners, and the total cost of such weed control on the highways is to be paid from the county "weed control fund."

Since the term "highways" is not defined in the act under consideration, we must, therefore, turn to other sources for a definition of it.

Section 1612, Revised Codes of Montana, 1935, defines a highway as follows:

"All highways, roads, lanes, streets, alleys, courts, places, and bridges laid out or erected by the public or now traveled or used by the public, or if laid out or erected by others, dedicated or abandoned to the public, or made such by the partition of real property, are public highways."

Roads and Streets, by Elliot, Volume I, Third Edition, on page 4, states:

"If the way is one over which the public have a general right of passage, it is, in legal contemplation, a highway . . . and whether it be situated in a town or in the county."

The term "highways . . . within the district" means streets and alleys within a city or town district as well as those within a county district.

It is, therefore, my opinion that the county commissioners have no authority under the Noxious Weed Control Act to collect from a municipal

corporation which has created a weed control district under Section 8 of the Act, the costs of weed control expended on streets and alleys of the city even though the city council has orally contracted to pay such costs. The Noxious Weed Control Act specifically provides such work be handled by the county commissioners and the total cost paid from the noxious weed fund.

The legislature has not granted to city or town councils the authority or power to make or enter into such a contract or contracts.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General