

N.D.A.G. Letter to Renner (Aug. 15, 1990)

August 15, 1990

Jerry Renner
Kidder County State's Attorney
P. O. Box 229
Steele, ND 58482-0229

Dear Mr. Renner:

Thank you for your letter of June 6, 1990, regarding N.D.C.C. §§ 63-01.1-05 and 63-01.1-08. You ask whether either section could be used in the control of noxious weeds, and if so, under what circumstances. It is my opinion that both of the sections may be used in the control and eradication of noxious weeds. The situations which exist and the outcomes which you seek to achieve will influence your decision to proceed under one or the other.

N.D.C.C. § 63-01.1-05(4) governs the duties of the county weed control officer, after a complaint is received by the officer, the county weed board or the commissioner of agriculture. The officer must first determine that the complaint is justified, and upon so doing, he must serve notice on the landowner, requiring him to control or eradicate the noxious weeds within five days. The five-day period may be extended by the county weed board, upon the request of the landowner. If the landowner resides out of state, he must be given at least fifteen days to control or eradicate the weeds.

If the landowner fails to control or eradicate the weeds within the time provided, the county weed officer may,

. . . cause noxious weeds to be controlled or eradicated and the expenses to be charged against the land of the landowner.

. . . .

The expenses charged shall become a part of the taxes to be levied against the land for the ensuing year and shall be collected in the same manner as other real estate taxes are collected, and placed to the credit of the respective subdivisions entitled thereto, or the landowner shall be subject to the penalties provided in section 63-01.1-15.

N.D.C.C. § 63-01.1-05(4).

Thus, N.D.C.C. § 63-01.1-05(4) may be used when:

- a. The landowner refuses to control or eradicate noxious weeds;

- b. There is a desire to actually have the noxious weeds controlled or eradicated; and
- c. There is the ability on the part of the county to absorb the costs of control or eradication until recompense is available, as stated above.

Under N.D.C.C. § 63-01.1-08, there must be a finding by the commissioner of agriculture, any control authority, county weed control officer, or other authorized person that land is infested with noxious weeds. The county weed board must then adopt a resolution confirming that fact by a two-thirds majority. This section allows for the imposition of a penalty, should the landowner fail to control the weeds. It does not permit the county to control the weeds in his stead. The penalty can be assessed only after notice is given to the landowner and he fails or refuses to control the weeds within the time set forth. The fine levied may not be more than "fifty dollars per day for each day of violation and not more than a total of two thousand five hundred dollars per year as determined by the district court." N.D.C.C. § 63-01.1-08(4).

You also ask whether N.D.C.C. § 63-01.1-05 permits the weed control officer, to enter private land to spray weeds without the owner's permission, if he has complied with the certified notice provision. N.D.C.C. 63-01.1-05(4) states:

The weed control officer may, upon failure by the landowner to do so in the time limits provided, cause noxious weeds to be controlled or eradicated and the expenses to be charged against the land of the landowner. The weed control officer may cause noxious weeds to be controlled or eradicated. (Emphasis supplied.)

N.D.C.C. § 63-01.1-08(1) states that:

1. The commissioner, and the control authority, county weed control officer, or anyone authorized thereby, may enter upon all land under their jurisdiction for the purpose of performing their duties and exercising their powers under this chapter, including the taking of specimens of weeds or other materials, without the consent of the landowner, lessee, renter, tenant, or operator, and without being subject to any action for trespass or damages, including damages for destruction of growing crops, if reasonable care is exercised. (Emphasis supplied.)

Reading the above quoted sections together, a weed control officer may enter private land to spray weeds without the owner's Permission.

You also ask whether an action against a landowner for non-compliance with N.D.C.C. § 63-01.1-08 would be a civil or a criminal proceeding.

A failure to comply with the notice provision of N.D.C.C. § 63-01.1-08 is governed by N.D.C.C. § 63-01.1-15(2). This section provides that a person failing to comply with a

notice "promulgated pursuant to the provisions of this chapter [is] subject to a civil penalty not to exceed five hundred dollars." N.D.C.C. § 63-01.1-15(2).

Finally you ask how a proceeding is initiated and carried out. N.D.C.C. § 63-01.1-15(2) states that "necessary court action may be pursued by the weed control officer or authority." N.D.C.C. § 63-01.1-02(4) defines "control authority" as the commissioner (of agriculture), those designated to act for the commissioner and the county weed board.

N.D.C.C. § 63-01.1-08(4) contemplates that actions will take place in the district court. It is presumed that the action would be commenced by a complaint filed by the commissioner, the commissioner's designee, the county weed board or the weed control officer.

I hope that this response will be of assistance to you. If you have any additional questions, please do not hesitate to contact me.

Sincerely,

Nicholas J. Spaeth

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