

N.D.A.G. Letter to Kaldor (Feb. 24, 1992)

February 24, 1992

Honorable Lee A. Kaldor
State Representative
Route 1, Box 61A
Hillsboro, ND 58045

Dear Representative Kaldor:

Thank you for your February 17, 1992, letter requesting an opinion as to whether a security interest granted by a producer of sugar beets or sugar cane would attach to raw or refined sugar under the laws of North Dakota.

You state in your letter that the Commodity Credit Corporation (CCC) is requiring that a sugar processing cooperative must show that all sugar cane and sugar beets pledged as collateral are free and clear of any other liens in order to obtain price support loans. Pursuant to federal regulations the processors can demonstrate the freedom from liens by either obtaining lien waivers from each secured creditor of each of the producers or by obtaining an opinion from the state Attorney General that the laws of the state do not allow for a security interest initially asserted against sugar beets or sugar cane or the proceeds thereof to attach to raw or refined sugar.

North Dakota Century Code (N.D.C.C.) § 41-09-28(9) provides:

If a secured party who has perfected a security interest in crops or livestock, or if a lienholder who has created a lien by statute or otherwise; which includes liens for threshing; crop or agricultural product processing; crop production; fertilizer, farm chemicals, and seed; agricultural supplies; and landlord's lien; intends to impose liability for such security interest or lien against a crop or livestock buyer, the name of the secured party or lienholder must appear on the most current list or lists distributed by the secretary of state pursuant to subsection 4 of section 41-09-46. In order to appear on the list or lists, secured parties or lienholders must file with the secretary of state or in the office of the register of deeds in any county in this state a form prescribed by the secretary of state which contains the information prescribed by the secretary of state under section 41-09-41 or contained on a form prescribed by the secretary of state under section 35-17-04, 35-30-32, or 35-31-02.

N.D.C.C. § 41-09-28(1) defines a crop or livestock buyer as follows:

A crop or livestock buyer is a buyer in the ordinary course of business as to security interests and liens if such person qualifies under the provisions of subsection 13. As used in this section, a crop or livestock buyer is a person who buys crops or livestock from, or who sells crops or livestock on a fee or commission for, a person engaged in farming operations.

Subsection 13 of N.D.C.C. § 41-09-28 provides:

A crop or livestock buyer takes free of any security interest created by, or any lien against crops or livestock of, the person engaged in farming operations if any of the following apply:

- a. The crop or livestock buyer has complied with the requirements of subsection 11 of this section.
- b. No evidence of security interests or liens appear on the most current list prepared and distributed by the secretary of state pursuant to subsections 3 and 4 of section 41-09-46.
- c. The name of the person represented to be the seller of the crops or livestock does not appear on the most current lists prepared and distributed pursuant to subsections 3 and 4 of section 41-09-46.

Subsections 3 and 4 of N.D.C.C. § 41-09-46 provide in pertinent part:

3. The secretary of state shall develop and implement a computerized central notice system which must contain the information filed with the office of the secretary of state or with any of the offices of the registers of deeds in this state pursuant to sections 35-17-04, 35-30-02, 35-31-02, and 41-09-40. . . . From the computerized central notice system, the secretary of state or a designee shall produce each month one list for crops and one list for livestock which contain the information as filed on the forms pursuant to section 41-09-40. The secretary of state shall also include the information filed for crops and livestock pursuant to sections 35-17-04, 35-30-02, and 35-31-02. The list must be in alphabetical order according to the last name of, or in numerical order according to the social security number of, the person engaged in farming operations. The lists may be prepared in categories according to county, regions as designated by the secretary of state, or on a statewide basis. If requested, the lists must be in printed form and on microfiche. Each list must conspicuously note its effective date.
4. The lists prepared pursuant to subsection 3 must be distributed monthly by mail at least five business days in advance of their

effective date. If requested, the secretary of state shall mail the lists to any person making a request at a fee as provided in section 41-09-42.

Subsection 11 of N.D.C.C. § 41-09-28 provides:

When a crop or livestock buyer issues a check or draft to a person engaged in farming operations in payment for crops or livestock in order to take free of security interests or liens against such crops or livestock, the crop or livestock buyer must issue the check or draft for payment jointly to the person engaged in farming operations and those secured parties or lienholders who have a security interest or lien in the crops or livestock sold and whose names appear on the most current list or lists distributed by the secretary of state at the time the check or draft is issue.

In summary, a buyer of sugar beets from the producer of the sugar beets takes free of any security interests or liens upon the sugar beets provided the buyer issues the check or draft for payment of the sugar beets jointly to the seller and any secured parties or lienholders whose names appear on the most current list of security interests and agricultural statutory liens on crops generated by the North Dakota Secretary of State.

In addition to the protections contained in North Dakota state law for the buyers of farm products, the federal Food Security Act provides protection for purchasers of farm products. See 7 U.S.C. § 1631 and the regulations promulgated thereunder at 9 C.F.R. pt. 205. North Dakota does have a certified central notice system pursuant to the federal act.

I trust this opinion will be sufficient for your purposes. Should you have any further question, please do not hesitate to contact me.

Sincerely,

Nicholas J. Spaeth

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