

N.D.A.G. Letter to Tollefson (Sep. 24, 1986)

September 24, 1986

Mr. Douglas Tollefson
Director
Noxious Weed Division
Department of Agriculture
State Capitol
Bismarck, ND 58505

Dear Mr. Tollefson:

Thank you for your letter of September 15, 1986, concerning county commissioner authority in noxious weed control.

N.D.C.C. §11-11-14 specifies the powers of the board of county commissioners. N.D.C.C. §11-11-14(2) gives the board of county commissioners the authority to make all orders respecting property of the county.

However, N.D.C.C. Ch. 63-01.1 is the particular statute which relates to noxious weed control. Pursuant to N.D.C.C. Ch. 63-01.1 the county weed board is the control authority for the county. The county weed board has the authority to prevent the spread of any designated noxious weeds in an appropriate and effective manner. See N.D.C.C. §§63-01.1-02(3), (4) and 63-01.1-04.1.

Of course, the county commissioners appoint the county weed board and may provide funding for noxious weed control programs. See N.D.C.C. §§63-01.1-04(5) and 63-01.1-06. Therefore, the board of county commissioners certainly has an indirect influence in noxious weed program activities.

However, when it comes to making the actual decisions about the use of certain herbicides in a county's noxious weed control program, the statutes are clear that those decisions shall be made by the county weed board. As long as the county weed board is not using a herbicide, the use of which is not otherwise unlawful by federal or state statutes and rules, the county commissioners cannot prevent such use by merely issuing an order to that effect. It is the duty of the county weed board to implement and pursue effective programs for the control of noxious weeds, including designating herbicide use and other technical aspects of the program.

Therefore, although the board of county commissioners generally has broad authority respecting the property of a county, by law the county weed board has been delegated the authority to determine the specifics of an effective weed control program for the county. Clearly, the county weed board has the right to make decisions concerning the use of certain herbicides for a noxious weed control program.

Sincerely,

Nicholas J. Spaeth

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