

**LETTER OPINION
2002-L-02**

January 4, 2002

Honorable David O'Connell
State Senator
2531 County Road 30
Lansford, ND 58750

Dear Senator O'Connell:

Thank you for your letter asking whether the North Dakota Wheat Commission has the authority to select Alan Lee as one of its representatives on the U.S. Wheat Associates' board of directors.¹ Attached to your request is a letter from one of your constituents, and a letter from North Dakota Farmers for Profitable Agriculture.²

The Wheat Commission's statutory authority determines whether it can select Alan Lee as one of its representatives on the U.S. Wheat Associates board of directors. It is well-settled that public officials and state agencies have only the authority expressly given them by the constitution and statutes, together with those powers and duties which are necessarily implied from the express grant of authority. First Bank of Buffalo v. Conrad, 350 N.W.2d 580, 584 (N.D. 1984); American Federal of State, County, and

¹ In March 2001, the county wheat representatives from District 2 elected Louis Kuster to succeed Alan Lee as that District's representative on the Wheat Commission. At the time, Alan Lee was serving his second term and was the chairman.

² Although not expressly requested in your letter, the correspondence from your constituent questions whether a person who is not presently an elected Wheat Commission member is eligible under U.S. Wheat Associates' by-laws to serve on its board of directors. I cannot render an opinion on this issue as I would be issuing private legal advice to a private, out-of-state corporation over which I have no control. The Attorney General cannot render legal advice or assistance to private businesses or members of the general public. See N.D.C.C. § 54-12-01. Furthermore, U.S. Wheat Associates has apparently already decided the issue based upon Alan T. Tracy's July 10, 2001, letter stating that: "Alan Lee clearly meets the above criteria [criteria in the U.S. Wheat Associates' by-laws] and is eligible to take office at our next meeting as our elected Secretary-Treasurer."

Municipal Employees v. Olson, 338 N.W.2d 97, 100 (N.D. 1983); Kopplin v. Burleigh County, 47 N.W.2d 13, 140 (1951); 2 Am. Jur. 2d Administrative Law §§ 71, 73 (1994).

The authority of the Wheat Commission to appoint representatives to the U.S. Wheat Commission is quite broad. Section 4-28-06, N.D.C.C., provides, in part:

In the administration of this chapter, the commission has the following powers, authority and duties:

1. To foster and promote programs aimed at increasing the sale, utilization, and development of wheat, both at home and abroad.
...
4. To contract and cooperate with any person, firm, corporation, limited liability company, or association, or with any local, state, or federal department or agency for executing or carrying on a program or programs of research, education, and publicity.
...
6. To appoint, employ, bond, discharge, fix the compensation and prescribe the duties of such administrative, clerical, technical, and other personnel, employees, and agents as it may deem necessary to conduct the business and affairs of the commission.
...
10. To exercise all express and implied rights, powers, and authority that may be necessary to perform and carry out the expressed purposes of this chapter and all the purposes reasonably implied incidentally thereto or lawfully connected therewith and to adopt, rescind, modify, and amend all necessary and proper orders, resolutions, rules, and regulations for the procedure and exercise of its powers and the performance of its duties.

One of the Wheat Commission's purposes is to foster, promote, and protect opportunities for "greater development, more effective utilization and better marketing of wheat produced in the state". N.D.C.C. § 4-28-01. To effect this purpose, the Wheat

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Commission participates in a number of wheat marketing-orientated organizations including U.S. Wheat Associates. Other organizations include the National Association of Wheat Growers, the Northern Crops Council, the North Dakota Grain Growers Association, the U.S. Durum Growers Association, the North Dakota Crop Improvement Association, the Wheat Foods Council and the Wheat Marketing Center. In addition to these organizations that target effective utilization and better marketing of wheat produced in the State, the Wheat Commission also participates in other organizations more orientated towards wheat education or research.

I need not glean the statutes for the Wheat Commission's implied authority to appoint agents, because the Commission is expressly authorized to appoint agents "as it may deem necessary to conduct the business and affairs of the Commission." N.D.C.C. § 4-28-06(6). It is not unreasonable to expect that, with such broad and varied participation in marketing, research, and education activities, the Wheat Commission would, by choice or by necessity, delegate some of its duties to employees or agents.

Therefore, it is my opinion that the Wheat Commission has the express authority to appoint agents to conduct its business and affairs in various organizations in which it is actively involved. Specifically, the Wheat Commission, in its discretion, has the authority to appoint Alan Lee as a delegate to U.S. Wheat Associates.

Sincerely,

Wayne Stenehjem
Attorney General

pcg/vkk

cc: North Dakota Wheat Commissioners
Neal Fisher, Administrator, North Dakota Wheat Commission