

VOLUME NO. 35**Opinion No. 49**

AGRICULTURE — Pesticides, financial responsibility standards of state applicators; PESTICIDES — Financial responsibility standards, state applicators. Sections 27-216, 27-231, and 27-232, R.C.M. 1947.

HELD: State agencies who apply pesticides in the same manner as commercial applicators need not comply with the financial responsibility requirements of section 27-232, R.C.M. 1947.

December 26, 1973

Mr. George Lackman
Commissioner of Agriculture
Capitol Annex Building
Helena, Montana 59601

Dear Mr. Lackman:

I am in receipt of your request for my opinion as to whether state agencies who apply pesticides in the same manner as commercial applicators must comply

with liability insurance and bonding requirements to be imposed by the department of agriculture on commercial applicators pursuant to section 27-232, Revised Codes of Montana, 1947.

Section 27-231, R.C.M. 1947, provides in pertinent part:

(1) All state agencies, municipal corporations, or any other governmental agency shall be subject to the provisions of this act and rules adopted thereunder **concerning the application of pesticides**. ... (Emphasis supplied)

Section 27-232, R.C.M. 1947, provides:

The department of agriculture shall within two (2) years after the effective date of this act, require **from each commercial pesticide applicator** proof of financial responsibility in amounts to be determined under such rules and regulations as made by the department of agriculture. (Emphasis supplied)

Section 27-216, R.C.M. 1947, defines the term "commercial applicator". It states, in pertinent part:

For the purpose of this act unless the context clearly indicates otherwise:

(4) (a) "Commercial applicator" means any person who, in this state, by contract or for hire applies by aerial, ground, or hand equipment pesticides to any land, plants, seed, animals, waters, structures, or vehicles. ...

Section 27-231, *supra*, provides that "[a]pplicators and operators operating equipment for the application of pesticides used by any state agencies, municipal corporations, or any governmental agencies" shall be issued "a limited commercial applicator's or operator's license without a fee" when the applicator or operator is applying pesticides for a governmental agency. Thus, governmental agencies and their agents are treated differently from commercial applicators under the act, and are required only to comply with the rules in the act concerning the application of pesticides.

Section 27-232, *supra*, requiring proof of financial responsibility, clearly refers only to commercial pesticide applicators as defined in section 27-216, *supra*. Governmental agencies certainly are not commercial applicators and no mention is made in section 27-232, *supra*, of governmental agencies being required to furnish proof of financial responsibility.

THEREFORE, IT IS MY OPINION:

State agencies who apply pesticides in the same manner as commercial applicators need not comply with the financial responsibility requirements of section 27-232, R.C.M. 1947.

Very truly yours,

ROBERT L. WOODAHL
Attorney General