

**LETTER OPINION  
2003-L-28**

May 27, 2003

Honorable Ray Wikenheiser  
State Representative  
601 East Elm  
Linton, ND 58552-0816

Dear Representative Wikenheiser:

Thank you for asking whether an individual appointed to the Emmons County Weed Board may serve out his term if he no longer owns real property in Emmons County, but still remains a resident of Emmons County. I understand the board member is currently renting an apartment in Linton and is therefore no longer directly paying property taxes to Emmons County.

Section 11-10-04.1, N.D.C.C., states that “an appointed member of a county board . . . that has authority to levy taxes must be a resident of the area subject to taxation by the board . . . .” Chapter 63-01.1, N.D.C.C., which contains the county weed board provisions, also has a residency statement: “Any qualified elector in the board member area subject to taxation is eligible to represent that area on the board.” N.D.C.C. § 63-01.1-04(2). Section 11-10-04.1, N.D.C.C., and the “subject to taxation” language in N.D.C.C. § 63-01.1-04(2) were passed by the 1997 Legislative Assembly to ensure that county board members live in the taxing district over which that board has taxing authority. Hearing on H.B. 1255 Before the House Ag. Comm., 1997 N.D. Leg. (Jan. 30) (Statement of Rep. Belter).

The “subject to taxation” phrase in N.D.C.C. § 11-10-04.1 clearly modifies “area” rather than “resident.” Further, the phrase “subject to taxation” in N.D.C.C. § 63-01.1-04(2) appears to modify “board member area”<sup>1</sup> rather than “qualified elector.” As such, there is no statutory requirement that a county weed board member actually own real property, and therefore be subject to property taxes, in the area subject to taxation in order to be on the county weed board. Accordingly, it is my opinion that a county weed board member is not required to own real property and be subject to direct taxation by the board in order to

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<sup>1</sup> “Board member area’ means a geographical area within the county from which a member of the weed board is appointed.” N.D.C.C. § 63-01.1-02(1).

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remain a member of the county weed board, but rather only need be a resident of an area subject to taxation by the board.<sup>2</sup>

Sincerely,

Wayne Stenehjem  
Attorney General

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<sup>2</sup> The member would not be a resident of an area subject to taxation by the county weed board, and therefore would be ineligible to remain a member, if the member lived in a city that established its own weed control authority because the county weed board cannot levy a tax on property within the corporate limits of a city that has established its own weed control authority. N.D.C.C. §63-01.1-06. The member at issue in this opinion does not currently live in a city that has established its own weed control authority.