

N.D.A.G. Letter to Tomac (Aug. 5, 1985)

August 5, 1985

Mr. Steven W. Tomac
Chairman
Credit Review Board
State Capitol
Bismarck, ND 58505

Dear Mr. Tomac:

This letter is in response to a request from the Credit Review Boards Administrative Assistant, Jet Collins, concerning the use of interest monies from the HomeQuarter Purchase Fund to pay administrative costs of the Credit Review Board.

House Bill No. 1494, as passed by the 1985 Legislative Assembly establishes a Home-Quarter Purchase Fund. 1985 N.D. Sess. Laws 137. Section 11 of HB No. 1494 authorized the transfer to the Home-Quarter Purchase Fund the sum of \$2,000,000 from the accumulated and undivided profits of the Bank of North Dakota. The monies are to be transferred during the biennium on a quarterly basis in amounts of \$250,000 or so much thereof as is available. Any funds transferred are appropriated to the Home-Quarter Purchase Fund for interest buy-downs.

Additionally, Section 6 of B No. 1494 provided that "a revolving fund must be maintained at the Bank of North Dakota for the subsidy of interest rates on home-quarter purchases, as provided in this act." Section 6 appropriated "all monies transferred into the fund, interest upon monies in the fund, and payments to the fund. . .for the purpose of providing subsidies in accordance with this act." (Emphasis supplied).

Section 10 of HB No. 1494 appropriated "out of any monies in the general fund in the state treasury, not otherwise appropriated, the sum of \$50,000, or so much thereof as may be necessary to the Credit Review Board for administrative expenses for the period beginning with the effective date of this act, and ending June 30, 1987."

Section 3 of HB No. 1494 states, in part, as follows:

The board shall serve as negotiator between a farmer who is in danger of immediate foreclosure or who has received a notice of foreclosure on a farm and has petitioned the board, and any lender who holds a valid mortgage upon the property. The board may hire staff, subject to appropriations, to serve as negotiators for the board. Board members are entitled to receive fifty dollars for each day of official service, as directed by the board. The board members are entitled to expenses as provided in sections 44-08-04 and 54-06-09. The expenses provided under this section may be paid from

any funds available in the home-quarter purchase fund. (Emphasis supplied).

The process envisioned by HB No. 1494 is, first, a farmer petitions the Credit Review Board. Then, the Credit Review Board reviews the application and accepts it or rejects it. If the application is accepted, the Board or its agents negotiate with the farmer and the lender in an attempt to reach a settlement that will allow the farmer to reside on the farm residence and continue producing agricultural commodities. If negotiations do not result in a settlement, interest subsidies may be approved by the Board on loans for the purchase or refinancing of the home-quarter.

In all three stages of the process (the application stage, the negotiation stage, and the loan-making stage) administrative expenses or costs will be incurred and, in fact, are inextricably a part of the process. Certainly, in determining loan qualification, approval of the loan, and payment of the loan and repayment of the loan, considerable administrative expense and paperwork will be necessary. Certainly, such administrative expenses and paperwork involved in the loan-making process are part of providing interest buy-downs or subsidies of interest rates. Arguably even monies from the appropriated \$2,000,000 should be available for the administrative expenses of the loan-making process.

However, the Credit Review Board only wishes to use the interest upon monies in the fund which they are specifically appropriated under Section 6 of HB 1494 for administrative expenses. The clear language of the bill gives the Credit Review Board the authority to use the interest on the \$2,000,000 transferred to the fund or portions of the \$2,000,000 transferred quarterly to the fund. Subsection 3 of the bill also allows for payment of expenses from the fund.

The intent of the bill, therefore, logically includes payment of administrative and other expenses for the actual loan-making process of providing interest rate subsidies from the interest monies in the Fund. Arguably, such interest monies could also be used for expenses in the application and negotiation process since those steps are a necessary prerequisite to the loan-making process. However, it is our understanding that interest monies from the fund will not be applied in such a fashion unless and until the \$50,000 appropriated for administrative expenses has been exhausted.

In other words, the Credit Review Board has no authority to make interest rate subsidies on loans until the farmer has applied for assistance and the negotiation process has taken place.

If monies appropriated for the expenses of negotiation (getting to the point where loan-making is required) have been exhausted, the situation could be a "catch-22." The Credit Review Board could find itself in the position of having no financial means available to them to complete the negotiation process, which is a prerequisite to distribution of loan monies to farmers for interest rate subsidies, while still having money available for loans.

In short, the Credit Review Board has the authority, by virtue of the specific language of HB 1494 and the logical implications of that language, to use interest monies from the Home-quarter Purchase Fund for administrative and other expenses associated with the loan-making process of providing interest subsidies.

Sincerely,

Nicholas J. Spaeth

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