

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 90

COUNTIES - Authority to create rural improvement district for weed control;  
COUNTY COMMISSIONERS - Authority to create rural improvement district for weed control;  
MUNICIPAL CORPORATIONS - Authority to create rural improvement district for weed control;  
WEED CONTROL DISTRICTS - Authority to create rural improvement district for weed control;  
MONTANA CODE ANNOTATED - Sections 1-3-225, 7-12-2102, 7-12-4102(2)(g) and (h), 7-22-2101 to 7-22-2153.

HELD: A rural improvement district may not be established under sections 7-12-2102(1) and 7-12-4102(2)(g) and (h), MCA, for the purpose of providing weed control because those statutes are subordinate to and preempted by the specific statutory scheme of weed control in Title 7, chapter 22, part 21, MCA.

17 June 1988

Keith C. Kelly, Director  
Department of Agriculture  
Scott Hart Building  
303 Roberts  
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Dear Mr. Kelly:

You have asked my opinion on the following question:

May sections 7-12-2102 and 7-12-4102, MCA, be utilized by a board of county commissioners to authorize a rural improvement district for the

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purpose of providing weed control on public and private property?

It is my opinion that a rural improvement district may not be established under section 7-12-2102(1), MCA, for the purpose of providing weed control because it would be preempted by the provisions of Title 7, chapter 22, part 21, MCA.

A comprehensive system of weed control is legislatively mandated in Title 7, chapter 22, part 21, MCA. Under those provisions (§§ 7-22-2102 to 2153, MCA), each county is required to form a weed management district and each district is to include all land within the county's boundaries--both public and private. § 7-22-2102, MCA. While the provisions on county weed control do not expressly preclude the creation of an overlapping service by a rural improvement district, the fact that this service would duplicate one already statutorily authorized means that it would be prohibited under the general rules of preemption and statutory construction. The catch-all language of section 7-12-4102(2)(g) and (h), MCA, provides:

(2) Whenever the public interest or convenience may require, the [county commissioners are] hereby authorized and empowered to:

....

(g) create special improvement districts and order any work to be done which shall be deemed necessary to improve the whole or any portion of such streets, avenues, sidewalks, alleys, places, or public ways, property, or right-of-way ... and

(h) maintain, preserve, and care for any and all of the improvements herein mentioned.

However, this general statutory allowance is preempted by the specific legislation which gives weed management districts primary responsibility and power regarding weed control. §§ 7-22-2102, 7-22-2121, MCA. The fundamental rule that municipal ordinances are inferior in status and subordinate to the laws of the state applies. 5 McQuillin, Municipal Corporations § 15.20 (3d ed. 1981).

Another applicable rule is the maxim that "[p]articular expressions qualify those which are general." § 1-3-2, MCA. When there are two statutes dealing

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with a subject, one in general terms and the other in more detailed terms, the special statute controls the general. State v. Montana Department of Public Service Regulation, 181 Mont. 225, 592 P.2d 34 (1979). See also Witty v. Fluid, 43 St. Rptr. 354, 714 P.2d 169 (1986). The courts are "constrained to follow the more specific statute." Pierson v. Montana, 38 St. Rptr. 3, 622 P.2d 195 (1981). Hence, while a rural improvement district appears to have been given general authority which could potentially include weed control under sections 7-12-2102(1) and 7-12-4102(2)(g) and (h), MCA, that authority is preempted by specific statutory weed control provisions directing that county governments form weed management districts to implement weed control on all property in the district. Creation of a rural special improvement district for the same purpose would be duplicative.

THEREFORE, IT IS MY OPINION:

A rural improvement district may not be established under sections 7-12-2102(1) and 7-12-4102(2)(g) and (h), MCA, for the purpose of providing weed control because those statutes are subordinate to and preempted by the specific statutory scheme of weed control in Title 7, chapter 22, part 21, MCA.

Very truly yours,

MIKE GREELY  
Attorney General