

LETTER OPINION
97-L-7

January 16, 1997

Mr. Greg Mueller
Chairman
North Dakota Oilseed Council
4023 State St
Bismarck, ND 58501-0620

Dear Mr. Mueller:

Thank you for your letter inquiring whether the Oilseed Council can provide funds to the American Renewable Oil Association (AROA) for a grower-owned oilseed processing and marketing business.

Your letter stated that in May, 1996, AROA requested \$20,000 from the Oilseed Council. In its Research and Crop Promotion Grants Application Form, AROA stated that the funds were to be "dedicated towards the start-up of a grower-owned niche oilseed processing and marketing business." the application further stated that the total \$60,000 sought from the Oilseed Council and the North Dakota Agricultural Products Utilization Commission was "intended to fund the development of this business to the point of a capital fund drive in December of 1996." You have asked whether the Oilseed Council can grant these funds.

The powers and duties of the Oilseed Council are established in N.D.C.C. § 4-10.2-07, which provides, in relevant part:

4-10.2-07. Council powers and duties

In the administration of this chapter, the council has the power and duty to:

1. Contract and cooperate with any person or with any governmental department or agency for research, education, publicity, promotion, and transportation for the purposes of this chapter.
2. Expend the funds collected pursuant to this chapter and appropriated for its administration.

The "purposes of this chapter" are indicated in N.D.C.C. § 4-10.2-01, which provides in relevant part:

It is hereby declared that the production, development, marketing, and promotion of sunflower, safflower, rapeseed

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or canola, crambe, and flax is important to the general welfare of the people of this state; that it is in the public interest that better methods of production, processing, and marketing of sunflower, safflower, rapeseed or canola, crambe, and flax and that advertising and promoting of sunflower, safflower, rapeseed or canola, crambe, and flax be fostered, encouraged, developed, and improved so the sunflower, safflower, rapeseed or canola, crambe, and flax industries within the state, the people directly or indirectly employed by these industries and the people of this state should be benefited thereby, the accomplishment of which requires and demands the establishment of a council for the purposes and with the objectives of contributing to the stabilization and improvement of the agricultural economy of this state. . . nor does this chapter authorize the council to engage in competitive business enterprises, it being the intended purpose of this chapter that the council, through research and advertising, shall promote sunflower, safflower, rapeseed or canola, crambe, and flax produced or marketed for sale in this state.

(Emphasis added.)

AROA has requested funds to dedicate toward the start-up of a grower-owned niche oilseed and marketing business. The application states that the funds are requested to fund the development of the business, and specifically, to establish a formal steering committee, provide the legal and accounting assistance to incorporate, adopt by-laws, develop the most appropriate business structure, develop the business projections and plan, and create the educational material and prospectus for potential grower-investors during the equity stock offering. Essentially, AROA is looking for funds to start the business.

The purpose of the Oilseed Council, as outlined in the above statutes, is to promote the commodities through research and advertising. The powers and duties of state agencies, as creations of state law, are limited to those expressly granted or those necessarily implied from the powers and duties expressly granted. See American Federation of State, County, and Municipal Employees, Council No. 95 v. Olson, 338 N.W.2d 97 (N.D. 1983). The Oilseed Council has the power and duty to expend funds and contract and cooperate with entities for these purposes. N.D.C.C. ch. 4-10.2 does not authorize, either expressly or by necessary implications, the Oilseed Council to engage in other activities or to provide funds for other purposes. The request for funding submitted by AROA does not involve either research or advertising, but rather requests start-up

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funds for business. Therefore, it is my opinion that the Oilseed Council cannot grant the requested funds to AROA.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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