

LETTER OPINION
94-L-148

May 11, 1994

Mr. John T. Goff
Cass County State's Attorney
P.O. Box 2806
Fargo, ND 58108-2806

Dear Mr. Goff:

Thank you for your letter requesting an opinion regarding the membership of a county weed board. Specifically, you ask whether the board of county commissioners is required to appoint a county weed board member from a city with a population of 5,000 or more pursuant to N.D.C.C. ? 63-01.1-04, when the city has chosen to act as a weed control authority within its own jurisdictional limits pursuant to N.D.C.C. ? 63-01.1-10.1.

The county weed board is the weed control authority for the county. N.D.C.C. ? 63-01.1-04. The board of county commissioners is required to establish county weed board member areas by dividing the county into contiguous geographical areas from which board members will be appointed. N.D.C.C. ?? 63-01.1-01, 63-01.1-04. Any qualified elector in a board member area is eligible to represent that area on the county weed board. N.D.C.C. ? 63-01.1-04. N.D.C.C. ? 63-01.1-04 further provides: "In each county encompassing a city with a population of five thousand or more, one board member must be appointed from within the city limits of that city."

The governing body of a city with a population of three thousand or more may act as its own weed control authority, in lieu of being under the county weed board's administration. N.D.C.C. ? 63-01.1-10.1. The city governing body may levy a tax to establish and administer its own program and also may act in conjunction with any other weed control authority, such as the local county weed board. Id. If a city has established its own control authority, property

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within the city's jurisdictional limits is not subject to the county weed board's tax levy. N.D.C.C. ? 63-01.1-06(1).

The language in N.D.C.C. ? 63-01.1-04 requiring a county weed board member to be appointed from the city makes no exceptions for cities which act as their own weed control authority. To be eligible to be a county weed board member a person is only required to be a qualified elector of the board member's area of the county. Id. Therefore, it is my opinion that a county commission must appoint a resident of each city within the county having a population of five thousand or more to the county weed board regardless of whether the city has established an independent and separate weed control program.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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