

**OPINION
59-26**

May 29, 1959 (OPINION)

AGRICULTURE

RE: Wheat Commission - Power to Borrow

This is in reply to your request for an opinion whether or not the North Dakota State Wheat Commission may borrow money to carry on its program and project under the provisions of Senate Bill No. 166 of the 1959 Legislature. It is further stated that in borrowing such money the credit of the state or the state agencies would not be pledged, and that the money would be repaid from the revenue resulting from the tax on wheat sold.

In reviewing the provisions of Senate Bill No. 166, it is noted that the measure was made an emergency and was approved and became law on March 17, 1959. It is also noted that the tax imposed on the wheat does not become effective until July 1, 1959.

The Wheat Commission is given certain duties and powers under section 6 of the bill and upon examination it is noted that the duties and powers are very broad to accomplish its purpose. The purpose of the Wheat Commission is set out in section 1 entitled, "Legislative Intent." It states,

. . . . To foster, promote, and protect opportunities for economic security, individual rights and enterprises, the development of the natural resources with the objective of stabilizing and improving the agricultural economy of the state"

These duties cannot be accomplished without expending money. For the matter the entire program cannot be implemented without some expenditure of money. It is also noted that the original or first purchaser is not required to make a report or transmit the money collected on the wheat sold until twenty days after the expiration of the calendar quarter; in this instance the first calendar quarter expires September 30, 1959. It is also noted that the seller has sixty days from the date of sale in which to apply for a refund.

From these provisions it is conceivable that the Commission would not have any money available to it until some time in October or for that matter even later.

The Commission is in many respects similar to a governmental corporation. We have been unable to find any specific provisions relating to the authority of governmental corporations to borrow money except as pertaining to municipal corporations. The laws applicable to municipal corporations would seem to have application here. On this topic the authorities are in conflict. One view generally stated is that the power to borrow money does not belong to municipal corporations as an incident of its corporation, but that it exists only when conferred by expressed constitutional or legislative

action. The other rule is that if the borrowing of money is necessary for the purpose of discharging the duties imposed upon it, directly or by implication, by its charter, and for which it can raise money by taxation, then it may borrow money.

The tax in this instance is already imposed by statute and the proceeds of such tax are available to the Commission up to but not to exceed the amount of \$400,000.00. This appropriation is contained in section 8 of the bill, and may be used for expenditures for a period beginning from the effective date of the Act and ending July 1, 1961. This narrows the issue largely to the proposition whether or not the Commission has the authority to borrow money. Subsection 10, of section 6 seems to give plenary authority to the Commission to carry out its duties and its functions.

On the basis of the duties and functions imposed upon the board, it is our opinion that the Wheat Commission may borrow money providing that it does not in any way obligate the credit of the state or its political subdivisions, and provided that the money be repaid from the anticipated revenue receivable by the tax imposed upon wheat sold.

The Commission, in our opinion, is authorized to pledge the anticipated revenue to secure the loan necessary to implement and to operate and perform the duties and functions of the Commission until such time that the revenue under provisions of this bill becomes available. It is further observed that such loan must take into consideration the overall appropriation of \$400,000.00, and any expenditure whether on borrowed money or on revenue received by the tax must in no event exceed in the aggregate the amount of \$400,000.00.

Being that the Legislature deemed it necessary to make this bill an emergency, it is presumed that it was an oversight on the part of the Legislature not to provide the money needed to implement and put into operation the program as outlined in Senate Bill No. 166, or in the alternative it must be presumed that the Legislature intended that they should finance their own program and make such arrangements as necessary to accomplish this. In so much that the entire program is self-sustaining, the latter provision is favored.

In conclusion it is our opinion that the Wheat Commission may borrow the necessary money to accomplish the provisions, objectives and duties imposed upon the Commission to carry out the provisions of Senate Bill No. 166 on the basis as outlined above.