

N.D.A.G. Letter to Peterson (April 17, 1989)

April 17, 1989

Mr. Jack Peterson
Pesticide/Noxious Weed Director
Department of Agriculture
State Capitol
Bismarck, ND 58505

Dear Mr. Peterson:

Thank you for your April 5, 1989, letter inquiring whether a county weed board may contribute money to the United States Department of Interior for certain weed control purposes on land owned by the Department of Interior. Your request really asks two separate questions; therefore, I will respond to each part separately.

First of all, there is no statute preventing a county weed board from contributing money for weed control on land owned by the United States Department of Interior.

N.D.C.C. § 63-01.1-04.1 states, in part, as follows:

63-01.1-04.1. Powers and duties of county weed board.

2. The county weed board may expend funds from those sources authorized in section 63-01.1-06 for the purpose of controlling noxious weeds, in addition to any other expenditures for control authorized by this chapter, when weeds have grown on any public or private land and a control authority finds that the extent of the weeds is so severe that their eradication would constitute an extreme financial burden upon the person otherwise liable for the expense.

(Emphasis supplied.)

N.D.C.C. § 63-03.1-06.2 states, in part, as follows:

63-01.1-06.2. Leafy spurge control program funding. The leafy spurge control program shall be funded by landowner, county weed board, city, and state contributions as follows:

1. Landowners shall contribute twenty percent of the cost of the leafy spurge treatment program on their land but not to exceed a total cost of sixty dollars per acre [.40 hectare] over a two-year period. Landowner contributions may be in the

form of property other than money, or services, if the contribution is specifically approved by the county weed board. Otherwise, the landowner contribution shall be in money.

2. Except as provided in subsections 1 and 3, county weed boards . . . shall contribute the total cost of the leafy spurge treatment program on private lands and lands within the board or city's jurisdiction with funds available under section 63-01.1-06.3.

....

4. Any legislative appropriation for the leafy spurge control program of sections 63-01.1-06.1 through 63-01.1-06.3 shall be expended for reimbursement of the cost of leafy spurge control according to this section to private landowners, including lessees, tenants, renters, or operators of private land, county weed boards, or cities.

(Emphasis supplied.)

N.D.C.C. § 63-01.1-02(8) defines "landowner" as "any owner of federal, state, municipal, or private land, under statutory authority or otherwise, but does not include a lessee, renter, tenant, operator, or an owner of any easement or right of way."

These sections indicate that as long as no state monies appropriated for the leafy spurge control program are spent (because of the restriction in N.D.C.C. § 63-01.1-06.2(4)), county weed boards may spend funds under their control to help pay for noxious weed control, including leafy spurge control, on public lands. However, the Department of Interior is obligated to contribute at least 20% of the cost of the leafy spurge treatment program, in money or in the form of other property or services. Thus, the \$9,000 which the county weed board proposes to spend must not be more than 80% of the total cost of the leafy spurge control program to be undertaken on the Department of Interior's land.

Although N.D.C.C. § 63-01.1-13 indicates that state and federal government agencies should on their own initiative assume satisfactory noxious weed eradication or control programs on lands which they own, control, or have jurisdiction over within the state, I find nothing in the statutes which would prohibit the county weed board from contributing county monies for weed control programs in which federal agencies participate. In fact, the proposal seems to fall expressly within the Board's authority, as long as the proposal complies with the two limitations regarding landowner contributions and expenditures of legislative appropriations for leafy spurge control programs.

The second part of your question relates to whether or not the monies may be expended for a specific purpose, namely, to help pay for a fence to contain sheep or goats that will eat leafy spurge on land belonging to the Department of the Interior.

A county weed board is authorized to "implement and pursue an effective program for [the] control of noxious weeds." N.D.C.C. § 63-01.1-04.1(5). The control of weeds involves preventing "the spread of any noxious weed . . . by seed or any propagating part." N.D.C.C. § 63-01.1-02(3). Thus, a county weed board may expend funds for any endeavor which reasonably results in preventing the spread of a noxious weed.

Whether the maintenance of animals which feed upon leafy spurge is preventing the spread of a noxious weed is a question of fact rather than law. Thus, I am unable to render an opinion on this factual question. Instead, I would defer to the county weed board's judgment in this matter.

Finally, it should be noted that the Commissioner of Agriculture has the authority to adopt rules outlining procedures for effective weed control programs. See N.D.C.C. § 63-01.1-03.

I hope this information is helpful to you.

Sincerely,

Nicholas J. Spaeth

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