

LETTER OPINION
2010-L-15

December 28, 2010

Mr. Walter M. Lipp
Sheridan County State's Attorney
PO Box 590
McClusky, ND 58463-0590

Dear Mr. Lipp:

Thank you for your letter requesting my opinion on various issues related to county weed boards and their relationship with boards of county commissioners. It is my opinion that boards of county commissioners and county weed boards have the authority to receive moneys for noxious weed control. It is my further opinion that a county weed board has the duty to determine for what purposes and how much money should be used and disbursed for noxious weed control. That authority, however, is somewhat limited by the authority of the board of county commissioners to approve all expenditures from the county treasury. It is my further opinion that the board of county commissioners has the administrative duty to pay the expenses of a noxious weed control program. It is my further opinion that a board of county commissioners may exert some control over whether to hire, and the compensation of, a weed control officer and other weed board employees, through the budgeting process. It is my further opinion that a board of county commissioners has authority over other employment conditions of a weed control officer and other weed board employees, through employee policies and the budgeting process.

ANALYSIS

In 2009, the North Dakota Legislature revised the law on noxious weed control and moved the law to a new chapter.¹ The goal was to clarify the law and not change state policy with respect to the control of noxious weeds.² The weed control law provides that the board of county commissioners appoints the county weed board.³

¹ 2009 N.D. Sess. Laws. ch. 86. The legislative change resulted in the repeal of N.D.C.C. ch. 63-01.1, related to noxious weed control, and the creation of a new N.D.C.C. ch. 4.1-47.

² Hearing on H.B. 1026 Before the House Comm. on Agriculture, 2009 N.D. Leg. (Jan. 8) (Testimony of Anita Thomas). The current noxious weed control law, like its predecessor, has almost identical provisions applying to both county weed boards and city weed boards. See N.D.C.C. ch. 4.1-47.

³ See N.D.C.C. § 4.1-47-06(2).

You first ask whether the board of county commissioners has the authority to receive noxious weed funds.

The Agriculture Commissioner distributes state money to county weed boards for general noxious weed control,⁴ for the landowner assistance program,⁵ and for the control of invasive species.⁶ The weed control law also refers to “moneys received by the county from any source for noxious weed control.”⁷ Because the law indicates the county may receive moneys from any source for noxious weed control,⁸ and that weed boards also receive moneys for noxious weed control,⁹ it is my opinion that boards of county commissioners and county weed boards have the authority to receive moneys for noxious weed control. It appears that this money would be deposited in the noxious weed control fund since that fund is used to pay the expenses of a noxious weed control program.¹⁰

You next ask whether the board of county commissioners has the authority to control and expend noxious weed funds, and the authority to approve or disapprove weed board expenditures.

A county weed board may certify to the board of county commissioners a tax of up to two mills and the board of county commissioners may levy an additional tax of up to two mills.¹¹ The moneys received from these taxes are to be put in a separate fund called the noxious weed control fund, which is to be used to pay the expenses of a noxious weed control program.¹²

The weed control law states that the “county weed board shall . . . [c]ontrol and disburse all moneys received by the county from any source for noxious weed control.”¹³ The weed control law also provides that the board of county commissioners

⁴ See N.D.C.C. § 4.1-47-15.

⁵ See N.D.C.C. § 4.1-47-16.

⁶ See N.D.C.C. § 4.1-47-33.

⁷ N.D.C.C. § 4.1-47-09(6).

⁸ See N.D.C.C. § 4.1-47-09(6).

⁹ See N.D.C.C. §§ 4.1-47-15, 4.1-47-16, and 4.1-47-33.

¹⁰ See N.D.C.C. § 4.1-47-14(2).

¹¹ See N.D.C.C. § 4.1-47-14(2).

¹² See N.D.C.C. § 4.1-47-14(2). “[T]he expenses of a . . . noxious weed control program include compensation for and the reimbursement of expenses incurred by the . . . weed board, the . . . weed control officer, and other employees of the board, and expenses incurred in the provision of noxious weed control, as authorized by this chapter.” N.D.C.C. § 4.1-47-14(3).

¹³ N.D.C.C. § 4.1-47-09(6) (emphasis added).

“may pay the expenses of a . . . noxious weed control program . . . from the . . . general fund, the noxious weed control fund, or both.”¹⁴

State law occasionally authorizes a county or city board to exercise exclusive control over its moneys. The authority to exercise exclusive control is specifically stated in the law for county and city library boards,¹⁵ and for municipal arts councils.¹⁶ Although a county weed board is given broad control over its moneys,¹⁷ the law does not state that that control is exclusive.

The legislative history of the noxious weed control law and North Dakota court case law are not helpful in clarifying whether the weed board or the board of county commissioners has the authority to control and expend moneys for noxious weed control. Neither are there any North Dakota Attorney General opinions that specifically address this issue.

In interpreting state laws, it is presumed that the entire statute is intended to be effective.¹⁸ Reading these laws together, it is my opinion that the weed board’s duty to “control and disburse all moneys received by the county from any source for noxious weed control,”¹⁹ means that the county weed board has the duty to determine for what purposes and how much money should be used and disbursed for noxious weed control.

It is my further opinion that the law providing that the board of county commissioners “may pay the expenses of a . . . noxious weed control program . . . from the . . . general fund, the noxious weed control fund, or both,”²⁰ means that the board of county commissioners has the administrative duty to pay the expenses of a noxious weed control program, and those expenses may be paid from the general fund, the noxious weed control fund, or both.

State law provides that all bills or expenditures must be authorized or allowed by the board of county commissioners.²¹ Thus, the broad authority of the county weed board to disburse funds is somewhat limited by the board of county commissioners’ authority to

¹⁴ See N.D.C.C. § 4.1-47-14(1).

¹⁵ See N.D.C.C. § 40-38-04(3); see also N.D.A.G. 2002-L-28.

¹⁶ See N.D.C.C. § 40-38.1-04(2).

¹⁷ See N.D.C.C. § 4.1-47-09.

¹⁸ See N.D.C.C. § 1-02-38.

¹⁹ N.D.C.C. § 4.1-47-09(6).

²⁰ See N.D.C.C. § 4.1-47-14(1).

²¹ See N.D.C.C. §§ 11-23-09, 11-11-35, 11-25-01. See also N.D.A.G. 2005-L-25 (board of county commissioners must approve all payments from county treasury).

approve all expenditures from the county treasury.²² Because the Legislature intended the control of the county weed board to be quite broad, it is my opinion that the board of county commissioners should approve the county weed board expenditures unless the board of county commissioners determines an expenditure is unlawful because it is not related to the noxious weed control program, or the expenditure exceeds the weed board's spending authority.²³

You also ask whether the board of county commissioners has the authority to accept, reject, or modify the employment conditions of a weed control officer and weed board employees. "Employment conditions" can encompass many things. The board of county commissioners' control may vary, depending on the specific "employment condition." Because hiring and compensation are specifically addressed in the weed control law, I will address the board of county commissioners' control over hiring and determining the compensation for weed control officers and weed board employees.²⁴

The weed control law provides that the county weed control officer is "designated by the county weed board."²⁵ It also provides that a county weed board shall employ a weed control officer,²⁶ and may employ additional personnel to assist with noxious weed control efforts.²⁷ These laws indicate that the Legislature intended that the county weed board should hire the weed control officer and other additional personnel.²⁸ Thus, it is my

²² Cf. N.D.A.G. 96-L-205 (a county job development authority's power is limited by the spending authority and appropriations the county job development authority has received from the board of county commissioners under N.D.C.C. ch. 11-23) and N.D.A.G. 2005-L-25 (board of county commissioners is required to approve all vouchers for paying moneys from the county treasury).

²³ Cf. N.D.A.G. 96-L-205 (a county job development authority's power is limited by the spending authority and appropriations the county job development authority has received from the board of county commissioners under N.D.C.C. ch. 11-23).

²⁴ You also asked about the board of county commissioners' authority to accept, reject, or modify the employment conditions of a weed board contractor. A weed board "contractor" is not an "employee," thus I will not respond to this question. Also, the weed control law is not clear regarding the authority of a weed board to contract with independent contractors to do work for the weed board.

²⁵ N.D.C.C. § 4.1-47-01(5).

²⁶ See N.D.C.C. § 4.1-47-09(8).

²⁷ See N.D.C.C. § 4.1-47-08(2).

²⁸ This office has long held that implicit in the power to hire is the power to fire. See N.D.A.G. 97-L-32, N.D.A.G. 93-L-261, N.D.A.G. 82-38. But the authority to fire is not unfettered, and must comply with applicable county policies, state and federal law, and case law. See N.D.A.G. 93-L-333.

opinion that the board of county commissioners does not have the authority to accept or reject the hiring of persons by the county weed board.

Regarding compensation, the weed control law provides that the county weed board shall provide for the compensation of the weed control officer²⁹ and its secretary and treasurer,³⁰ and may compensate additional personnel to assist with noxious weed control efforts.³¹ The law also provides that the county weed board shall reimburse the weed control officer and secretary and treasurer for actual and necessary expenses,³² and provide a mileage allowance for them.³³ In contrast, the weed control law provides that the board of county commissioners “shall establish the rate of compensation for county weed board members”³⁴ but does not give authority to the board of county commissioners to determine the compensation for the county weed control officer and other weed board employees. Thus, it is my opinion that the board of county commissioners does not have any general authority to reject or modify the determination made by the county weed board regarding the compensation for the county weed control officer and other county weed board employees.³⁵

However, the power of a county weed board is limited by the spending authority and appropriations the county weed board has received from the board of county commissioners under N.D.C.C. ch. 11-23.³⁶ Thus, it is my opinion that the board of county commissioners may exert some control over whether to hire, and the compensation of, a weed control officer and other weed board employees, through the budgeting process.

Regarding control over other employment conditions, e.g., leave, health benefits, etc., “the Board of County Commissioners has the authority to establish employment policies for all employees of the county.”³⁷ Thus, it is my opinion that the board of county commissioners

²⁹ See N.D.C.C. § 4.1-47-09(8).

³⁰ See N.D.C.C. § 4.1-47-09(7).

³¹ See N.D.C.C. § 4.1-47-08(2).

³² See N.D.C.C. § 4.1-47-09(7)(b), (8)(b).

³³ See N.D.C.C. § 4.1-47-09(7)(c), (8)(c).

³⁴ See N.D.C.C. § 4.1-47-06(7). But see N.D.C.C. § 4.1-47-09(7), which provides that the county weed board shall provide for the compensation of its members. Thus, the law is unclear regarding whether the board of county commissioners or the county weed board has the authority to determine the compensation for county weed board members. You did not ask for an opinion on this issue.

³⁵ To the extent N.D.A.G. 93-L-85 may be contrary to this conclusion, it is overruled.

³⁶ See n.23.

³⁷ N.D.A.G. 93-L-333. The county auditor advised a member of my staff that the county weed control officer is treated as a county employee for the purpose of leave and other benefits.

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has authority over other employment conditions of a weed control officer and other weed board employees, through employee policies and the budgeting process.

Sincerely,

Wayne Stenehjem
Attorney General

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This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.³⁸

³⁸ See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).