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OPINION	:	
of	:	No. CV 78/105
GEORGE DEUKMEJIAN Attorney General	:	MARCH 2, 1979
CLAYTON P. ROCHE Deputy Attorney General	:	

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THE HONORABLE JOHN A. DRUMMOND, COUNTY COUNSEL, MENDOCINO COUNTY, has requested an opinion on the following question:

May either the Mendocino County Board of Supervisors, or the county voters through the initiative process, adopt an ordinance banning the application of phenoxy herbicides including, but not limited to "2,4-D", "2,4,5-T" and silvex in Mendocino County, or is such matter governed exclusively by the provision of state law, specifically section 14001, et seq. of the Food and Agriculture Code?

The conclusion is:

Neither the Mendocino County Board of Supervisors nor the county voters through the initiative process may adopt an ordinance banning the application of phenoxy herbicides, including but not limited to "2,4-D", "2,4,5-T" and silvex, in Mendocino County as such matter is governed exclusively by the provisions of section 14001 et seq. of the Food and Agriculture Code and related statutes and regulations. Additionally, the matter appears to be preempted by federal law insofar as local agencies of the state are concerned.

ANALYSIS

A county has only those powers expressly granted to it by the constitution or the general laws of the state, or those powers which may be necessarily implied therefrom. (Upton v. City of Antioch (1959) 171 Cal.App.2d 858, 861, and cases cited

D. Preemption By Federal Law

The Federal Environmental Pesticide Control Act of 1972 provides for the comprehensive regulation of pesticides, including their registration and use. The legislative history of that act indicates that it did not intend to preempt states from legislating in the same field but it did intend to prohibit local entities of states from doing so. Section 24 of that Act provides (7 U.S.C. § 136v):

> "(a) A State may regulate the sale or use of any pesticide or device in the State, but only if and to the extent the regulation does not permit any sale or use prohibited by this subchapter;
>
> "(b) Such State shall not impose or continue in effect any requirements for labeling and packaging in addition to or different from those required pursuant to this subchapter; and
>
> "(c) a State may provide registration for pesticides formulated for distribution and use within that State to meet special local needs if that State is certified by the Administrator as capable of exercising adequate controls to assure that such registration will be in accord with the purposes of this subchapter and if registration for such use has not previously been denied, disapproved, or canceled by the Administrator. Such registration shall be deemed registration under section 136a of this title for all purposes of this subchapter, but shall authorize distribution and use only within such State and shall not be effective for more than 90 days if disapproved by the Administrator within that period."

(See also 7 U.S.C. § 136b(a)(2) regarding "state certification" of "state plans."

With respect to the 1972 federal law, Senate Report No. 92-838 stated in part:

> "4. The Senate Committee considered the decision of the House Committee to deprive political subdivisions of States and other local authorities of any authority or jurisdiction over pesticides and concurs with

> the decision of the House of Representatives. Clearly, the fifty States and the Federal Government provide sufficient jurisdictions to properly regulate pesticides. Moreover, few, if any, local authorities whether town, counties, villages, or municipalities have the financial wherewithal to provide necessary expert regulation comparable with that provided by the State and Federal Governments. On this basis and on the basis that permitting such regulation would be an extreme burden on interstate commerce, it is the intent that section 24, by not providing any authority to political subdivisions and other local authorities of or in the States, should be understood as depriving such local authorities and political subdivisions of any and all jurisdiction and authority over pesticides and the regulation of pesticides."
> (1972 U.S. Code Congr. & Admin. News at pp. 3993, 4008.)

(See also further indication of this legislative intent in Senate Report No. 92-970, wherein a proposed amendment is set forth and discussed to give "local governments the authority to regulate the sale or use of a pesticide beyond the requirements imposed by State and Federal authorities." The amendment was, of course, not accepted as is evident from the report of the Conference Committee as well as the terms of Section 24 of the law as enacted.(See 1972 U.S. Code Congr. & Admin. News at pp. 4092, 4111, 4128, 4130, 4134.)

Accordingly, the legislative history of the Federal Environmental Pesticide Control Act of 1972 indicates virtually conclusively an intent that the federal law should preempt <u>any regulation of pesticides by any local entity of a state.</u>

CONCLUSION

State and federal law both preempt and preclude Mendocino County, either through its board of supervisors or the electorate from prohibiting the use, aerial or otherwise, of phenoxy herbicides in the county. Whether this is or is not wise policy is not for this office to determine but is a question to be directed to the State Director of Agriculture, the State Legislature, the Environmental Protection Agency, and Congress. 13/

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13. We note the news releases this date to the effect that the Environmental Protection Agency has in fact just used its emergency powers to impose a partial ban upon "2,4,5-T" and silvex. (See, e.g., San Francisco Chronicle, March 2, 1979, p. 4.)