

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 93-F-16

Date issued: October 19, 1993

Requested by: Mr. Jerry Renner, Kidder County State's Attorney

- QUESTIONS PRESENTED -

I.

Whether the penalty imposed pursuant to N.D.C.C. ? 63-01.1-15 may be assessed only after a hearing.

II.

Whether a landowner may appeal a penalty decision to the county commissioners.

III.

Whether a penalty imposed under N.D.C.C. ? 63-01.1-15 may be assessed as part of the property owner's real estate taxes.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that a penalty imposed pursuant to N.D.C.C. ? 63-01.1-15 may be assessed only after a hearing initiated by the Weed Control Authority before the County Weed Board or after a hearing in District Court to adjudicate a penalty.

II.

It is my further opinion that a landowner may appeal a penalty decision by the county weed board to the county commissioners, however a penalty decision by the district court may only be appealed to the North Dakota Supreme Court.

III.

It is my further opinion that a penalty imposed under N.D.C.C. ? 63-01.1-15 may not be assessed as part of the property owner's real estate taxes.

- ANALYSES -

I.

N.D.C.C. ? 63-01.1-15 was amended in 1993 by Senate Bill 2523. The amendment changed the law regarding penalties to provide more direction in the imposition of penalties for noxious weed violations. Hearing on S. 2523 Before the Senate Comm. on Agriculture, 53rd N.D. Leg. (Feb. 5, 1993) (Statement of Cindie Heiser, Noxious Weeds Coordinator, North Dakota Department of Agriculture).

N.D.C.C. ? 63-01.1-15 provides in part:

63-01.1-15. Penalties.

. . . .

2. Persons failing to comply with the rules and notice provisions of this chapter are subject to a civil penalty not to exceed fifty dollars per day for each day of violation, subject to a maximum penalty of two thousand five hundred dollars per year. The accumulated penalties under this section are a lien against the property of the landowner from the day the notice is delivered to the landowner under section 63-01.1-08. All penalties collected pursuant to this section must be deposited with the treasurer of the political subdivision and credited to the weed control fund in the political subdivision in which the penalty originated. Penalties collected pursuant to this section for failure or refusal to perform remedial requirements for the control of pests on an infested area must be credited to the weed control fund in the political subdivision in which the penalty originated but dedicated for use by the county weed board to control pests. The penalty may be adjudicated by the courts or by the county weed board after a hearing. An aggrieved landowner may appeal the imposition of a penalty by the county weed board to the board of county commissioners.

Based upon the language of the statute, it is my opinion that a penalty may only be assessed after a hearing. Hearings under this section would be initiated only after determination

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has been made by the control authority that the landowner is not in compliance with chapter 63-01.1. Although section 63-01.1-15 does not expressly state who initiates the penalty hearings, it is appropriate to assume that such a procedure could only be initiated by an entity that exercises control under the chapter. For this reason, it is my opinion that the hearings provided for in subdivision 2 of N.D.C.C. ? 63-01.1-15 may only be initiated by a "control authority." N.D.C.C. ? 63-01.1-02 defines "control authority" as including "the commissioner of agriculture, the county weed board, and, pursuant to the county weed board's authorization, the county weed control officer."

To initiate a penalty hearing before the County Weed Control Board, the control authority should, by appropriate means, serve notice upon the land owner indicating the proposed penalty and the time and place of the hearing. To adjudicate the penalty before the district court, the control authority should direct the local county state's attorney to bring an action for purposes of adjudicating the penalty. See Letter from Attorney General Heidi Heitkamp to Commissioner of Agriculture Sarah Vogel (June 28, 1993).

The North Dakota Commissioner of Agriculture has the authority to adopt rules to carry out the intent of N.D.C.C. ch. 63-01.1. The Commissioner has not adopted rules regarding the procedures to impose penalties for noxious weed control, however, but may do so in the future.

II.

N.D.C.C. ? 63-01.1-15(2) provides "the penalty may be adjudicated by the courts or by the county weed board after hearing. An aggrieved landowner may appeal the imposition of the penalty by the county weed board to the board of county commissioners." Based upon the language of the statute, it is my opinion that a land owner may appeal a penalty determination by the county weed board to the board of county commissioners. A penalty determination by the district court, however, would be appealable to the North Dakota Supreme Court pursuant to N.D.C.C. ch. 28-27.

III.

The procedures for the recovery of expenses for controlling noxious weeds and for recovery of the penalties assessed for

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failure to control weeds and pests are different. N.D.C.C. ? 63-01.1-08 provides that the control authority, after notice and a statement of costs, may cause noxious weeds to be controlled. The expense of controlling may be recovered as a part of the taxes levied against the land for the ensuing year and must be collected in the same manner as real estate taxes. N.D.C.C. ? 63-01.1-08.

In comparison, N.D.C.C. ? 63-01.1-15 provides that a penalty may be adjudicated by a court after a hearing, or, in the alternative, may be determined by the county weed board after a hearing.

N.D.C.C. ? 63-01.1-15 further provides that accumulated penalties are a lien against the property of the landowner from the day the notice is delivered to the landowner under section 63-01.1-08. The notice provided by section 63-01.1-08 is notice requiring the landowner to control or eradicate the noxious weeds or pests within a certain time and specifying that the landowner may be subject to the penalty provided in section 63-01.1-15 if the landowner fails to comply. The statutory lien granted by N.D.C.C. ? 63-01.1-15 may be recorded with the county register of deeds, N.D.C.C. ? 47-19-01, and enforced as other liens. The amount of the lien would not be known until after the adjudication of the penalty by the county weed board or the district court. Because the statute provides that the penalties are a lien against the property rather than stating they may be recovered as part of taxes, it is my opinion that the penalties imposed pursuant to N.D.C.C. ? 63-01.1-15 may not be levied against the land as part of the property owner's real estate taxes.

- EFFECT -

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.

Heidi Heitkamp
ATTORNEY GENERAL

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