

OPINION
75-5

November 12, 1975 (OPINION)

Mr. Melvin Fischer
Poultry Coordinator
Department of Agriculture
State Capitol
Bismarck, ND 58505

Dear Mr. Fischer:

This is in response to your letter of 24 October 1975 with regard to the application of chapter 4-13.2 of the North Dakota Century Code.

You mention that section 4-13.2-04 of that chapter creates a Poultry Advisory Board, however, does not specify who appoints the board nor specify the chairmanship of the board. You state that you are requesting our viewpoint concerning the legality of clarifying this section by regulation.

Some consideration of the background of the 1975 legislation may serve to clarify the situation here involved.

At one time the North Dakota Poultry Improvement Board was a more or less independent agency of the state with membership appointed by the governor, having their own "Poultry Improvement Fund" established from license fees administered by such board etc. (See in this regard chapter 4-13 of the North Dakota Revised Code of 1943.)

The Poultry Improvement Board Act was extensively revised by chapter 91 of the 1971 Session Laws still leaving the basic administration duties with the "Poultry Improvement Board" but providing that the Poultry Improvement Board shall consist of the Commissioner of Agriculture, who shall serve as chairman, the executive officer of the Livestock Sanitary Board, and the chairman of the Animal Science Department of North Dakota State University, and three members to be appointed by the Commissioner of Agriculture from nominees submitted by industry groups. While an appropriation was made from the previously mentioned "Poultry Improvement Fund" (See Chapter 19 of the 1971 Session Laws) there was also an appropriation out of any moneys in the general fund, not otherwise appropriated in said chapter 91 of the 1971 Session Laws, to the Poultry Improvement Board.

Chapter 55 of the 1975 Session Laws repeals the old chapter 4-13, provides for a "Poultry Advisory Board" rather than the former "Poultry Improvement Board", places the primary administrative duties in the Commissioner of Agriculture, transfers the appropriations from the Poultry Improvement Board to the Department of Agriculture etc. While, the present 4-13.2-04 does clearly indicate that the industry recommends three members of the Poultry Advisory Board it also indicates that the members are "appointed".

Considering the effectual transfer of the administrative

responsibilities to the Commissioner of Agriculture, we would necessarily conclude that he retains the responsibility for the chairmanship of same. Noting however, the deletion of the statutory provisions specifying the procedure for appointment of members and specifying that he will serve as chairman we would conclude that he was intended to use his own discretion as to the procedural aspects of such appointments of members and as to whether he would personally serve as chairman of the board, or delegate this responsibility.

Regulations specifying the procedure for appointment of members and chairmanship of the advisory board could be validly promulgated pursuant to the first unnumbered paragraph of section 4-13.2-03 and chapter 28-32 of the North Dakota Century Code and would serve to clarify these matters for the industry and other interested persons.

We trust the within and foregoing will be sufficient for your purposes.

Sincerely yours,

ALLEN I. OLSON

Attorney General