

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 39

OPINION NO. 8

GIFTS - Contribution to litigation fund by Wheat Research and Marketing Committee;  
LITIGATION - Authority of Wheat Research and Marketing Committee to engage in;  
LITIGATION - Expenditure of funds;  
MARKETING - Transportation rates;  
PUBLIC FUNDS - Control over expenditure for litigation;  
RAILROADS - Transportation rates as concern of Wheat Research and Marketing Committee;  
WHEAT RESEARCH AND MARKETING COMMITTEE - Authority to engage in litigation;  
MONTANA CODE ANNOTATED - Sections 1-2-102, 80-11-202, 80-11-205;  
MONTANA CONSTITUTION - Article V, section 11(5), Article VIII, section 14;  
OPINIONS OF THE ATTORNEY GENERAL - 39 Op. Att'y Gen. No. 3 (1981); 37 Op. Att'y Gen. No. 105 (1978).

HELD: 1. The Montana Wheat Research and Marketing Committee may become a party plaintiff in a class action suit brought by various Montana farmers and farming entities against a railroad alleging unreasonably high transportation rates and seeking a refund of

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excessive charges. However, the Committee may spend money for the lawsuit only if it controls such expenditure of funds by contract or agreement.

2. The Montana Wheat Research and Marketing Committee may not contribute money into a common fund for the benefit of a class action over which the Committee has no control. However, the Committee may enter into contracts or agreements with organizations to carry out specific research or marketing studies to be used in the litigation.

4 March 1981

W. Gordon McOmber  
Montana Department of Agriculture  
Agriculture/Livestock Building  
Capitol Station  
Helena, Montana 59601

Dear Mr. McOmber:

You have asked for my opinion on the following questions:

1. May the Montana Wheat Research and Marketing Committee become a party plaintiff in a class action lawsuit brought by various Montana farmers and farming entities against a railroad, alleging unreasonably high transportation rates and seeking a refund of excessive charges?
2. If not, may the Wheat Research and Marketing Committee contribute money into a common fund for the benefit of such a class action?

The first issue presented by your request is whether the Wheat Research and Marketing Committee has the statutory authority to enter a lawsuit to determine reasonable rates and charges for the transportation of grain. Section 80-11-205, MCA, states:

- (1) The committee may:
  - (a) adopt rules necessary for the administration of this part;

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(b) provide, through the department, for the enforcement of this part;

(c) provide for the conduct of research into the production, marketing, and uses of wheat and barley;

(d) enter into contracts or agreements with Montana state university and other local, state, or national organizations, public or private, for the purposes of improving wheat or barley quality, increasing the efficiency of production, developing marketing knowledge, developing markets, determining new uses for wheat or barley, developing alternative crops for wheat or barley, and carrying out all research and marketing contemplated by this part. The committee may not establish research units or agencies of its own.

(2) No researchers or professional or scientific personnel may be employed to carry out this part except as provided in subsection (1)(d) of this section.

(3) None of the powers or duties provided for in this part permit participation in state or federal political action by the committee. [Emphasis added.]

The interpretation of this statute is controlled by the Legislature's intent, which must, if possible, be determined from the plain meaning of the words used. See § 1-2-102, MCA; Haker v. Southwestern Railway Co., 176 Mont. 364, 369, 578 P.2d 724, 727 (1978). The key word for the purpose of the question you have posed is "marketing." "Marketing" has a number of meanings, some of which would be more restrictive upon the powers of the Wheat Research and Marketing Committee than another. For example, Webster's Third New International Dictionary gives three definitions of "marketing," each of which could be what the Legislature intended in this case: "the act of selling or purchasing in a market," or "the bringing or sending of goods to market," or "an aggregate of functions involved in transferring title and in moving goods from producer to consumer including among others buying, selling, storing, transporting, standardizing, financing, risk bearing, and supplying market information."

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To resolve this ambiguity, I have examined the Montana wheat research and marketing statutes as a whole. See Hostetter v. Inland Development Corp. of Montana, 172 Mont. 167, 171, 561 P.2d 1323, 1326 (1977). Section 80-11-202, MCA, states:

In the presence of the facts that wheat is the principal grain crop produced in Montana and as such is an agricultural resource of the first magnitude in the economy of the inhabitants of Montana, a prime factor in the production of wealth and the development and stabilization of property values and of activities and enterprises which are bases and sources of important contributions by taxation to the public revenues, and that Montana wheat is a commodity which enters a world market highly competitive in character and that barley is also an important crop, it is hereby declared to be the public policy of the state of Montana to protect and foster the health, prosperity, and general welfare of its people by encouraging and promoting intensive, scientific, and practical research into all phases of wheat and barley culture and production, marketing, and use and into the development of markets for wheat and barley grown in Montana by the department. [Emphasis added.]

Because of the broad purpose stated in the statute, it is my opinion that the Legislature intended that the word "marketing" be interpreted in its broadest sense, to include the transportation of goods.

This interpretation is further buttressed by an examination of the legislative history of the statutes. See Department of Revenue v. Puget Sound Power & Light Co., \_\_\_ Mont. \_\_\_, 587 P.2d 1282, 1287-88 (1978). When the 1967 Montana Legislature was considering the adoption of the Act which created the Montana Wheat Research and Marketing Committee, C. Lowell Purdy, then the Montana Commissioner of Agriculture, testified in favor of the bill as follows:

At the present time we do not have a well coordinated, knowledgeable organization that can effectively speak for Montana grain

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producers at transportation rate hearings, though Montana Grain Growers and Citizen Freight Rate Committees have done as much as possible with limited finances. The activities of our Railroad and Public Service Commission cover a broad field in transportation and are not in a position to specialize in grain matters. The Montana farm organizations, though helpful, cover a wide field and are not in a position to be effective in specific problems such as grain transportation rates. The wheat commission would be in a position to work effectively with all these organizations in the betterment of Montana agriculture.

Testimony before the House Committee on Agriculture and Irrigation, 1/26/67, and before the Senate Committee on Agriculture, 2/17/67, on H.B. 139 (adopted as 1967 Mont. Laws, ch. 314). This supports my conclusion that the Legislature intended for the Wheat Research and Marketing Committee to be active in the area of transportation rates.

The Wheat Research and Marketing Committee may, therefore, take action to assure reasonable transportation rates if it determines such action to be in the best interests of the wheat and barley growers of Montana as a whole. While the statute prohibits political action, it does not prohibit legal action. Section 80-11-205(1)(b), MCA, does require that lawsuits against purchasers or growers of wheat or barley for violation of the wheat research and marketing statutes be brought by the Department of Agriculture rather than the Wheat Committee. However, that provision does not govern the situation you have described, in which the litigation has been brought not merely to enforce the procedural requirements of the wheat research and marketing statutes, but rather to assure reasonable transportation rates in accord with the substantive duty of the Committee to aid the marketing of Montana wheat and barley. In the latter situation, the Wheat Committee has the power to engage directly in litigation without acting through the Department of Agriculture.

However, your letter raises a serious constitutional question concerning the propriety of engaging in litigation in the manner you have described. Article V,

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section 11(5) of the Montana Constitution states: "No appropriation shall be made for religious, charitable, industrial, educational, or benevolent purposes to any private individual, private association, or private corporation not under control of the state." Because the funds of the Wheat Committee, for the most part, may be expended only upon an appropriation, this constitutional limitation is applicable to any expenditure of those funds. See 39 Op. Att'y Gen. No. 3 (1981); Mont. Const. art. VIII, § 14.

Your letter states:

As a party plaintiff in this action MWR and MC would be asked to make a substantial monetary contribution the majority of which would be paid out as attorney fees, costs and expenses for the private attorneys hired by the other plaintiffs to prosecute this action.  
[Emphasis added.]

As you have described the situation, the actual use of the funds contributed by the Wheat Committee would not be under the control of the state, but rather under the control of the private individuals, associations, or corporations, who have already instituted the suit. Such a contribution would violate article V, section 11(5) of the Montana Constitution. See Veterans' Welfare Commission v. Veterans of Foreign Wars, 141 Mont. 500, 507-12, 379 P.2d 107, 111-13 (1963) (holding that the state Veterans' Welfare Commission may not pay for secretarial services to two private veterans' organizations); Cramer v. Montana State Board of Food Distributors, 113 Mont. 450, 453, 129 P.2d 96, 97 (1942) (holding that the state Board of Food Distributors may not turn over a portion of the license fees collected from retail grocery merchants to a private food distributors' association); State ex rel. Browning v. Brandjord, 106 Mont. 395, 403-04, 81 P.2d 677, 682 (1938) (holding that the state Public Welfare Board may not donate money to the federal Works Progress Administration without a valid contract); cf. 37 Op. Att'y Gen. No. 105 at 441, 456 (1978) ("Counties may not make gifts of...county funds to any individual or organization. Any county grant of money to a non-profit service organization must be pursuant to a contract wherein the organization agrees to furnish services or materials the county is empowered to furnish or

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purchase.") The Wheat Committee may become a party plaintiff in a lawsuit only if it controls the expenditure of Committee funds for the lawsuit by way of contract or agreement. See § 80-11-205(1)(d), MCA.

Your second question describes a scenario that is clearly prohibited by article V, section 11(5). Your letter states:

Without being a party to the class action suit is it permissible for MWR and MC to contribute money into a common fund for the benefit of the class action plaintiffs...? The monies in this common fund would be expended by the class action plaintiffs in payment of attorney fees, costs and expenses for the private attorneys hired by the plaintiffs to prosecute this suit. The MWR and MC would have no control over the actions of the plaintiffs, nor of the actions of their counsel. [Emphasis added.]

The Committee may not contribute to a fund over which it has no control.

A corollary question has arisen in the course of my consideration of your request. May the Committee spend money for studies, the results of which are to be used in litigation? Because present law does not prohibit the Committee from engaging directly in litigation, it follows that the law does not prohibit the Committee from engaging indirectly in litigation by funding research. However, just as in the case of funds for direct legal action, the Committee must control the expenditure of the funds for the studies by way of contract or agreement.

THEREFORE, IT IS MY OPINION:

1. The Montana Wheat Research and Marketing Committee may become a party plaintiff in a class action suit brought by various Montana farmers and farming entities against a railroad alleging unreasonably high transportation rates and seeking a refund of excessive charges. However, the Committee may spend money for the lawsuit only if it controls such expenditure of funds by contract or agreement.

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2. The Montana Wheat Research and Marketing Committee may not contribute money into a common fund for the benefit of a class action over which the Committee has no control. However, the Committee may enter into contracts or agreements with organizations to carry out specific research or marketing studies to be used in the litigation.

Very truly yours,

MIKE GREELY  
Attorney General