

OPINION
75-1

July 18, 1975 (OPINION)

Cooperative Extension Service
N.D. State University of Agriculture
and Applied Science
U.S. Department of Agriculture Cooperating
State University Station
Fargo, ND 58102

Gentlemen:

This is in response to your letter of 18 June 1975 with regard to the application of Senate Bill No. 2060 as passed at the 1975 Session of the North Dakota legislature.

You point out that you are, as the Pesticide Control Board, charged with responsibility for the development of a State Plan that would permit implementation of said bill. You state that you have some questions which need clarification.

You point out that Section 9 "Commercial Applicators License", Section 12 "Pesticide Dealers License" and Section 18 "Reciprocal Agreement" all relate to the county extension agent as the certifying agent.

Your first two questions are stated as:

1. Does the commercial applicator, dealer and an individual's license by reciprocity require licensing in each county of operation?
2. Is the prescribed license fee required in each county of operation?"

You further indicate that in Section 9, interpretation of the following wording "if the County Extension Agent finds the applicant qualified . . ." is sought and your specific questions in this regard are stated as (with our renumbering).

3. "Does the County Extension Agent make the determination as to the qualifications of the applicator or can the professionals who conduct the educational programs, evaluate the qualifications of each commercial applicator seeking licensing? If this is permissible, can the names of the successful applicators be sent to the County Extension Agent for certification?
4. "In the event of an area or statewide meeting, does the Act require the presence of the County Extension Agent from each of the counties in which there are applicator participants?"

You state that in similar fashion, you respectfully request clarification of the same questions in Section 12.

We note that as originally introduced, the bill provided for centralized state licenses but that due to amendments, particularly those introduced in the House of Representatives, such apparently is no longer the case.

Thus the first sentence of Section 12 of the new law provides:

"It shall be unlawful for any person to distribute restricted use pesticides or assume to act as a restricted use pesticide dealer, at any time, without first having obtained an annual license from the county treasurer in each county in which the applicant operates his business, which license shall expire on December thirty-first of each year. * * *" (emphasis supplied by us)

We thus must conclude that a license for a dealer must be obtained from the county treasurer in each county of operation. Noting the remainder of the language of this section, we also conclude that where the dealer maintains more than one location or outlet in a county, he must have a county license for each such location or outlet.

The last sentence of Section 14 of the new law provides:

"The county extension agent in the county of the residence of the applicant shall issue a certificate, without fee, to any private applicator who has qualified as prescribed by the board." (emphasis supplied by us)

As pursuant to subsection 2 of Section 54-01-26 "There can be only one residence" the private applicator would be required to obtain only the one license, though he could operate (within the restrictions of the private applicator regulations) in any county in the state.

The question is not so clear with regard to commercial applicator's licenses. Thus the first sentence of Section 9 provides:

"No person who would be a commercial applicator if certified shall purchase, use or supervise the use of a restricted use pesticide without a commercial applicator's license issued by a county treasurer, unless exempted by this Act, and without first complying with the certification standards and requirements of this Act, or other restrictions as may be determined by the board." (emphasis supplied)

While said Section 9 also refers to "the county treasurer", "the county general fund", "the county extension agent", "the county treasurer of the appropriate county", etc., we would assume that all such specific references relate back to the first reference to "a county treasurer." On such basis we would conclude that the commercial applicator's license could be obtained from the county treasurer of any county of the state without regard to the residence of the commercial applicator and without regard to where he was doing business. However the money would have to be paid into the general fund of the county whose treasurer issued the license, the county

extension agent would have to be of the same county as the county treasurer issuing the license, etc.

To summarize in specific answer to your first question, the commercial applicator's license could be obtained from any county treasurer of the state, and such license would be effective in any county in the state, dealer's licenses would have to be obtained from the county treasurer of each county in the state where the dealer does business (and where the dealer operates more than one place of business in a county, one license would have to be obtained for each such place of business in the county), and the private applicator's license would have to be obtained from the county extension agent of the county of such private applicator's residence and would be valid throughout the state. The provisions of Section 18 with regard to reciprocal licensure would not vary this result.

In response to your second question, under Section 9 of the act, commercial applicators would be required to pay an annual fee of twenty dollars for each commercial applicator's license issued and a fee of five dollars for taking the examination. We would assume there would thus be one annual license fee and one five dollar examination fee payable by a commercial applicator and giving it a license effective throughout the state. As to pesticide dealers, as heretofore noted, same may be required to have more than one license. The first sentence of subsection 2 of Section 12 provides:

"Application for a license shall be accompanied by a ten dollar annual license fee and shall be on a form prescribed by the board."

On such basis, we would conclude that there would be one ten dollar fee required for each license applied for, on which basis a pesticide dealer could be liable for one or more license fee dependent on how many counties he did business in and the number of locations or outlets he maintains within each county. Private applicators, of course, are licensed without fee as indicated in subsection 3 of Section 14 of the act.

As to your third question, Section 9 of the act provides in part:

"* * * If the county extension agent finds the applicant qualified to apply pesticides in the classifications he has applied for after such examinations as the board shall require by regulation, and the applicant meets all other requirements he is qualified in. If a license is not to be issued as applied for, the county extension agent shall inform the applicant in writing of the reasons therefor. * * *"

It is perhaps arguable under this language, that the board could require by regulation an examination to be conducted by itself. Noting, however, the requirement in this section that "if the county extension agent finds the applicant qualified", that the county extension agent is to inform the applicant of the reasons for refusing a license, that both license fee and examination fee are required to be put into the county treasury and the county's general fund, we would conclude that the better view is that the legislature intended that the county extension agent should make the

determination as to the qualifications of applicant, though such determination is made pursuant to board regulations requiring specific examinations relevant to the classification of license desired.

As to your fourth question, the act does not specifically require any statewide meetings or areawide meetings. However considering the fact that, as heretofore indicated, we feel the county extension agent will actually be the person administering examinations (and in the case of private applicator's issuing the license) and as presumably the county treasurer's records of licenses actually issued will be available to him, we would conclude that it would be extremely helpful if not essential, to obtain the attendance of the appropriate county extension agents at any areawide or statewide meetings.

We hope the within and foregoing will be sufficient for your purposes.

Sincerely,

ALLEN I. OLSON

Attorney General