

**OPINION
69-356**

May 22, 1969 (OPINION)

Mr. Ellis L. Berg

Executive Secretary

Poultry Improvement Board

RE: State - Poultry Improvement Board - Employment of Attorney

This is in response to your letter in which you ask for an opinion on the following questions:

1. Can the Poultry Board's funds be used to pay for the services of a lawyer to secure compliance with our law?
2. Is there some legal basis on which the attorney general's office can prosecute violators of state law?"

The Poultry Improvement Board was created pursuant to the provisions of Chapter 4-13. Under the provisions of Section 4-13-10, certain fees are authorized to be exacted from persons engaged in activities related to poultry. The proceeds of such fees are to be used to carry on the necessary work of the Board. The Legislature in turn makes appropriation of the fees collected. Section 4-13-13 provides that the poultry improvement fund may be expended under the direction of the Poultry Improvement Board for the payment of any and all expenses incident to the fulfillment of the purpose of this chapter.

We might also observe that the Poultry Improvement Board is one of the many boards created which constitute a regulatory agency of a certain industry or business. Such boards constitute agencies of the State of North Dakota and operate out of special funds. They are deemed to be financially self-sufficient. This means they raise the necessary revenues to regulate the industry and carry out the provisions of law relating to such industry or activity.

Thus, in direct response to your first question, the Board is authorized to expend funds for the services of an attorney. However, only the Attorney General or his assistants may represent a State agency (Section 54-12-08). If the Board were to nominate a competent attorney, the Attorney General in all probability will recognize the wishes of the Board and appoint such person as special assistant attorney general to perform certain services for the Board without compensation from the Attorney General's Office. The phrase, "without compensation from the Attorney General's Office", becomes a necessary part such appointment because the Attorney General's Office is financed from the General Fund, whereas the Poultry Improvement Board is financed from a special fund. We do not believe it to be proper to expend General Fund money for the activities of a special fund program. This would run contrary to the concept that the regulatory board is financially self-sustaining.

As to question No. 2, if you are referring to criminal prosecution of

violators of State law, the criminal procedures employed in prosecuting criminal actions would be available for the criminal prosecution of any violation of Chapter 4-13. The procedure would entail making a complaint to the State's Attorney of the county in which the violation took place. The prosecution would be undertaken by the State's Attorney. Under certain procedures, the State's Attorney can ask the Attorney General's Office for assistance if the matter is of such gravity that the State's Attorney feels that he is incapable of prosecuting the case. Also, under certain conditions, the District Court may direct the Attorney General to assume the prosecution. If, however, you are thinking in terms of civil proceedings, such as obtaining an injunction or a restraining order, same would be accomplished by an attorney representing the Board. The State's Attorney could be appointed for such purpose, but it isn't an affixed duty of the State's Attorney to act in such matters. In such instances, the answer given to question No. 1 would apply.

HELGI JOHANNESON

Attorney General