

## Opinion No. 10

**NOXIOUS WEED FUND; Re-use of proceeds for work or chemical sales  
—COUNTY BUDGET ACT — Sections 16-1715, 16-1717, 16-1718,  
16-1719, 16-1901, 16-1902, 16-1904 and 16-1906, Revised Codes  
of Montana, 1947—Chapter 63, Laws of 1955.**

**Held: Proceeds from work or chemical sales reverting to "noxious weed fund" may be expended for purposes of weed control during the fiscal year in which received notwithstanding that such re-use will result in warrants drawn against such fund exceeding, in the aggregate, the estimated expenditures appropriated in the current county budget; provided that such warrants shall not exceed cash on hand in the "noxious weed fund" at the time of issuance thereof.**

---

May 15, 1961

Mr. V. G. Koch  
Richland County Attorney  
Sidney, Montana

Dear Mr. Koch:

You have requested my opinion as to whether or not proceeds derived from work or chemical sales and reverting to the "noxious weed fund" as provided for in Section 16-1717, Revised Codes of Montana, 1947, may be expended during the fiscal year in which realized where such expenditure, in the aggregate, would result in warrants being drawn on said fund in excess of the amount of expenditures indicated in the county budget for such fiscal year.

Section 16-1717, Revised Codes of Montana, 1947, reads as follows:

"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 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' **and any proceeds from work or chemical sales shall revert to the noxious weed fund and shall be available for re-use within the fiscal year.** 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 shall be drawn by the supervisors, provided that no

warrants shall be drawn except upon claims duly itemized by the claimant, except pay roll claims which shall be itemized and certified by the supervisors, each such claim shall be presented to board of county commissioners for its approval before the warrant therefor shall be countersigned by the commissioners."

The bold type portion was added by Section 1, Chapter 63, Laws of 1955.

The quoted section of the code vests in the weed control supervisors appointed by the county commissioners considerable discretion in the matter of the time and manner of expending weed control funds to secure the control and extermination of noxious weeds and seeds. This discretion of the supervisors in expenditure of funds is further broadened by Section 16-1718, Revised Codes of Montana, 1947, wherein is stated in pertinent part:

"Furnishing of materials. The supervisors shall have authority to purchase such chemical, material, and equipment as they determine necessary for carrying on an effective control program. Such materials shall be paid for out of the noxious weed fund. . . ."

The necessity of vesting such discretion as to the expenditure of moneys for weed control is apparent when the mandatory duties of the commissioners and supervisors under Sections 16-1715 and 16-1719, Revised Codes of Montana, 1947, are considered.

Under those sections, the duty to destroy weeds is made paramount and the cost thereof is to be paid out of the noxious weed fund. In the case of such duty performed under Section 16-1715 *supra*, the law contemplates reimbursement of the noxious weed fund by the owner or occupant of the land treated, but such reimbursement need not necessarily be made until after the close of the fiscal year in which the land was treated and the expense thereof paid for out of the fund. In instances arising out of Section 16-1715, *supra*, it is evident that expenditures from the fund might have to be made which could not have been anticipated at the time of preparation of the budget for the fiscal year in which such expenditures are made should landowners be remiss in compliance with notice.

The legislation providing for the control of noxious weeds and the administration and financing thereof are remedial statutes contemplating solution of public nuisance problems of varying seriousness. To implement such legislation the "revolving fund" financing of Section 16-1717, *supra*, was provided by the legislature to insure maximum benefit from available revenue.

The conflict to be resolved is between the requirements of Sections 16-1901, 16-1902, 16-1904 and 16-1906, Revised Codes of Montana, 1947, (Chapter 19, County Budget System) which are general and comprehensive and require detailed and itemized estimates of expenditures and revenues by each county service, tabulation of the same by the

county clerk, review and hearing by the county commissioners and formulation of the budget, and prohibition of expenditure over the amount of the budget and issuing of warrants for such expenditure; and the provision for re-use of proceeds from work or chemical sales under Section 16-1717, *supra*. In the County Budget Act, the handling of the revenues and expenditures of departments and services is dealt with generally; in the Weed Control Act, specific revenues and expenditures are dealt with minutely and definitely.

In *Regan v. Boyd*, 59 Mont. 453, our Supreme Court set forth a rule for construction of statutes which is applicable here. The Court said, at page 461:

"... It is the rule of statutory construction in force in this state and generally elsewhere that, 'Where there is one statute dealing with a subject in general and comprehensive terms, and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible; but to the extent of any necessary repugnancy between them, the special will prevail over the general statute.' (Citing cases) 'Where the special statute is later, it will be regarded as an exception to or qualification of the prior general one' (Citing cases)."

Substantially this same rule has been repeatedly restated by our Court in later decisions. (See *Lillis v. City of Big Timber*, 103 Mont. 206; *Story Gold Dredging Co. v. Wilson*, 106 Mont. 166; *In re Kesl's Estate*, 117 Mont. 377; *State v. Holt*, 121 Mont. 459; *Wymont Tractor and Equipment Co. v. U.C.C.*, 128 Mont. 501).

The County Budget Act, insofar as applicable in the instant situation, has remained virtually unchanged since 1929, while the provision regarding reversion of proceeds and their re-use in Section 16-1717, *supra*, was inserted by amendment in 1955.

In construing together the County Budget Act and the Weed Control statutes, consideration must be given to the evils sought to be remedied by each as an aid to such construction. The County Budget Act has for its primary purpose the establishment of a system whereby expenditures and income are controlled and limited during the fiscal year by designating the amounts of money legally at the disposal of the commissioners (See Opinion No. 44, Volume 25, Opinions of the Attorney General) to curb spending beyond income. The Weed Control Act has for its purpose the control and elimination of plant growth and propagation detrimental to agriculture. The legislature, in Section 16-1717, *supra*, has provided a method of re-use of available funds to accomplish this object without spending beyond income, and in my opinion, this method so provided is an exception to or qualification of the County Budget Act.

On the State level appropriations are regularly made by the legislature of "fees and collections received" as part of the appropriation for the department concerned without an estimate of the amount thereof.

In conclusion, it is my opinion that proceeds derived from work or chemical sales reverting to the noxious weed fund may be expended during the fiscal year in which received for weed control purposes notwithstanding that such expenditures, in the aggregate, will result in warrants being drawn against such fund in excess of the amount of the county budget for weed control for that fiscal year. Provided, however, that such warrants shall not exceed cash on hand in said "Noxious Weed Fund" at the time of issuance of such warrants.

Very truly yours,  
FORREST H. ANDERSON  
Attorney General