

N.D.A.G. Letter to Renner (Nov. 12, 1991)

November 12, 1991

Mr. Jerome L. Renner
Kidder County State's Attorney
P.O. Box 229
Steele, ND 58482

Dear Mr. Renner:

Thank you for your October 2, 1991 letter regarding the liability of the county and the county weed board for property damage caused through noxious weed eradication.

N.D.D.C. § 63-01.1-08(1) provides that the Commissioner of Agriculture, any control authority, county weed control officer, or anyone authorized thereby, are not liable for damages caused in the performance of their duties if they exercise reasonable care. The county weed board is a control authority. N.D.D.C. § 63-01.1-02(4). Thus, if reasonable care is used in the eradication process by a board employee or anyone authorized by the board, the county weed board is immune from damages resulting from the performance of its duties as outlined in N.D.C.C. ch. 63-01.1.

The responsibility for noxious weed control under N.D.C.C. ch. 63-01.1 lies with the county weed board, the Commissioner of Agriculture and the county weed control officer. The county itself has no authority to control noxious weeds. However, the county would likely be named as a defendant in a lawsuit to recover damages caused by noxious weed eradication. Under N.D.C.C. ch. 32-12.1, the county is not liable for property damage unless an employee acting within the scope of employment negligently causes damage. N.D.D.C. § 32-12.1-03(1). Thus, if a county employee negligently causes damage while spraying noxious weeds, the county is liable.

Whether reasonable care is exercised in the application of chemicals, including Tordon, to eradicate noxious weeds, is a question of fact upon which I cannot render a legal opinion. Please note that N.D.C.C. ch. 4-35 governs the use of pesticides, so any chemical application must be in accord with both the provisions of that chapter and the pesticide label. Applying chemicals in a manner consistent with the label and N.D.C.C. ch. 4-35 may be evidence of reasonable care, however, it is not conclusive proof of reasonable care.

In a situation where the county weed board authorizes someone other than a county employee to eradicate noxious weeds, the liability of the county is unclear. There are many different legal theories on which the county may be sued, but the likelihood of success on those theories is a question which must be addressed on a case-by-case basis.

I hope I have satisfactorily addressed your concerns.

Sincerely,

Nicholas J. Spaeth

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