

JOHNSON GRASS CONTROL:  
COUNTY WEED BOARD  
AGRICULTURE DEPARTMENT:



Section 263.265, RSMo Cum. Supp. 1957, authorizes the county court, township board and special road district of any county declared a Johnson grass extermination area to expend the tax which this section authorizes for the purpose of controlling and eradicating Johnson grass only on county roads and right of ways.

February 12, 1959

Honorable John S. Williamson  
Commissioner  
Department of Agriculture  
Jefferson City, Missouri

Dear Mr. Williamson:

This is in response to your request for an opinion, January 22, 1959, which we quote:

"A question has come up concerning the fiscal responsibilities of the Department of Agriculture under the 'Johnson Grass Law' (HB. 23, 1957), and we need an opinion as to this responsibility.

"Sub-section 2 of Section 263.259 says in part, 'The state commissioner of agriculture shall inspect or cause to be inspected all lands of the county between the dates of August fifteenth and October thirty-first of each year during which time the county is classed as a Johnson grass extermination area. The county weed control board shall assist in the inspection upon the request of the commissioner of agriculture. The commissioner and his designated representatives as well as the county weed control board shall have the right of ingress and egress upon all lands in the county in making an inspection or performing any other duties imposed by Sections 263.255 to 263.267.'

"The act also provides in Section 263.257, sub-section 2 in part 'Members of the board shall receive no salary but shall be fairly reimbursed by the county court for necessary expenses incurred in performance of their duties.'

"In none of the above sections do we find provision for compensating personnel that will be needed to make the field inspections, except such inspections

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as would be made by members of the weed control board.

"May we add here, that in our opinion, the field inspections required by the act could not be done by the three members of the weed control board even though they were willing to do the inspection. The time allowed for the act would not permit it.

"Section 263.265 provides that the county courts. . . . shall be authorized to levy upon all property subject to its authority a tax in an amount not to exceed five cents on each one hundred dollars' valuation, for the purpose of controlling and eradicating Johnson grass on county roads and right of ways.

"In your opinion does this section imply the use of tax funds, for costs in administering the law within a county?"

It is the opinion of this office that the tax authorized by Section 263.265, RSMo Cum Supp. 1957, may be used only for the purpose of controlling and eradicating Johnson grass on county roads and right of ways.

Section 263.257(2):

"The state commissioner of agriculture shall within ten days after receipt of the notice provided in subsection 1 appoint a three-man county weed control board, composed of citizens of the county, to serve as advisers and to assist in the administration of Sections 263.255 to 263.267, and to perform such other duties as prescribed by the commissioner of agriculture. Members of the board shall receive no salary but shall be fairly reimbursed by the county court for necessary expenses incurred in performance of their duties."

Section 263.259(2):

"The state commissioner of agriculture shall inspect or cause to be inspected all lands of the county between the dates of August fifteenth and October thirty-first of each

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year during which the county is classed as a Johnson Grass Extermination Area. The county weed control board shall assist in the inspection upon request of the commissioner of agriculture. The commissioner and his designated representatives as well as the county weed control board shall have the right of ingress and egress upon all lands in the county in making an inspection or performing any other duties imposed by sections 263.255 to 263.267. All failures to comply with the provisions of sections 263.255 to 263.267 shall be reported to the prosecuting attorney of the county and it shall be his duty to prosecute all violations of sections 263.255 to 263.267 in the manner provided in section 263.262."

**Section 263.265:**

"The county court, township board and special road district of any county declared a Johnson Grass Extermination Area, in addition to any and all taxing powers which it may possess, shall be authorized to levy upon all property subject to its authority a tax in an amount not to exceed five cents on each one hundred dollars' valuation, for the purpose of controlling and eradicating Johnson grass on county roads and right of ways. The cost of control and eradication of Johnson grass on all lands and highways owned or supervised by the state highway department shall be paid by the highway department out of funds appropriated for its use."

**Section 263.259(1):**

"The state commissioner of agriculture shall have the following duties:

- (1) He shall supervise the control and eradication of Johnson grass;
- (2) He shall inspect land and places for compliance with the provisions of sections 263.255 to 263.267;
- (3) He shall inform himself of the origin, nature and appearance of

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Johnson grass and the manner in which it is disseminated and shall follow recommendations of the Missouri College of Agriculture as to the best and approved method to control, eradicate and prevent the dissemination of Johnson grass;

(4) He shall cooperate with and have authority to enter into cooperative agreements with state and federal agencies and departments for the furtherance of the control and eradication of Johnson grass. The state commissioner shall make all rules and regulations for carrying out the provisions and requirements of sections 263.255 to 263.267."

We believe that the words "county roads and right of ways," as used in Section 263.265, are restrictive and cannot be construed to mean the lands owned or controlled by individuals or agencies other than the county. It is to be noted that Section 263.265 also states that the cost of control and eradication of Johnson grass on all lands or highways owned or supervised by the State Highway Department shall be paid by the highway department out of funds appropriated for its use. We see within this Section 263.265 the provisions for payment of cost of control in part from two different agencies. We do not believe that the five cent tax was intended to cover the entire expense of the program.

You will observe that Section 263.257(2) provides for the reimbursement by the county court for the necessary expenses of the county weed control board in performance of their duties.

We see in this act no specific provision for the payment to the Department of Agriculture for its efforts and expenses in the inspection of all the county lands. Section 263.259(2) states that the state commissioner of agriculture shall inspect or cause to be inspected all lands of the county between specified dates. You will note that it also states that the county weed control board shall assist in the inspection upon request of the commissioner. Apparently discretion is lodged with the commissioner with respect to the delegation of the duties of the inspection to the county weed board, and to that extent we would judge that the county court may reimburse the weed control board for the necessary expenses incurred in the performance of their duties of inspection. Section 263.257(2) states with respect to the weed control board that they are "\* \* \* to perform such other duties

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as prescribed by the commissioner of agriculture." Section 263.259 (2) states, "The county weed control board shall assist in the inspection upon request of the commissioner of agriculture."

CONCLUSION

Therefore, it is the opinion of this office that Section 263.265, RSMo Cum. Supp. 1957, authorizes the county court, township board and special road district of any county declared a Johnson grass extermination area to expend the tax which this section authorizes for the purpose of controlling and eradicating Johnson grass only on county roads and right of ways.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, James B. Slusher.

Yours very truly,

JOHN M. DALTON  
Attorney General

JBS:mc