

Opinion No. 60-103

June 2, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Dallas Rierson, Chairman Grasshopper Control Board P. O. Box 728 University Park, New Mexico

QUESTION

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Are members of the Grasshopper Control Board individually liable for consequential damages which result from the board's official actions?

CONCLUSION

No, but see analysis.

OPINION

{*472} ANALYSIS

You state that the chemical now used by the Board for grasshopper control leaves a residue on the grass which makes it necessary for the owner of cattle eating their grass to delay eight months in slaughtering his cattle since to slaughter such cattle before that time would violate the Federal Pure Food and Drug law. You ask whether the board members would be personally liable for the board's action in using this chemical if one of the non-signing ranchers or slaughter houses file an action for damages against them as individuals.

As a general rule courts are prone to hold that persons appointed to perform a public duty or to do any act of a public character are not answerable for consequential damages which result from their official actions if they acted within the scope of their authority in good faith. **American Print Works v. Lawrence**, 23 N.Y. L. 590, 57 American Decisions 420. **Bohan v. Port Jarvis Gas Light Company**, 122 N.Y. 18, 25 N. E. 246. See also **Mitchell v. Hopper**, 114 Ark. 556, 170 S.W. 231, which involve a case where cattle were injured because of the official actions of a cattle inspector.

While we have found no case exactly in point we are of the opinion that members of the grasshopper control board would not be personally liable for any consequential damage to a rancher or slaughter house which might occur because of the spraying of grass by the board pursuant to its statutory authority. The fact that a chemical leaves a residue would not, in our opinion, in and of itself establish liability on the part of the board members. They are advised that it is the chemical used by many states for this purpose

and is generally accepted to be one of the best of its kind considering economy, results and effect. On this basis we do not feel the board would be acting outside the scope of its authority in using this chemical in good faith.

By: Boston E. Witt

Assistant Attorney General