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August 05, 2016

Lonnie Mayer, Supervisor
Hutchinson County Weed & Pest Board
140 Euclid #38
Olivet, South Dakota 57052

Official Opinion No. 16-01

Re: Obligation for Weed Control on or Along Township Roads

Dear Mr. Mayer,

In your position as Supervisor of the Hutchinson County Weed & Pest Board, you have requested an official opinion from the Attorney General's Office on the following questions:

Question(s):

1. Is the township or the adjoining landowner responsible for weed control along township roads?
2. Can a township deviate from the dates established in statute for the removal of weeds?

Answer(s):

1. The Legislature has placed the responsibility for controlling and eradicating *noxious weeds* on or along township roads upon the state agency or subdivision that supervises the roads. The responsibility for controlling *all other weeds* on or along township roads has been placed upon the landowner.

2. Yes. Pursuant to SDCL 31-31-3 and 31-31-5, a township's board of supervisors may determine the dates between which all weeds shall be removed along township roads.

Facts:

Townships within Hutchinson County contend that the responsibility for controlling and eradicating weeds on township roads, or within the road right of way, shall be upon the landowner. Attorney General's Opinion 76-1 interprets state law to require townships to control noxious weeds along township roads. Also, townships within Hutchinson County are adjusting the dates of required weed control to deviate from the dates contained in SDCL 31-31-3 and 31-31-5. Based on these facts, you have asked the two questions identified above.

In re Question 1:

Attorney General Janklow issued a formal opinion on this same issue on January 8, 1976. That opinion stated in relevant part:

[South Dakota] statutes do not authorize a township to require a landowner to control *noxious weeds* in township road ditches adjacent to his property. SDCL 31-31-2 . . . refers to "grass, weeds and brush." SDCL 38-22-22 and 24 . . . specifically refer to "noxious weeds" and it is the responsibility of the township in this instance to control such noxious weeds. SDCL 38-12-2 and 3 contain statutory definitions of what constitutes "noxious weeds."

AGO 76-1.

Since the date of that opinion, SDCL 38-12-2 and 38-12-3 were repealed, and SDCL 38-22-22 and 38-22-24 were amended to remove the term "noxious weeds" from their statutory descriptions. Opinion 76-1 is, therefore, no longer a valid explanation of statutory authority on this issue. It is my opinion, however, that these statutory changes do not affect the underlying obligation of townships to remove noxious weeds on or along township roads.

SDCL 38-22-22 provides in pertinent part that "[t]he responsibility for and the cost of controlling and eradicating weeds . . . on all lands or highways owned or supervised by a state agency or subdivision shall be upon the state agency or subdivision supervising such lands or highways. . . ." SDCL 31-31-2, however, provides in pertinent part that "[t]he owner or occupant of any land abutting or adjoining upon township roads shall cut, remove, or destroy or cause to be cut, removed, or destroyed, grass, weeds, trees, and brush growing on or in the right-of-way of such roads. . . ." Facially, these statutes appear to conflict;

SDCL 38-22-22 indicates that townships are responsible for eradicating weeds on or along township roads, while SDCL 31-31-2 indicates that this responsibility falls upon landowners.

Statutes must be read as a whole and in conformance with well-established principles of statutory construction. *State v. I-90 Truck Haven Service, Inc.*, 2003 S.D. 51, ¶ 8, 662 N.W.2d 288, 291. “The purpose of statutory construction is to discover the true intention of the law, which is to be ascertained primarily from the language expressed in the statute.” *Puetz Corp. v. SD Dept. of Revenue*, 2015 S.D. 82, ¶ 16, 871 N.W.2d 632, 637 (quoting *State v. Clark*, 2011 S.D. 20, ¶ 10, 798 N.W.2d 160, 164). “Words and phrases in a statute must be given their plain meaning and effect.” *Pete Lien & Sons, Inc. v. Zellmer*, 2015 S.D. 30, ¶ 35, 865 N.W.2d 451, 463 (citations omitted). However, “[w]here conflicting statutes appear, ...reasonable construction [must be given] to both, and ...effect [must be given], if possible, to all provisions under consideration, construing them together to make them harmonious and workable.” *Meyerink v. Northwestern Public Service Company*, 391 N.W.2d 180, 184 (S.D. 1986) (citations omitted). See also *Martinmass v. Englemann*, 2000 S.D. 85, ¶ 49, 612 N.W.2d 600, 611.

For the purposes of SDCL ch. 38-22 “weed” is defined as “any plant which the [Weed and Pest Commission] has found to be detrimental to the production of crops or livestock or to the welfare of persons residing within the state.” SDCL 38-22-1.2(11). Similarly, the Weed and Pest Commission has described a “noxious weed” as “a weed which the commission has designated as sufficiently detrimental to the state to warrant enforcement of control measures.” ARSD § 12:62:02:01(5). The Commission has created a list of statewide noxious weeds contained in ARSD § 12:62:03:01.06. A review of these provisions leads to the conclusion that the “weeds” discussed in SDCL 38-22-22 (those that must be detrimental to crops, livestock, and persons) are the same as the “noxious weeds” defined in ARSD § 12:62:02:01(5) (those detrimental to the state) and listed in ARSD § 12:62:03:01.06.

Conversely, SDCL 31-31-2 does not have a corresponding definition of the term “weed” in its chapter. I am aware that SDCL 2-14-4 provides that “[w]henver the meaning of a word or phrase is defined in any statute, such definition is applicable to the same word or phrase wherever it occurs except where a contrary intention plainly appears.” However, interpreting the weeds described in both SDCL 31-31-2 and SDCL 38-22-22 as “noxious weeds” would lead to a result that in my opinion the Legislature did not intend.

“[I]n construing statutes together it is presumed that the legislature did not intend an absurd or unreasonable result.” *Martinmaas*, 2000 S.D. 85, ¶ 49 (quoting *Moss v. Guttormson*, 1996 S.D. 76, ¶ 10, 551 N.W.2d 14, 17). To

interpret both SDCL 38-22-22 and SDCL 31-31-2 as both controlling the same types of weeds would result in making both townships and landowners responsible for controlling noxious weeds, with no entity then responsible for the control of all other weeds. Therefore, it is my conclusion that the Legislature intended the term "weed" in SDCL 31-31-2 to refer to all other weeds beyond those noxious weeds controlled by SDCL 38-22-22. As such, the responsibility for controlling and eradicating *noxious weeds* on or along township roads has been placed upon the township. The responsibility for controlling *all other weeds* on or along township roads has been placed upon the abutting landowner.

In re Question 2:

The plain language of SDCL 31-31-3 permits a township's board of supervisors to determine the dates between which weeds shall be removed from township roads.

SDCL 31-31-3 provides:

Time for weed removal. Grass, weeds, trees or brush referred to in §§ 31-31-1 and 31-31-2 shall be cut, removed, or destroyed between the first day of September and the first day of October of each year, *or between dates annually fixed by the board of supervisors.*

This language is carried over into SDCL 31-31-5 which provides:

Failure of abutting landowner to remove weeds--Removal by board of supervisors--Compensation for removal. If the owner or occupant of land abutting upon or adjoining township roads does not cut, remove, or destroy, or cause to be cut, removed, or destroyed, the grass, weeds, trees, or brush in the right-of-way of such roads between the first day of September and the first day of October, *or between the dates annually fixed by the board,* the board of supervisors of the township in which the land is located may employ a person or persons to immediately cut and remove the grass, weeds, trees, and brush on or in the right-of-way of such township roads with compensation at a rate to be fixed and paid by the board.

Lonnie Mayer

Page 5

The emphasized language makes it clear that the Legislature has given a township's board of supervisors the express authority to establish the dates between which weeds shall be removed along township roads.

Very truly yours,



Marty J. Jackley
ATTORNEY GENERAL

MJJ/JCT/lde