

**LETTER OPINION
93-L-216**

June 28, 1993

Sarah Vogel
Commissioner of Agriculture
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Commissioner Vogel:

Thank you for your May 18, 1993, letter inquiring whether state's attorneys are required to provide legal assistance to county weed boards and county weed board officers in connection with the enforcement of N.D.C.C. ch. 63-01.1.

N.D.C.C. ch. 63-01.1 provides a comprehensive program to eradicate or control the spread of noxious weeds on lands in the state. A landowner whose property is found to be infested with noxious weeds may be required to take remedial measures set by the county weed board. N.D.C.C. ? 63-01.1-08(2).

The Commissioner of Agriculture, a county weed control board appointed by the Board of County Commissioners, and a designated county weed control officer are charged with enforcement of the chapter. N.D.C.C. ?? 63-01.1-02(2), (5), (6); 63-01.1-03; 63-01.1-04; ? 63-01.1-04.1(1).

This office previously concluded that a state's attorney has an implied duty to generally advise county weed boards, but "does not have the duty or authority to represent the county weed board in civil actions without a specific statutory grant of such

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power and duty." Letter from Attorney General
Nicholas J. Spaeth to John R. Gregg (April 22, 1985).

At the time of that opinion, N.D.C.C. ? 63-01.1-08(4) provided for payment of a fine for failure to take remedial measures. Fines collected were to be deposited with the State Treasurer and credited to the state school fund. N.D.C.C. ? 63-01.1-08(4). N.D.C.C. ? 63-01.1-15(2) authorized the weed control board to pursue court action to enforce a civil penalty of up to \$500 for failure to comply with required remedial action.

In 1991, N.D.C.C. ? 63-01.1-08 was amended to provide that fines collected were to be deposited with the county treasurer and credited to the county weed board fund. 1991 N.D. Sess. Laws ch. 711, ? 4. Amendments to N.D.C.C. ? 63-01.1-08 by the 1993 Legislative Assembly, which become effective August 1, 1993, eliminate fines and expand the scheme for imposition of penalties for noncompliance with remedial requirements. S.B. 2523, ?? 8, 12. Section 12 of Senate Bill 2523 specifically provides that persons failing to comply with remedial requirements "are subject to a civil penalty. . . . All penalties collected pursuant to this section must be deposited with the treasurer of the [county] and credited to the weed control fund in the [county] in which the penalty originated. . . ."

The recent amendments to N.D.C.C. ch. 63-01.1 require an analysis and conclusion different from that contained in the earlier Gregg opinion concerning the duty of a state's attorney to represent the weed control board in legal actions.

N.D.C.C. ? 11-16-01 states in pertinent part:

Duties of the state's attorney. The state's attorney is the public prosecutor, and shall:

. . . .

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6. Prosecute . . . all actions for the recovery of debts, fines, penalties, and forfeitures accruing to the state or to [the state's attorney's] county.

Because penalties for noncompliance with county weed board notices requiring landowners to control or eradicate noxious weeds (or pests) must be deposited with the county treasurer and credited to the county weed control fund, it is my opinion that the penalty accrues to the county. It is my further opinion that pursuant to N.D.C.C. ? 11-16-01(6), state's attorneys have a duty to represent a weed control board in actions to recover fines under N.D.C.C. ? 63-01.1-08(4). Effective August 1, 1993, penalties under N.D.C.C. ? 63-01.1-15(2) are to be deposited with the Treasurer and, therefore, the state's attorney will have a duty to recover penalties under N.D.C.C. ? 11-16-01(6).

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

tam/jfl