

## **N.D.A.G. Letter to Keller (May 30, 1989)**

May 30, 1989

Honorable Joe Keller  
State Senator  
District 33  
Route 1, Box 187  
Beulah, ND 58523

Dear Senator Keller:

Thank you for your April 24, 1989, letter regarding the power and authority of electric cooperatives under N.D.C.C. ch. 10-13. Because a final answer concerning a cooperative's ability to issue a guaranty depends primarily upon the facts present in each case, a formal Attorney General's opinion, which is issued only to resolve questions of law, is not appropriate. Instead, I will provide you with a general discussion of the applicable legal issues.

Pursuant to N.D.C.C. § 10-13-03, electric cooperatives have the specific powers set out in that section "[i]n addition to the powers granted by the general law governing cooperatives." N.D.C.C. § 10-15-03(4) provides that cooperatives have the authority, among other things, to "[m]ake contracts, incur liabilities, and borrow money; issue certificates representing indebtedness or representing equity interests in its assets; acquire property; dispose of, mortgage, pledge, lease, or otherwise use in any manner any of its property, or any interest therein, wherever situated." The general authority of cooperatives given in N.D.C.C. § 10-15-03 and the specific authority of electric cooperatives under N.D.C.C. § 10-13-03 would permit an electric cooperative to guarantee the obligations of another person or corporation when to do so would further the operation of the business within those purposes described in N.D.C.C. § 10-13-01.

N.D.C.C. § 10-13-01 reads as follows:

10-13-01. Purposes of electric cooperatives. A cooperative may be organized and operated as an electric cooperative under the general law governing cooperatives and this chapter for the purpose of engaging in rural electrification by any one or more of the following methods:

1. The furnishing of electric energy to persons in rural areas who are not receiving central station service.
2. The furnishing of assistance in the wiring of the premises of persons in rural areas or in the acquisition, supply, or installation of electrical or plumbing equipment therein.

3. The furnishing of electrical energy, wiring facilities, electrical or plumbing equipment, or services to any other corporation or cooperative organized under this chapter or to the members thereof.
4. The operation and maintenance of electrical cold storage and electrical processing plants.
5. The establishment and operation by itself or with any one or more electric cooperatives of an electric generation or transmission cooperative for the purpose of providing electric energy to other cooperatives, public utilities, municipalities, or any department or agency of the state or federal government.

In your letter you refer to American Casualty v. Dakota Tractor & Equipment Co., 234 F. Supp. 606 (D.N.D. 1964), which addressed the question of corporate powers. This case is generally applicable to the facts of your letter. The court there stated that corporate powers include those implied powers that are necessary or reasonably appropriate to exercise expressly granted powers. *Id.* at 610. The court went on to find that although it is not generally necessary in the conduct of a corporation's business to lend its credit to another business, the power to act as surety or guarantor exists whenever reasonably necessary in the conduct of the corporation's business. *Id.* at 610.

The acts, however, would have to be "reasonably necessary" in connection with the specific business purposes described in N.D.C.C. § 10-13-01. In addition, the intended purpose of the guaranty and the obligation guaranteed would have to be within the authority of the cooperative's articles of association properly filed under N.D.C.C. § 10-15-04.

Because of the importance of the facts existing in each case, I cannot be more specific in my legal analysis. However, I hope this general discussion is helpful to you .

Sincerely,

Nicholas J. Spaeth

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