

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 99-F-04

Date issued: March 24, 1999

Requested by: Representative Merle Boucher

- QUESTION PRESENTED -

Whether the Agricultural Products Utilization Commission established by North Dakota Century Code ch. 4-14.1 may make grants to assist in litigation concerning international trade disputes.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the Agriculture Products Utilization Commission does not have authority under N.D.C.C. ch. 4-14.1 to provide grants to assist in litigation concerning international trade disputes.

- ANALYSIS -

The Agricultural Products Utilization Commission is created by N.D.C.C. ch. 4-14.1. Among its permitted activities, the commission "may administer grant programs consistent with the purpose of this chapter, including a basic and applied research grant program, utilization and marketing grant program, cooperative marketing grant program, farm diversification grant program, agricultural prototype develop grant program, and a North American marketing grant program." N.D.C.C. § 4-14.1-03.1. The purpose of N.D.C.C. ch. 4-14.1 is stated in N.D.C.C. § 4-14.1-01:

It is hereby declared to be the public policy of the state of North Dakota to protect and foster the prosperity and general welfare of its people by improving the agricultural economy of the state. In furtherance of this policy, it is the purpose of this chapter to provide necessary assistance to the research and marketing needs of the state by developing new uses for agricultural products, byproducts, and by seeking more efficient systems for processing and marketing agricultural products and byproducts, and to promote efforts to increase productivity and provide added value to agricultural

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products and stimulate and foster agricultural diversification and encourage processing innovations.

N.D.C.C. § 4-14.1-01. Therefore, the six grant programs authorized by N.D.C.C. § 4-14.1-03.1 are required to fit within one or more of the purposes identified by N.D.C.C. § 4-14.1-01.

N.D.C.C. § 4-14.1-01 states that the purpose of the chapter is to provide necessary assistance to research and marketing needs, which implies that any assistance provided under that chapter must relate to research or marketing. The means by which this assistance may be provided is by developing new uses for agricultural products or byproducts, seeking more efficient systems for processing and marketing agricultural and byproducts, promoting efforts to increase productivity, providing added value to agricultural products, stimulating and fostering agricultural diversification, and encouraging processing innovations. Of these means, the only one related conceptually to assisting a private entity in a trade dispute would be that of seeking more efficient systems for processing and marketing agricultural products and byproducts.

Generally, the mention of one thing in a statute implies the exclusion of another. Little v. Tracy, 497 N.W.2d 700, 705 (N.D. 1993). Further, "[t]he rule of ejusdem generis states that where general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar in nature to those objects specifically enumerated." Resolution Trust v. Dickinson Econo-Storage, 474 N.W.2d 50, 52 (N.D. 1991). Therefore, the plain and ordinary meaning of the word marketing should be determined in light of its setting within N.D.C.C. § 4-14.1-01. Marketing has been defined as the act or process of buying and selling in the market for the commercial functions involved in transferring goods from producer to consumer. See American Heritage Dictionary, 767 (2d Coll. Ed. 1991). Although assisting in a trade dispute may have the effect of enhancing the buying and selling of goods or the transfer of goods from producer to consumer, the remainder of N.D.C.C. § 4-14.1-01 limits the sense of the word marketing in that section to promoting the sale of agricultural products and byproducts.

Further, if we make the assumption that there is an ambiguity in the meaning of N.D.C.C. §§ 4-14.1-01 and 4-14.1-03, we may consult the legislative history of these provisions in order to determine their meaning. Kim-Go v. J.P. Furlong Enterprises, Inc., 460 N.W.2d 694, 696 (N.D. 1990). N.D.C.C. ch. 4-14.1 was significantly amended during the 1989 Legislative Session. 1989 N.D. Sess. Laws ch. 81.

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The last sentence in N.D.C.C. § 4-14.1-01 was amended by adding most of the operable language, starting from "to the research and marketing needs" See Proposed Amendments to Engrossed House Bill 1200 prepared by Legislative Council Staff for Representatives Dalrymple and Nowatzki, April 6, 1989. The legislative history of this bill generally concerns issues extraneous to the meaning of this sentence. There was virtually no discussion of litigation matters concerning trade or economic disputes. However, there was extensive discussion concerning grants promoting the development of new agricultural products and byproducts and seeking buyers who would in turn sell these products to consumers, or determining consumer demand for new or existing products in places where those products were currently not available. Marketing was used to denote the commercial process of selling a product, including determination of consumer demand and reaction, and attempts to locate wholesalers and retailers willing to carry and sell these products. In light of this legislative history, conducting research concerning efficient systems of marketing agricultural products and byproducts would not encompass litigation in private trade disputes.

Therefore, it is my opinion that the Agricultural Products Utilization Commission may not make a grant under N.D.C.C. § 4-14.1-03.1 for the purpose of assisting in an international trade dispute.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

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