

LETTER OPINION
93-L-152

April 26, 1993

Representative Jim Boehm
N.D. House of Representatives
State Capitol
600 East Boulevard
Bismarck, ND 58505-0360

Dear Representative Boehm:

Thank you for your April 5, 1993, letter requesting information regarding possible personal liability for directors of rural electric cooperatives.

N.D.C.C. ch. 10-13 addresses the purposes and powers of electric cooperative corporations. Section 10-13-10 of that chapter specifically addresses when directors, trustees, and officers of electric cooperative corporations may be personally liable.

The directors, trustees, and officers of an electric cooperative, and the manager of an electric cooperative who is the person most responsible for carrying out the policies and directives of the officers, trustees, or the board of directors, are immune from civil liability for any act or omission relating to their service or function as a director, trustee, officer, or manager, unless the act or omission constitutes gross or willful negligence or gross or willful misconduct.

N.D.C.C. ? 10-13-10.

Pursuant to this section, a director of an electric cooperative is not personally liable for any act or omission as director unless the act or omission constitutes gross or willful negligence or gross or willful misconduct.

"Gross negligence" is defined basically as extreme carelessness. See N.D.C.C. ? 1-01-17. The North Dakota Supreme Court has defined "gross negligence" as "being no care at all, or the omission of such care which even the most inattentive and thoughtless seldom fail to make their concern, evincing a reckless

Representative Jim Boehm
April 26, 1993
Page 2

temperament and lack of care, practically willful in its nature." Wysoski v. Collette, 126 N.W.2d 896, 898 (N.D. 1964). Although "gross negligence" is "practically willful," it is not "willful" negligence. Id. "Willful negligence" requires that the act be done voluntarily and intentionally. Black's Law Dictionary 1599 (6th Ed. 1990). "Although not defined by statute, gross or willful misconduct" would include a flagrant or intentional transgression of an established and definite rule of action, dereliction of duty, or unlawful behavior. Id. at 703, 999.

Based upon N.D.C.C. ? 10-13-10, a director of an electric cooperative is not personally liable if the association makes a loan to a business which later goes broke and causes loss to the cooperative unless the act of the director concerning the making of the loan constitutes gross or willful negligence or gross or willful misconduct.

To what extent an omissions and errors policy would cover directors of an electric cooperative depends on the individual policy. If a director's act or omission constitutes gross or willful negligence or gross or willful misconduct, the amount for which the director could be held personally liable would not be affected by any insurance coverage.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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Representative Jim Boehm
April 26, 1993
Page 3