

FILED

JUL 07 2011

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 296083
COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

BERT HOOK, a single man,

Appellant,

v.

LINCOLN COUNTY NOXIOUS WEED CONTROL BOARD, a
Washington subagency; LINCOLN COUNTY, a Washington
municipal corporation,

Respondents.

**RESPONDENT, LINCOLN COUNTY NOXIOUS WEED CONTROL
BOARD'S BRIEF**

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I. Introduction

Respondent, Lincoln County Noxious Weed Control Board, respectfully requests that the Court deny the requests made by the Appellants and find for the Respondents.

II. Argument

The Trial Court found that there is more than one way a county Weed Board could come into existence. One method, pursuant to RCW 17.10.040, requires the county legislative authority to hold a public hearing to determine whether there is a need to activate the county noxious weed control board, due to a damaging infestation of noxious weeds. After a public hearing, on March 3, 1970, pursuant to WASHINGTON STATE LAWS, 1969 First Extraordinary Session, Chapter 113 (now Chapter 17.10 RCW), Lincoln County Resolution No. 117286 was passed by the Board of County Commissioners. By this Resolution, the County Commissioners memorialized a finding of need, activated the Weed Board, divided the county into five sections, and appointed a voting member to the board for each section, along with the County Extension Agent. The Resolution **did not** adopt as a County

ordinance or regulation, the provisions of Title 17.10 RCW, by reference or otherwise. (emphasis added)

The Weed Board admitted at oral argument that pursuant to *RCW 36.32.120(7)* 'no ...regulation, code, compilation, and/or statute shall be effective unless before its adoption, a public hearing has been held thereon by the county legislative authority of which at least ten days' notice has been given. Lincoln County has denied that *RCW 36.32.120(7)* applies to notice of a fact finding hearing as contemplated by *RCW 17.10.040*.

The CONSTITUTION OF THE STATE OF WASHINGTON,
ARTICLE 11, § 11.

Police and Sanitary Regulations, states:

"Any county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws."
(emphasis added)

Weed control is one example of a specific area for which the Legislature felt a need for state regulation utilizing local enforcement tools, if available.

The purpose and intent of weed control legislation is stated in *RCW 17.10.007*, which provides:

"The purpose of this chapter is to limit economic loss and adverse effects to Washington's agricultural, natural,

and human resources due to the presence and spread of noxious weeds on all terrestrial and aquatic areas in the state.

The intent of the legislature is that this chapter be liberally construed, and that the jurisdiction, powers, and duties granted to the county noxious weed control boards by this chapter are limited only by specific provisions of this chapter or other state and federal law."

The County could have activated the Weed Board or taken on the responsibility itself. *RCW 17.10.040* states as follows:

"The county legislative authority may, as an alternative to activating the noxious weed board, combat the class A noxious weed or class B noxious weed with county resources and personnel operating with the authorities and responsibilities imposed by this chapter on a county noxious weed control board. No county may continue without a noxious weed control board for a second consecutive year if the class A noxious weed or class B noxious weed has not been eradicated." (emphasis added)

Enforcement provisions are controlled by state statute, not local ordinance. Therefore the Appellant's position makes absolutely no sense. A reading of RCW 17.10.170 States clearly the legislative protocol required for dealing with noxious weeds. After a finding of a presence of noxious weeds the Weed Board gives (1) Notice to the landowner to eradicate; (2) Notice for failure of owner to control and consequences; (3) Gives authority to control the weeds, (4) Assesses liability to the owner (5) Allows for the placement of a lien

if the eradication is not paid for by the owner; and (6) Sets forth an alternative to the Weed Board to place a lien akin to a tax lien enforceable by the county much like failure to pay taxes. These are the procedures the Appellant says in his brief on page 23 that don't exist and are without guidelines or principals. It is clear that the Weed Board does and always has followed the same enforcement procedures as indicated in the law.

The Respondent's best argument is set forth on page 13 of the Appellant's brief. They argue that Bert Hook has annually been trying to resist the penalties imposed by Lincoln County's Weed Board for about 20 years. *CP-111*. Also look at footnote 4 on the same page. Mr. Hook has been in Lincoln County District Court three times, has had his property lien(ed)(sic), then compelled to pay taxes (levies) as determined by the Weed Board, among other things. The record that Bert Hook recites in the Appellant's brief goes for years of telling the story of how the board has operated and how it is configured with and without votes or appointments. There classic red herring argument leaves out the detail that there was no finding in the record of any other resident of Lincoln County that has failed as miserably at controlling noxious weeds as Mr.



Hook. In a county as rich in agriculture as Lincoln County is Mr. Hook is fortunate his neighbors have not taken it upon themselves to eradicate his weeds that go to seed and blow all over the county.

Appellant's citing of *Savage v. Tacoma*, 61 Wash 1, 112 Pac. 78, 1910, also bodes well for the Weed Board. The Supreme Court indicated clearly that the enabling legislation must be followed as far as enactment. Again, the legislature gave the counties the authority to start a Weed Board.

Appellant's have conveniently failed to address the Attorney General Opinion in the record. See *AGO No.1 from 1992*.

... Only when a county noxious weed control board has been ordered to activate by the director pursuant to RCW 17.10.040(3), may the county combat noxious weeds under the authority of chapter 17.10 RCW by means other than activating its noxious weed control board. Thus, a county ordered to activate its noxious weed control board by the state noxious weed control board pursuant to RCW 17.10.040(2), could not invoke the alternate authority provided for in RCW 17.10.040(3). Nor could a county invoke such authority if it determined, pursuant to RCW 17.10.040(1), that a need existed to activate its noxious weed control board. The county's only option, under RCW 17.10.040(1) and (2), is to combat noxious weeds by activating the noxious weed board.

The Attorney General's office understood that the county had to stay out of enforcement unless there was a finding by the Director



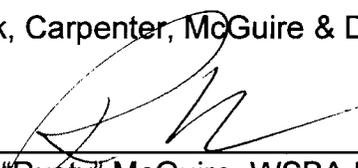
of Agriculture that he county wasn't taking care of its own problems. Absent that, when the county has a fact finding meeting it can and did adopt a valid Weed Board.

III. Conclusion

It is respectfully submitted that the activation of a county noxious weed control board is not remotely related to the adoption of local police, sanitary and other regulations contemplated by the grant of authority Provided by the Constitution of the State of Washington, ARTICLE 11, § 11. Nor is activation of the Weed Board adoption of a local ordinance or regulation as contemplated by RCW 36.32.110.

RESPECTFULLY SUBMITTED this 6th day of July, 2011.

Brock, Carpenter, McGuire & DeWulf, P.S.



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