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#97028



DATE: May 13, 1997
SUBJECT: Dry Bean Resources Act - First Purchasers
REQUESTED BY: Nebraska Dry Bean Commission
WRITTEN BY: Don Stenberg, Attorney General
Steve Grasz, Deputy Attorney General

You have requested an Attorney General's Opinion regarding the definition of "First Purchaser" for purposes of collecting the fee authorized by the Nebraska Dry Bean Resources Act (the Act). Specifically, you have requested clarification as to the scope of the definition of First Purchaser, and whether the Commission's understanding is correct that "every bean grown in the State of Nebraska is subject to the tax, whether it is seed or commercial."

The Dry Bean Resources Act defines first purchaser as follows:

First purchaser shall mean any person, public or private corporation, association, partnership, or limited liability company buying, accepting for shipment, or otherwise acquiring dry beans from a grower and shall include, but not be limited to, a mortgagee, pledgee, lienor, or other person having a claim against the grower when the actual or constructive possession of such dry beans is taken as part payment or in satisfaction or the mortgage, pledge, lien, or claim.

Neb. Rev. Stat. Ann. § 2-3741 (Michie 1995) (emphasis added). Thus, a first purchaser includes any person or legal entity buying, accepting for shipment, or otherwise acquiring dry beans from a grower. *Id.* Other relevant portions of the Act must also be

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May 13, 1997

Page -2-

consulted, however, in determining which beans are subject to the fee.

The Nebraska Supreme Court has long held that "statutes relating to the same subject matter are in pari materia, and a court will construe them together so as to determine the intent of the Legislature and to maintain a consistent and sensible scheme." *State ex rel. Scherer v. Madison Cty. Comrs.*, 247 Neb. 384, 387, 527 N.W.2d 615 (1995).

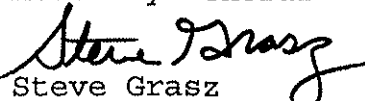
Another portion of the Act provides that "there shall be paid to the Commission a fee . . . upon all dry beans grown in the State . . . and sold through commercial channels." Neb. Rev. Stat. Ann. § 2-3755 (emphasis added). This fee is to be paid "whether such dry beans are stored or marketed in this state or any other state." Neb. Rev. Stat. Ann. § 2-3757.

When all parts of the Act are read together, we conclude that the fee is intended to be applied broadly and is applicable even where a grower markets his or her own dry beans, either individually or through a grower/processor organization. In Informal Opinion I91-058 (June 27, 1991), we previously advised the Commission that "the Commission is authorized by statute to collect the fee on all dry beans grown in Nebraska and sold through commercial channels. . . ." In this opinion, we also advised the Commission that the fee could be collected retroactively upon discovery of unreported sales. A copy of this informal opinion is enclosed.

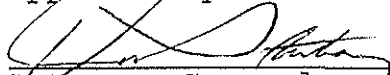
We note that our conclusion regarding the broad definition of first purchaser is consistent with testimony contained in the legislative history of the Act. In discussing the need for the Act, one witness stated, "It is necessary that each individual and each business that benefits from these activities share in their expense." Committee Records on LB 145, 90th Legislature, 1st Session 3 (Feb. 10, 1987) (Testimony of Mr. Fred Ehrman).

Sincerely yours,

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Enclosure
Approved By:



Attorney General

3-2895-3