

Revised Codes of Montana, 1947, defines noxious weeds and sets forth a procedure by which a weed control district may be created. The law provides that twenty-five per cent (25%) of the freeholders in a given area may petition the board of county commissioners asking for the creation of a weed control and weed seed extermination district, and upon receipt of such a petition the board of county commissioners must hold a hearing. If fifty-one per cent (51%) of the owners of agricultural land within the district shall file written consent for the creation of such a district, the commissioners shall declare the district created by an order duly made and entered on their minutes. However, the statutes do not set forth any procedure for dissolving or abolishing a district once it is created, nor is this power expressly conferred upon the board of county commissioners.

The principle is well established that the board of county commissioners may exercise only such powers as are expressly conferred upon it or which are necessarily implied from those expressed, and that where there is a reasonable doubt as to the existence of a particular power in the board of county commissioners, it must be resolved against the board, and the power denied. Section 16-801, Revised Codes of Montana, 1947; *Sullivan v. Big Horn County*, 66 Mont. 45, 47, 212 Pac. 1105; *Lewis v. Petroleum County*, 92 Mont. 563, 17 Pac. (2d) 60, 86 A. L. R. 575.

The power to dissolve a weed control district is not expressly conferred upon the board of county commissioners. The absence of any procedure to be followed in effectuating a dissolution of the district is also lacking. I believe there is a reasonable doubt as to whether the power to dissolve should be implied from the power to create, and in accordance with the above mentioned rule the power must be denied. The matter should be brought to the attention of the legislature so that a procedure may be set up to dissolve weed control districts, if that body desires to confer such a power.

Therefore, it is my opinion that the board of county commissioners does not have the power to dissolve a weed control district.

Very truly yours,
ARNOLD H. OLSEN
Attorney General

Opinion No. 61
Weed Control Districts, Dissolution
of—Boards of County Commissioners,
Powers of.

Held: A board of county commissioners does not have the power to dissolve a weed control district.

February 2, 1952.

Mr. Bernard W. Thomas
County Attorney
Blaine County
Chinook, Montana

Dear Mr. Thomas:

You have requested my opinion on the following questions:

1. Does the Board of County Commissioners have the power to abolish a weed control district?
2. If the Board of County Commissioners has such power, under what circumstances and by what procedure must it be exercised?

A negative answer to your first question precludes the necessity for any consideration of your second question. Sections 16-1701 to 16-1722, inclusive,