

4-27-04 ✓

February 20, 1975

Mr. Glenn Olson, State Manager
N.D. Dairy Products Promotion Commission
State Unit of American Dairy Association
P.O. Box 327
Edgeley, ND 58433

Dear Mr. Olson:

This is in response to your letter of February 5, 1975, wherein you make inquiry of this office relative to governmental immunity and liability protection. You submit the following factual situation and inquiry in your letter:

This Commission installs from 100 to 125 in-store promotion kits in our state's retail food stores. This material includes overwire hangers, shelf talkers, danglers and the like. There is a possibility that store personnel or shoppers may injure themselves on these pieces.

I would like to know if we have immunity as a department of the State of North Dakota. If not, with whom should we confer to secure liability protection.

Before discussing the matter of individual liability on the part of the commission members, we would note that a recent decision of the North Dakota Supreme Court in December, 1974, in Kitto v. Minot Park District, (case not yet reported) held that the doctrine of sovereign immunity would no longer apply to political subdivisions of the State of North Dakota. The Court delayed the effect of this decision until fifteen days following the adjournment of the Legislature for the purpose of permitting the Legislature to take action concerning the limits of liability, etc. This case does not appear to involve the question of sovereign immunity of the state or its agencies. In that connection we would note the provisions of Section 4-27-04 of the North Dakota Century Code which creates the commission, providing as follows, in part:

NORTH DAKOTA DAIRY PRODUCTS COMMISSION.--
There is hereby created a North Dakota dairy products

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promotion commission consisting of seven members of which the governor shall appoint four members, two of said appointive members shall be producers and two of said appointive members shall be processors. ***.

Accordingly, it would appear that the commission is not a political subdivision of the state but rather the state itself which appears to be unaffected by the recent decision.

Insofar as the individual members of the commission are concerned, they are responsible for their personal negligence which is the proximate cause of injury to other persons. Negligence, proximate cause and the amount of damage are questions of fact which must be determined from the facts present in any given situation. Commission members are not liable for injuries which are not due to their personal negligence. To the extent that the assessments collected under Chapter 4-27, North Dakota Century Code, are appropriated to the commission under Section 4-27-06, to be disbursed by the commission in accordance with the Act, it would seem that whether the possible exposure to liability on the part of the commission members is sufficient to justify the costs of the insurance premiums for liability insurance rests within the judgment of the commission. We note that Section 4-27-05(4) grants rather broad powers in connection with expenditures in that it may "incur such expenses as the commission may deem necessary and proper to carry out their duties--to be paid from moneys collected as herein provided."

We trust that the foregoing general observations, comments and information will be of interest and assistance to you.

Sincerely,

Lynn E. Erickson
Assistant Attorney General

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A: GWV, TFK, LEE, JEA, RPB, AIO