

**LETTER OPINION**  
**95-L-228**

October 11, 1995

Ms. Deborah Johnson  
North Dakota Soybean Council  
1351 Page Dr, Suite 201  
Fargo, ND 58103

Dear Ms. Johnson:

Thank you for your letter regarding ownership of office equipment purchased by the North Dakota Soybean Association (Association) with checkoff dollars provided by the North Dakota Soybean Council (Council).

I understand that the equipment in question was purchased under two types of contracts. From 1986 to 1994, the Council agreed to pay the Association out of checkoff funds to plan and carry out a soybean programming services program. Under these annual contracts for services, the Association was also responsible for "staff wages, miscellaneous operating expenses, travel and overhead costs." On at least one occasion during this period, the Council provided additional funds to the Association upon request because of a shortfall in the Association's budget resulting from the purchase of an office computer to provide the services required in the contracts. From 1994 to the present, the Association leased to the Council "sufficient office equipment" for the Council's activities. During this time, additional or replacement office equipment was purchased by the Association and used by the Council under the terms of the equipment lease. None of these contracts indicate which party owns the equipment.

A lease is a contract and the rules of construction relating to contracts generally govern leases as well. Trauger v. Helm Bros., Inc., 279 N.W.2d 406, 411 (N.D. 1979). Contracts must be interpreted to give effect to the mutual intention of the parties at the time of contracting. Pamida, Inc. v. Meide, 526 N.W.2d 487, 490 (N.D. 1995). The intention of the parties to a written contract is to be ascertained from the writing alone if possible. Id. If a written contract is ambiguous,

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extrinsic evidence can be considered to clarify the parties' intent. Id. Where a contract is clear and unambiguous there is no reason to go further. Id.

It is difficult to determine the intent of the Council and the Association under the contracts you describe. Not only are the agreements silent regarding ownership of the office equipment, but it is likely that the contracting parties did not consider this issue when executing the contracts. However, viewed in context, the contracts are reasonably clear.

For equipment purchased by the Association with the rental income from the equipment leases, ownership clearly belongs to the Association. Just as the rental income belonged to the Association, so too did any property purchased with that income, even if rented back to the Council. However, those leases only apply to property acquired during the terms of the leases or owned by the Association at the time the leases were executed. They do not apply to office equipment purchased by the Council outside of the lease or owned by the Council when the first equipment lease became effective in 1994.

The ownership of property purchased between 1986 and 1994 can also be determined by looking at the contracts for those years in context. The Association's agreements to provide a programming services program for the Council were contracts for services, not equipment. The fact that the Council agreed to increase its payment for those services to cover the Association's cost of purchasing additional office equipment does not change the nature of those contracts. Unless there is a contrary provision in a contract for services, it is my opinion that property purchased to provide those services belongs to the purchaser, which in this case was the Association.

The Council could have paid checkoff dollars to the Association on the condition that any equipment purchased with those funds be owned by the Council and simply used by the Association. However, because the contracts did not include such a condition, and there is no indication of such a condition in the other documents you provided to my office, I conclude that the equipment belongs to the Association as purchaser under both types of contracts.

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Sincerely,

Heidi Heitkamp  
ATTORNEY GENERAL

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