

OPINION
54-56

January 5, 1954 (OPINION)

HIGHWAYS

RE: Weeds - Township - Cutting

This office is in receipt of your letter of December 29, 1953, asking for an opinion as to the responsibility for the cutting of weeds upon the right of way of township highways and you state that your township had cut these weeds and certified the expenses thereof to the county auditor, but that your county auditor, on the advice of the state's attorney, held that the cutting of these weeds must be outside of the 33 feet nearest the section line.

This office has heretofore unofficially ruled that the cutting of weeds along and including the right-of-way was the obligation of the property owners and that if such property owner did not so cut the weeds, that the township and the county commissioners in an unorganized township had the duty to see that these weeds were cut and the expense thereof charged to the property owners of tax record. There is much merit in the contention of your state's attorney that the law presupposes that the cutting of these weeds as set forth in section 63-0305 of the 1953 supplement would include only those weeds outside of the regular right-of-way. However, when we check the law, we find it is the duty of all property owners to destroy noxious weeds upon their land. This is provided for by chapter 63-02 of the North Dakota Revised Code of 1943. Further, we find in section 63-0306 that this law placing the duty upon the property owner to cut the weeds along the highways does not apply to any county, state or federal highway. If it was the intention of the legislature to provide for the cutting of weeds outside of the right-of-way there would have been no occasion for including this last provision. It is, therefore, the opinion of this office that it is the duty of every land owner adjoining a township highway to cut the weeds including that portion of the highway which is not used for travel and that if such land owner does not so cut the weeds, that it is the duty of the township board to provide for the cutting of such weeds and certify the same to the county auditor to be placed upon the tax list and to be charged against the owner of the real estate.

Also, you ask whether or not this tax could be charged to the tax due on January 1, 1954, or must be carried over to January 1, 1955. The law presupposes that the certification by the township clerk is done in sufficient time so that the county auditor may place it upon the tax list for the year after the expense has been incurred. If the tax list has not been certified, it might be impracticable for the county auditor to so list the taxes at this time as we presume that the tax list has already been turned over for collection. However, this is only a matter of practicability and the law does not specify any particular year that expenses should be charged.

ELMO T. CHRISTIANSON

Attorney General