

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 39

OPINION NO. 13

COUNTIES - Recovery of cost of noxious weed control;
WEED CONTROL DISTRICTS - Cost allocation between county
and landowners;

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REVISED CODES OF MONTANA 1947 - Sections 16-1715,
16-1720;
MONTANA CODE ANNOTATED - Sections 7-22-2124, 7-22-2146,
7-22-2147, 7-22-2148(1);
1939 MONTANA LAWS - Chapter 195, section 11;
1947 MONTANA LAWS - Chapter 228, section 16.

HELD: In counties in which the full financial responsibility for a weed control program lies with the landowners, the county may recover the full amount of the cost incurred in noxious weed control when the weed board must institute weed control measures pursuant to section 7-22-2124, MCA, without the consent of the owner.

22 April 1981

Loren Tucker, Esq.
Madison County Attorney
P.O. Box 36
Virginia City, Montana 59755

Dear Mr. Tucker:

You have requested my opinion on the following question:

Whether a county may recover all or only two-thirds of the cost incurred in noxious weed control when the county, through its county weed board, controls noxious weeds without the consent of the landowner.

According to the information you have provided, the financial burden of weed control in Madison County generally rests on the landowners within the weed control district. When existing weeds are not adequately controlled by the landowners, however, the county weed board institutes control measures without the consent of the landowners.

As pointed out in your inquiry, the statutes applicable to recoupment of costs by a county for its extermination of weeds on land within a weed control district are ambiguous. Section 7-22-2147, MCA, states that when the district supervisors perform the weed control, one-third of the cost is paid from the noxious weed fund and two-thirds is chargeable against the land on which the

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work is undertaken. Section 7-22-2148(1), MCA, on the other hand, provides that when the county incurs expenses in exterminating weeds which the landowner refuses to control himself, the "sum to be repaid by the owner or occupant" may be assessed against the land as a special tax. There is no specific reference to whether that "sum" is to include all expenses incurred by the county or merely the two-thirds mentioned in section 7-22-2147, MCA.

The legislative history of sections 7-22-2147 and 7-22-2148(1), MCA, provides a reasonable means of erasing any ambiguity in the two provisions. Section 7-22-2148(1), MCA, was originally enacted as section 11, chapter 195, of the Laws of 1939 and was codified at section 16-1715, R.C.M. 1947. The section encompassed the entire process by which a county could undertake the extermination of weeds and collect the costs of its work when the landowner failed to assume his responsibility for weed control. Neither the original legislation nor section 16-1715, R.C.M. 1947, mentioned any division of expenses between the county and the landowner.

Moreover, the punctuation of the original act differs from that now codified in section 7-22-2148(1), MCA, and supports a finding that the full amount of expenses incurred by the county is generally recoverable. Section 7-22-2148(1), MCA, states that the county's expenses are to be paid from the noxious weed fund and that "the sum to be repaid by the owner or occupant" may become a lien on his land. Arguably, the "sum to be repaid" could be interpreted as referring back to section 7-22-2147, MCA, which allocates the cost between the weed fund and the owner. However, as originally enacted the provision stated that the expenses were to be paid by the county out of the noxious weed fund, and that "the sum, to be repaid by the owner or occupant," could be certified as an assessment on the land. The original insertion of the comma in the quoted phrase indicates a legislative intent that the appropriate "sum" to be assessed is the full amount of the expenses paid out of the noxious weed fund.

The legislative history of section 7-22-2147, MCA, is also helpful in answering the question you have posed. When read alone, section 7-22-2147, MCA, appears to allow a charge of only two-thirds of weed control costs in all cases in which the supervisors perform the work

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themselves, regardless of whether there was an agreement to that effect and regardless of whether the landowner has failed to meet his responsibility for weed control. However, the history of section 7-22-2147, MCA, belies such an interpretation.

Sections 7-22-2143, 7-22-2146, and 7-22-2147, MCA, were all originally enacted together in section 16, chapter 195, Laws of 1939. That enactment provided that one-third of the costs of weed control would be paid from the noxious weed fund, whether the control measures were undertaken by the landowners themselves or by the county. In 1947, the provision was amended. Immediately before the provisions calling for allocation of costs between the weed fund and the landowners, the Legislature inserted the following language:

If in the judgment of the commissioners and supervisors it seems advisable they may agree to assist the landowners in said district with a part of the cost of weed control on their land.

1947 Mont. Laws, ch. 228, § 16 (originally codified in § 16-1720, R.C.M. 1947; now codified in § 7-22-2716, MCA).

From the language of this amendment, it is apparent that the Legislature intended to make discretionary the previously-mandatory assumption of some expenses by the county. There is no indication in the amending language that the grant of discretion was meant to apply only to situations in which the landowners themselves performed the weed control or that one-third payments from the noxious weed fund would continue to be required in all cases in which the weed board undertook the work. Although the provisions on cost allocation have now been recodified in separate sections (§§ 7-22-2146 and 7-22-2147, MCA), their separation does not affect the intent of the 1947 Legislature that financial assistance from the noxious weed fund is discretionary regardless of who is responsible for the control of weeds.

Interpreting sections 7-22-2147 and 7-22-2148(1), MCA, as allowing recovery of the entire amount of county expense in cases in which the landowner is fully responsible for weed control and the weed board is forced to control weeds without his consent accords not only with legislative history but also with reason. For

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instance, under section 7-22-2146, MCA, county commissioners and weed control supervisors are clearly not required to have an agreement to assist landowners with weed control. Therefore, the landowners in counties without such agreements are obliged to carry the entire financial burden of the weed program. If section 7-22-2147, MCA, were then interpreted to allow recovery by the county of only two-thirds of the costs incurred in destroying weeds on the property of noncomplying landowners, it would be economically advantageous for the landowners to refuse to cooperate in the program. Complying landowners would bear their total cost of weed control, while recalcitrant landowners would be liable for only two-thirds of the expenses.

THEREFORE, IT IS MY OPINION:

In counties in which the full financial responsibility for a weed control program lies with the landowners, the county may recover the full amount of the cost incurred in noxious weed control when the weed board must institute weed control measures pursuant to section 7-22-2124, MCA, without the consent of the owner.

Very truly yours,

MIKE GREELY
Attorney General