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Robert R. Corbin

January 25, 1984

The Honorable Jack J. Taylor
Arizona State Senate
Senate Wing, State Capitol
1700 West Washington
Phoenix, AZ 85007

Re: I84-019 (R83-178)

Dear Senator Taylor:

You have requested an opinion concerning the scope of the statutory authority granted to the Arizona State Board of Pesticide Control ("the board") to regulate growers, sellers of pesticides and private applicators. Specifically, you are interested in the board's disciplinary provisions and in ascertaining whether the present statutes require a board hearing pursuant to A.R.S. § 3-386 prior to any other board action against growers, sellers and private applicators who have violated the applicable statutes or the board's rules and regulations.

Growers who use pesticides on their crops are required to procure a permit for pesticide application pursuant to A.R.S. § 3-376.A.^{1/} However, the board is not empowered by

1. A.R.S. § 3-376.A states:

It is unlawful for a grower to purchase, dispense, or use pesticides, or make or have application of pesticides made without first procuring from the board a permit for each calendar year or portion thereof, which shall be shown to the applicator and seller of the pesticide.

The Honorable Jack J. Taylor
January 25, 1984
Page 2

A.R.S. § 3-376.A or any other statutory provision to revoke or suspend a permit once issued. The only administrative action the board may take against a grower who holds a board issued permit for pesticide use and who has violated either the statutes or the board's rules is to proceed against the grower pursuant to A.R.S. § 3-386.A.

Proceedings under A.R.S. § 3-386 may be initiated only upon the filing of a petition with the board in writing by an aggrieved complainant. A.R.S. § 3-386.A and B. Because no other statutory provision authorizes the board to take action against a grower, unless an aggrieved complainant files the petition in writing as required by A.R.S. § 3-386.A and B, the board is unable to proceed against a grower.^{2/}

If the board does receive a petition in writing filed by an aggrieved complainant and proceeds under the terms of A.R.S. § 3-386, a suspension not to exceed six months of the grower's permit is the exclusive disciplinary remedy available.

Likewise, the board is not authorized to take disciplinary action against a seller of pesticides for violation of the board's statutes or rules. A.R.S. § 3-376.B requires a seller of pesticides to procure a permit prior to pesticide sales and to sell pesticides only to those holding a valid permit for use of pesticides.^{3/} However, neither

2. The board is specifically authorized to take disciplinary action against licensed Pest Control Advisors, A.R.S. § 3-379.04, Agricultural Aircraft Pilots, A.R.S. § 3-382.01 and Applicators A.R.S. § 3-382. No comparable provision empowers the board to take disciplinary action against growers for violations of the board's statutes and rules and regulations.

3. A.R.S. § 3-376.B in part provides:

It is unlawful for a seller of pesticides to sell, dispense, deliver or have delivered any pesticides in quantities as determined by the board without first procuring from the board a permit for each calendar year or portion thereof and determining that any purchaser has a valid permit for the use of such pesticides.

The Honorable Jack J. Taylor
January 25, 1984
Page 3

A.R.S. § 3-376.B nor any other section authorizes the board to proceed to disciplinary hearing against a pesticides seller in violation of the law.

Private applicators certified to apply restricted-use pesticides under the provisions of A.R.S. § 3-394 are subject to board regulation pursuant to A.R.S. §§ 3-392.B and 3-395. A.R.S. § 3-392.B authorizes the board to investigate alleged violations by certified applicators. The board may refuse to certify, or revoke or suspend certifications when necessary to carry out the purposes of the statutes. A.R.S. § 3-395

Finally, you ask whether the board must make a determination that a violation has occurred before A.R.S. § 3-389 may be invoked.⁴ A board finding of a violation is not a prerequisite to the sanctions imposed by A.R.S. § 3-389.

The decision of a county attorney to prosecute a person pursuant to this statute for violation of the board's statutes or rules without a prior board decision on the violation is a matter within his prosecutorial discretion based upon the specific facts involved in the case.

Sincerely,



BOB CORBIN
Attorney General

BC:JMU:pd

4. A.R.S. § 3-389 states:

Any person violating any provisions of this article or any rule, regulation or order adopted in accordance with the provisions hereof is guilty of a class 3 misdemeanor.