

**OPINION
56-10**

October 16, 1956 (OPINION)

AIRCRAFT

RE: Spraying - Liability for Crop Damaged

We are in receipt of your letter of October 9, 1956, in which you request an opinion concerning the applicability of Chapter 203, Session Laws of 1955, when a person for whom spraying was done brings an action for damage to his crop.

Chapter 203 reads as follows:

SECTION 1. LIMITATIONS FOR ACTIONS. No civil action shall be commenced arising out of the use or application of any herbicide, insecticide, fungicide or agricultural chemical by aircraft, unless the claimant has filed a verified report of the loss with the State of North Dakota aeronautics commission, together with proof of service of such verified report of loss upon the operator or applicator allegedly responsible and the person for whom such work was done within a period of sixty days from the occurrence of such loss or within sixty days from the date the claimant knew such loss had occurred, provided, however, if the damage is alleged to have been occasioned to growing corps, the report shall be filed prior to the time when fifty percent of the crop was harvested.

SECTION 2. CONTENTS OF VERIFIED REPORTS. The verified report of the loss as set forth in section one herein shall include, so far as known to the claimant the following: name and address of claimant, type, kind, and location of property allegedly injured or damaged, date the alleged injury or damage occurred, name of operator or applicator allegedly responsible for such loss or damage, and the name of the owner or occupant of the property for whom such operator or applicator was rendering labor or service."

It is our opinion that this statute is not applicable when a crop owner is bringing an action against a person whom the corp owner himself has hired to spray his crop, but only when the action is being brought by other persons who have sustained damage by the spraying. Otherwise the person bringing the action would have to serve himself which of course does not make sense.

The result of course is that the North Dakota aeronautics commission will not be entitled to the verified proof of loss in such cases, but that is a matter for the Legislature to correct if it deems it desirable.

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Attorney General