

December 20, 1993

William D. Drummond
Executive Administrator
North Dakota Barley Council
415 38th St. SW
Fargo, ND 58103-1113

Dear Mr. Drummond:

This letter is in response to your phone call of December 15, 1993 regarding the U.S. Feed Grains Council. You stated that the Internal Revenue Service has determined that U.S. Feed Grains' activities with regard to the federal government constitutes lobbying for tax purposes. U.S. Feed Grains' membership consists of agri-businesses, state check-off groups such as this state's Barley Council, producer associations, and organizations such as the Farm Bureau. It is my understanding that U.S. Feed Grains uses its funds to disseminate information and does not use any funds to make political contributions to candidates.

You questioned whether the North Dakota Barley Council can give money to U.S. Feed Grains, if they have been determined to be a lobbying organization for tax purposes.

There is a federal statute prohibiting the use of federal funds to lobby the federal government. 18 U.S.C.A. § 1913. No mention is made of state funds used to lobby the federal government.

Within North Dakota's statutes, there are statutes dealing with lobbying, but only to the extent of regulating lobbyists within the state. There is a state statute prohibiting the use of state property for political purposes:

16.1-10-02. Use of state services or property for political purposes.

1. No person may use any property belonging to or leased by, or any service which is provided to or carried on by, either directly, or by contract, the state or any agency, department, bureau, board, or commission thereof, for any political purpose.
2. The following definitions must be used for the purposes of this section:
 - a. "Political purpose" means any activity directly undertaken by a candidate for any office in support of his own election to such office; or aid and assistance to any candidate, political party, political committee, or

organization, but does not include activities undertaken in the performance of a duty of state office.

- b. "Property" includes, but is not limited to, motor vehicles, telephones, typewriters, adding machines, postage or postage meters, funds of money, and buildings. However, nothing in this section may be construed to prohibit any candidate, political party, committee, or organization from using any public building for such political meetings as may be required by law, or to prohibit such candidate, party, committee, or organization from hiring the use of any public building for any political purpose if such lease or hiring is otherwise permitted by law.
- c. "Services" includes, but is not limited to, the use of employees during regular working hours for which such employees have not taken annual or sick leave or other compensatory leave.

N.D.C.C. § 16.1-10-02. (Emphasis added.) As the statute provides, a political purpose does not include activities undertaken in performance of a duty of state office.

Statutes pertaining to the North Dakota Barley Council provide the following guidance:

4-10.4-07. Council powers and duties. In the administration of this chapter, the council may: 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.

N.D.C.C. § 4-10.4-07 (1987).

A person is defined in § 4-10.4-01(7) as any individual, partnership, corporation, limited liability company, association, grower, cooperative, or any other business unit. N.D.C.C. § 4-10.4-01(7) (Supp. 1993).

If U.S. Feed Grains Council is a group lobbying for the promotion of barley, the North Dakota Barley Council may have the statutory authority to contract with the lobbying group. However, if U.S. Feed Grains made political contributions to a candidate, I believe N.D.C.C. § 16.1-10-02 would prohibit the Barley Council's involvement. The policy of the state regarding barley is set forth in N.D.C.C. 4-10.4-02:

The public policy of North Dakota is to protect and foster the health, prosperity, and general welfare of the people by protecting and stabilizing the barley industry and the economy of the areas producing barley. (...)

It appears that the North Dakota Barley Council may continue to donate financial resources to the U.S. Feed Grains Council. However, the issue is open to interpretation and could be decided either way by a court of law. Also, pursuant to our telephone conversation on Wednesday, enclosed is the original insurance policy we discussed.

Sincerely,

Michele Johnson
Assistant Attorney General

MJ: KG
Enclosure