



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 83- 106

Robert E. Blue
Rawlins County Attorney
Rawlins County Courthouse
Atwood, Kansas 67730

Re: Agriculture--Weeds--Control and Eradication of
Noxious Weeds; Sale of Chemicals for Use on
Private Property; Price

Synopsis: Pursuant to the provisions of K.S.A. 2-1319 and
2-1322, a board of county commissioners must
prescribe a single "price" to be charged to all
landowners who desire to purchase chemicals
acquired by the county for the control of noxious
weeds. The price fixed by the board under the
aforesaid statutes must be applied in all cir-
cumstances, and the board may not require certain
landowners to obtain their own chemicals, or
require said landowners to pay a price other
than that which is charged to all other landowners
under the aforesaid statutes. Cited herein:
K.S.A. 2-1319, 2-1322, 19-101a (as amended by
Section 1 of 1983 Senate Bill No. 302).

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Dear Mr. Blue:

You request our interpretation of K.S.A. 2-1319 and 2-1322.
Specifically, you ask whether the Board of County Commissioners
of Rawlins County may, with regard to resale of chemicals
purchased by the county for the control of noxious weeds,

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require certain landowners to pay a price other than that fixed by the board pursuant to the aforesaid statutes, or refuse to sell chemicals to said landowners and require them to obtain their own chemicals.

K.S.A. 2-1322 authorizes the board of county commissioners, in cooperation with the secretary of agriculture, to purchase necessary chemical material for control and eradication of noxious weeds. Said statute also provides for the resale of said chemical materials at a price to be fixed as follows:

"The board of county commissioners shall sell chemical material to the landowners in their jurisdiction at a price fixed by the board of county commissioners which shall be in an amount equal to not less than fifty percent (50%) nor more than seventy-five percent (75%) of the total cost incurred by the county in purchasing, storing and handling such chemical materials, and may make such charge for the use of machines or other equipment and operators as may be deemed by them sufficient to cover the actual cost of operation.

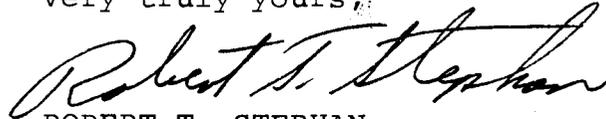
However, once the tax levying body of a county, city or township has authorized the maximum tax levy prescribed by K.S.A. 2-1318, the board of county commissioners may collect from the landowners in their jurisdiction an amount equal to seventy-five percent (75%) but not more than one hundred percent (100%) of the total cost incurred by the county in purchasing, storing and handling of chemical materials used in the control and eradication of noxious weeds. Whenever official methods of eradication adopted by the state board of agriculture are not used in applying the chemical material purchased, the board of county commissioners may collect the remaining portion of the total cost thereof from the landowner." (Emphasis added.)

In our opinion, the board of county commissioners must, under the above-quoted statute, fix a single "price" to be charged to all landowners. The price fixed by the board must be applied in all circumstances, and the board may not require certain

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landowners to obtain their own chemicals, or require said landowners to pay a price other than that which is charged to all other landowners under the aforesaid statute. Furthermore, the above-quoted statute, and K.S.A. 2-1319 (which contains similar provisions), are part of an enactment (L. 1979, ch. 5, §§1 and 2) which is uniformly applicable to all counties, and a county may not, therefore, exempt itself from said statute by the exercise of county home rule powers. See K.S.A. 19-101a, First (as amended by Section 1 of 1983 Senate Bill No. 302).

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:jm