

OPINION
69-18

May 12, 1969 (OPINION)

Mr. K. M. Kelly
Executive Secretary
Milk Stabilization Board

RE: Agriculture - Milk Stabilization Board - Authority to Post Bond

This is in response to your letter in which you recite the following:

"The North Dakota Milk Stabilization Board has instituted an injunctive action against Fairmount Foods Company, Inc., Bridgeman Creameries, a division of Land O' Lakes, Inc., to enjoin and restrain the defendants from selling fluid milk and cream products below the minimum wholesale prices as established by order of the North Dakota Milk Stabilization Board effective April 1, 1968.

"The Board made a motion for a temporary restraining order which was heard before Judge Ralph B. Maxwell on April 30, 1969 at Fargo. At the conclusion of the hearing Judge Maxwell granted the Boards motion for a temporary restraining order against the defendants and ordered the same to go into effect upon the posting of a \$25,000.00 bond pursuant to section 32-06-05 of the North Dakota Century Code."

You then ask for an opinion whether or not the Milk Stabilization Board may authorize its executive secretary to execute a bond on behalf of the Board as an undertaking as may be required under section 32-06-05.

The district court in imposing the undertaking in the amount of \$25,000.00 must have assumed that the Milk Stabilization Board has the authority to make such undertaking. The Milk Stabilization Board was created and granted certain powers as may be found in chapter 4-18.1 of the Supplement to the Century Code. Amongst the powers granted to the Milk Stabilization Board we find that it may establish minimum prices for milk and milk products. We must assume that the legislature intended for the Board to exercise and perform those functions necessary to effectively carry out its regulations and orders. We also note that the current provisions of chapter 4-18.1 do not provide specific authority to the Milk Stabilization Board to employ injunctive procedures. Consequently the Board in seeking injunctive actions and would be required to conform to the conditions which the court may impose pursuant to such statutory provisions.

We are also mindful that certain appropriations were made by the legislature and that the funds available to the Milk Stabilization Board are limited to the appropriations made, provided the income will be sufficient to meet the amounts appropriated. We do not find any specific authority which authorizes the Board to commit future revenues which have not yet been appropriated.

On this basis it is our opinion that the Milk Stabilization Board may execute an undertaking and may authorize its executive secretary to execute a bond or undertaking, with limitations. The undertaking amount (undertaking) greater than what is available under the current appropriations could create a liability on the officers of the Board to the extent that such undertaking or bond exceeds current uncommitted appropriations.

HELGI JOHANNESON

Attorney General