

OFFICIAL OPINION NO. 76-1, Responsibility of weed spraying on township roads

January 8, 1976

Mr. Raymond Eilers  
State Weed Supervisor  
Department of Agriculture  
Anderson Building  
Pierre, South Dakota 57501

OFFICIAL OPINION NO. 76-1

**Responsibility of weed spraying on township roads**

Dear Mr. Eilers:

You have requested an opinion from this office as to whether or not a township can legally declare, at a township meeting, that it is the responsibility of each landowner to control noxious weeds in township road ditches adjacent to the respective landowner's property.

Relevant statutes applicable to this problem state:

SDCL 38-22-24. Boards of county commissioners and supervisors of townships shall, and governing bodies of all cities and towns are authorized to, appropriate and expend money from the general fund of each county, city and towns and townships for the control or eradication of noxious weeds within their respective corporate limits, and may buy, use and sell equipment and materials for use therein; to employ such county weed supervisor or supervisors as the commission may deem necessary and to fix the salaries therefor, and who shall receive necessary traveling expenses incurred in the performance of their duties and in attending meetings designated by the state weed control commission when requested by it so to do; and pay for such other services and items of expense as recognized, approved, authorized, or established by the state weed program, or the rules, regulations or orders of the state weed control commission. SDCL 38-22-22. The responsibility for and the cost of controlling and eradicating noxious weeds on all lands or highways owned or supervised by a state department or commission shall be upon the state department or commission supervising such lands or highways, and paid out of funds

appropriated to its use; on county lands and county roads, on township lands and township roads, on city streets and alleys by the county township or city in which such lands and roads are located and out of funds made available for that purpose.

SDCL 31-31-2. It shall be the duty of any person owning or occupying the land abutting upon township roads to cut or remove, or cause to be cut or removed, grass, weeds and brush growing within the right of way of such roads, provided that such roads are left in such condition that grass and weeds thereon can be cut with a mower.

It is my opinion that the above 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 cited above refers to "grass, weeds and brush." SDCL 38-22-22 and 24 cited above 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."

It appears to me that the above cited statutes must be construed together yet giving effect so far as possible to the provisions of each section. It may be somewhat difficult to administer but it appears that control of noxious weeds is a matter for the township, whereas control and removal of grass, non-noxious weeds and brush growing within the right-of-way of township roads is a responsibility of the adjoining landowner.

Respectfully submitted,

WILLIAM J. JANKLOW  
ATTORNEY GENERAL

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