

OFFICIAL OPINION NO. 90-05, Control of weeds by local township board

January 15, 1990

Mr. Erling Podoll, Chairman
Franklin Township Board of Supervisors
R.R. 2, Box 21A
Frederick, SD 57441

OFFICIAL OPINION NO. 90-05

Control of weeds by local township board

Dear Mr. Podoll:

You have requested from this office an official opinion regarding the following factual situation:

FACTS:

Noxious weed control is usually carried out by about one-half to two-thirds of the landowners in Franklin Township. A particular noxious weed, leafy spurge, is capable of exerting severe economic loss. Leafy spurge infestations could be so severe in some parts of the county that there is a potential for these lands to go off the tax rolls and become unsalable. In Franklin Township, leafy spurge is still controllable because infestations are limited to certain areas and not large acreages. The township board feels that if the problem is attacked soon enough, we have the opportunity to control it and keep it from getting out of hand. The township board is willing to take a leading role in the attack.

Based upon the above factual situation, you have asked the following question:

QUESTION:

Can a township board divert part of its road maintenance or snow removal funds for weed control on private lands (not within any township road right-of-way) if it would be in the best interests of the township?

Townships, like any other form of municipal government, have only those powers which are expressly conferred upon them by the Legislature. Sioux Falls Municipal Employees

Association v. City of Sioux Falls, 89 S.D. 298, ____, 233 N.W.2d 306, 309 (1975). This principle is often referred to as "Dillon's Rule." SDCL 8-2-10 states that:

No organized township shall possess or exercise any powers except such as are enumerated in this chapter, or are especially given by law or are necessary to the exercise of the powers so enumerated or granted.

SDCL 8-2-1 lists the general corporate and regulatory powers of townships. Nowhere in that section is any authorization given for a township to spray noxious weeds on private property. In fact, the only authority I have found in the South Dakota Code relating to weeds and townships is SDCL 31-31-2, et seq., which addresses weed removal from township roads.

The bulk of the weed statutes in South Dakota can be found in SDCL ch. 38-22. That chapter details the formation of the county weed and pest board which, among other things, has been granted the duty and authority to control the noxious weed problems within the various counties of this state.

Therefore, I am of the opinion that a township cannot use township funds to spray noxious weeds on private property. Therefore, I believe that I need not address your questions relating to liability of the township if it had used township funds to spray weeds. I only suggest that the township board of supervisors work closely with the local county weed and pest board to address the concerns you have presented.

Respectfully submitted,

ROGER A. TELLINGHUISEN
ATTORNEY GENERAL

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