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ATTORNEY GENERAL OPINION NO. 90- 40

Steven Kraushaar
Marshall County Attorney
Marshall County Courthouse
Marysville, Kansas 66508

Re: Agriculture--Weeds--Purchase and Use of Equipment and Chemicals; Sale of Chemicals, Price; Charges for Use of Machinery and Equipment; Record of Purchases, Sales and Charges; Cost-Sharing Certificates

Synopsis: Current law dealing with the eradication of noxious weeds (K.S.A. 2-1314 et seq.) imposes duties regarding the sale and distribution of chemical materials. It does not provide the authority to substitute a cost-sharing certificate program in lieu thereof. Cited herein: K.S.A. 2-1314 et seq.; K.S.A. 1989 Supp. 2-1322.

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Dear Mr. Kraushaar:

As county attorney for Marshall county you inquire whether the noxious weed law (K.S.A. 2-1314 et seq.) allows a county to use a cost-sharing certificate program for distributing chemical materials to eradicate weeds.

You indicate the certificates would work as follows: the landowner identifies the acres infested with noxious weeds with the county weed department office or has the noxious weed supervisor visit the property to verify the noxious weed problem. The landowner and the noxious weed supervisor

discuss the problem, what chemical should be used, when and at what rate the chemical is to be applied. The noxious weed supervisor then issues a cost-share certificate to the landowner noting the chemical and the amount to be used. The cost that the county will share with the landowner is determined by the board of county commissioners, and is in an amount equal to but not less than fifty percent nor more than seventy-five percent of the total cost incurred by the county in purchasing, storing and handling the chemicals used. The landowner would then obtain the chemical at his local chemical dealership and have the dealer send the certificate back to the county for reimbursement.

The relevant statute, K.S.A. 1989 Supp. 2-1322, states in part:

"The board of county commissioners, or the governing body of incorporated cities, cooperating with the secretary of the state board of agriculture, shall purchase or provide for needed and necessary equipment and necessary chemical material for the control and eradication of noxious weeds. The board of county commissioners of any county or the governing body of any city may use any equipment or materials purchased as provided for in this section, upon the highway, streets and alleys, for the treatment and eradication of weeds which have not been declared noxious by legislative action. 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, sorting 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." (Emphasis added.)

This statute imposes a duty on the board of county commissioners to sell the chemical material directly to the landowner, without reference to any alternative such as that

proposed by a cost-sharing certificate program. A similar proposal was considered and rejected by the legislature.

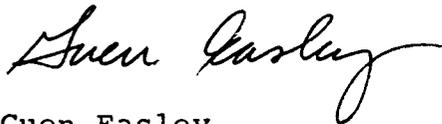
This issue of cost-share certificates was examined by the legislature in 1987 and 1988. House Bill No. 2593 was introduced in the 1987 legislature but no hearings were held until 1988. During the interim period between these two sessions, the special committee on agriculture and livestock reviewed the noxious weed law and analyzed the cost-share certificate proposal contained in 1987 House Bill No. 2593. The special committee made no recommendations regarding the cost-share certificate proposal noting various problems such as cost increases, detrimental competitive relationships and the potential for budgetary problems that the county might incur. Interim Committee Report by the Special Committee on Agriculture and Livestock, November 19, 1987. On February 19, 1988 the house of representatives adopted the committee recommendation that House Bill 2593 not be passed.

In conclusion we opine that while it is possible that the legislature may amend the the noxious weeds law to allow a cost-sharing certificate program to distribute chemical materials, the current law does not authorize such a program. We note that our conclusion does not address whether the program in question can be authorized by the county pursuant to its county home rule powers [K.S.A. 19-101 et seq.] because the question of home rule power is currently in litigation. See Blevins v. Hiebert et al., No. 62,450 (Kan. Dec. 8, 1989).

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Guen Easley
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