DEPARTMENT OF JUSTICE
STATE OF NEBRASKA • STATE CAPITOL
TELEPHONE 402/471-2682 • FAX 402/471-3297 • LINCOLN, NEBRASKA 68509-8920

ROBERT M. SPIRE
Attorney General
A. EUGENE CRUMP
Deputy Attorney General

#90017

NO.
STATE OF NEBRASKA
OFFICIAL
FEB 28 1990
DEPT. OF JUSTICE

DATE: February 28, 1990

SUBJECT: The authority of the Wheat Board in promoting the development of markets for wheat.

REQUESTED BY: Senator Loren Schmidt

WRITTEN BY: Robert M. Spire, Attorney General
Bernard L. Packett, Assistant Attorney General

This is in response to your inquiry concerning the authority of the Nebraska Wheat Development, Utilization, and Marketing Board with regard to the promotion and development of markets which might benefit wheat grown outside of Nebraska.

The authority of the Board is contained in § 2-2309 (Reissue 1987) which provides that the Board shall have the power to:

> (1) Formulate the general policies and programs of the State of Nebraska respecting the discovery, promotion, and development of markets and industries for the utilization of wheat grown within the State of Nebraska.

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Section 2-2309 also provides that the Board has the power to:

> (5) Conduct, in addition to the things enumerated, any other program for the development, utilization and marketing of wheat grown in the State of Nebraska * * *.

These two provisions in and of themselves clearly give the Wheat Board authority for the development of markets only for Wheat grown within the State.

You have also asked if the Board may enter into market development contracts which promote increased wheat utilization to U.S. consumers if the increased wheat utilization actually comes from wheat grown in states other than Nebraska.

In this regard, we call to your attention that part of § 2-2309 which gives the Wheat Board power to:

> (3) Cooperate with local, state, or national organizations, whether public or private, in carrying out the purposes of the Nebraska Wheat Resources Act and to enter into such contracts as may be necessary.

Although, there is no legislative history upon which we could rely as to the intention of the legislature in adopting this provision, we have no quarrel with the provision to the extent that it permits the Wheat Board to cooperate or enter into contracts with local (Nebraska) or State (Nebraska) governmental or public entities. However, to the extent that this provision was intended to authorize the Wheat Board to cooperate or enter into contracts with other states, or private state or national organizations, there are some constitutional questions which might be raised.

With regard to the provision of the law which would give the Wheat Board the power to cooperate or contract with another state, or agency of another state, we call your attention to the last paragraph of Article I of the Constitution of the United States which provides in part:

> No state shall, without the consent of congress, * * * enter into any agreement or compact with another state, * * *.

Although some leeway is given in one state contracting with another we are unable to say with any degree of certainty whether or not the Wheat Board would be in violation of the above provision of the United States Constitution without examining the specific language of a proposed contract.

The same is true with regard to contracts between the Wheat Board and private, state or national organizations, considering the language of Article XIII, Section 3 of the Nebraska Constitution, which provides that "the credit of the State shall never be given or loaned in aid of any individual, association, or cooperation * * *." In this regard we would be unable to give an opinion of the validity of such a contract without examining the specific language of the contract.

Aside from the constitutional questions that might be raised regarding contracts entered into by the Wheat Board, the Legislature has given the Board a great deal of leeway in contracting for the development of policies and programs respecting the discovery, promotion, and development of markets and industries for the utilization of wheat grown in Nebraska. There is no limitation placed upon the authority of the Board, even though there may be an incidental benefit to wheat grown in other states and to classes of wheat not grown in Nebraska. Within the limits placed upon the Board to contract by the provisions of either the United States or Nebraska Constitution, the Board is free to establish or take part in programs which, in its best judgment, will assist policies and programs that would increase the utilization of Nebraska grown wheat.

Very truly yours,

ROBERT M. SPIRE
Attorney General

Bernard L. Packett
Assistant Attorney General

Approved By:

Robert M Spire
Attorney General

22-46-6.12