

AGRICULTURE:

STATE ENTOMOLOGIST:

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) Notice to a resident of an area found by the  
) State Entomologist to be infested with the  
) Japanese beetle, stating that on a given date  
) the area would be treated with DDT, and advising  
) such resident to take certain measures to  
) protect his property, is not authorized or  
) required by law, has no legal effect, and its  
) service upon the resident is merely a matter of  
) courtesy.

August 5, 1953

Honorable L. C. Carpenter  
Commissioner  
Department of Agriculture  
Jefferson City, Missouri

Dear Sir:

We render herewith our opinion based on your request of July 9, 1953, which request reads as follows:

"We would appreciate receiving an opinion on the enclosed 'Notice' to be used in connection with our Japanese Beetle Control Program in St. Louis. This was written up in accordance with the Missouri Plant Law, R. S. Mo., 1949, Chapter 263, Sec. 263.090."

In connection therewith you have submitted the following proposed notice:

"This area has been found to be infested with the Japanese beetle. The Japanese beetle is a well known pest which is extremely destructive to plants and other vegetation. If allowed to remain it will not only destroy the foliage on the trees and plants, but also the grass, as the grub, or young beetle, feeds on the roots of the grass thus destroying it permanently.

"The Federal and State governments have recognized the destructiveness of this insect and have declared it a public nuisance by placing it on the quarantine lists. Thus authorized agents of the

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Department of Agriculture have the right of inspection of private and public grounds and to use the necessary methods in the eradication of this pest.

"Failure to comply with the provisions of the MISSOURI INSECT PEST AND PLANT DISEASE LAW will result in prosecution.

"On the date of \_\_\_\_\_ your territory will receive a treatment of DDT. Please do not have wash on the line or animals free in the yard.

"The DDT will be applied in dust form which is harmless to humans and animals unless taken in large quantities. Therefore, the area will be habitable immediately after the application.

"Thanks for your cooperation.

"L. C. Carpenter, Commissioner,  
"State Department of Agriculture."

Section 263.090, RSMo 1949, to which you refer, reads as follows:

"Notice to property owners--eradication by state entomologist--state has lien for costs. -- 1. Whenever such inspection discloses that any places, or plants or plant products, or things and substances used or connected therewith, are infested or infected with any insect pest or disease listed, as required by section 263.080 in the rules and regulations made pursuant to this law, written notice thereof shall be given the owner or other person in possession or control of the place where found, and such owner or other person shall proceed to control, eradicate or prevent the dissemination of such insect pest or disease, and to remove, cut or destroy infested and

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infected plants and plant products, or things and substances used or connected therewith, within the time and in the manner prescribed by said notice or the rules and regulations made pursuant to this law.

"2. Whenever such owner or other person cannot be found, or shall fail, neglect or refuse to obey the requirements of said notice and the rules and regulations made pursuant to this law, such requirements shall be carried out by the inspectors or other employees of the state entomologist, and the state entomologist shall have and enforce a lien for the expense thereof against the place in or upon which such expense was incurred in the same manner as liens are had and enforced upon buildings and lots, wharves and piers for labor and materials furnished by virtue of contract with the owner."

The notice provided for in such section partakes of the nature of an order, requiring the owner or person in possession or control of the infested area himself to take such measures to control or eradicate the insect pest or disease as the notice may prescribe. If no such person can be found or if he refused to obey the order, the State Entomologist may take the measures prescribed in such order, having a lien on the premises for the expense thereof. We understand that the DDT treatment is not being made under the second portion of the statute.

The notice which you have submitted to this office for consideration, however, does not order or contemplate that the person to whom it is directed will himself do anything. It only notifies him that on a certain day the area will be treated with DDT, advising him to take certain measures for the protection of his property. It is not authorized or required by the law and has no legal effect whatever. It is simply an act of courtesy on the part of the State Entomologist and his staff, for the benefit of the residents of the area to be treated.

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There is no provision of the law requiring any notice to be served prior to treatment by the Department of Agriculture. We note the Department has promulgated no rules with reference to such treatment. We reserve our opinion whether the Department is authorized to make this treatment except under the provisions of Section 263.090, supra.

CONCLUSION

It is the opinion of this office that a notice to a resident of an area found by the State Entomologist to be infested with the Japanese beetle, stating that on a given date the area would be treated with DDT, and advising such resident to take certain measures to protect his property, is not authorized or required by law, has no legal effect, and its service upon the resident is merely a matter of courtesy.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. W. Don Kennedy.

Yours very truly,

JOHN M. DALTON  
Attorney General

WDK/fh