

ALAN WILSON
ATTORNEY GENERAL

March 27, 2025

The Honorable Hugh E. Weathers
South Carolina Department of Agriculture
P.O. Box 11280
Columbia, SC 29211

Frances H. Price, Chair
Agriculture Commission of South Carolina
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Dear Commissioner Weathers and Chairperson Price:

Attorney General Alan Wilson referred your letters to the Opinions section. You seek clarification regarding the handling of assessments under the Agricultural Commodities Marketing Act (The Act). S.C. Code Ann. §§ 46-17-10, *et seq.* (Rev. 2017).

Chairperson Price advises that a commodity board recently requested the approval of the Agriculture Commission of South Carolina (the Commission) to move the board's assessment funds from the South Carolina Department of Agriculture (the SCDA) to an outside account. The Commission denied the request and the board questioned the Commission's authority to do so. Chairperson Price explains the Commission is focused on ensuring the assessments, which are hard-earned farmers' dollars, "remain safe and secure" under the SCDA as the funds are collected mostly for research, promotion, and education. Further, the Commission, under the umbrella of the SCDA, believes it is essential that the Commission have oversight for the security of the assessment funds and that if the funds are held in an account outside of the SCDA, it will lose that oversight.

Commissioner Weathers provides the following additional background. The South Carolina Corn Board (the SCCB) was formed in the Summer of 2024 in connection with Marketing Order Number 14 for South Carolina Corn. In October of the same year, the SCCB unilaterally opened an external bank account using its own name and Employer Identification Number without approval of the SCDA or the Commission. The SCCB then deposited \$11,248.27 of farmer assessments into the account without the Commission's approval. The SCDA learned of the

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account and alerted the Commission. The Commission requested the SCCB deposit the funds in the state-held Corn Board account. The SCCB did not comply. The Commission then met on November 13, 2024, and passed the following motion unanimously:

Fund Management and Remittances - A motion was made and seconded that all funds be maintained within the SC Department of Agriculture for all SC commodity boards and that all remittances from all SC commodity producers (first purchasers) shall be made to the Agriculture Commission of SC. Furthermore, all accounts opened outside of the Department of Agriculture shall be immediately closed, and all monies deposited into their appropriate account within the Department of Agriculture.

Commissioner Weathers explains the SCCB has not complied with the Commission's directive and continues to maintain its account containing assessment funds independent of the oversight of the Commission and the SCDA. Further, the SCCB sent a letter dated February 17, 2025, to Commissioner Weathers which said in part:

As expressed during our meeting, it remains the SCCB's decision to manage daily operations and transactions of the Board in the account previously opened, but with the Commission fully accounting for the collection of funds from first purchasers before depositing these funds into the account that has been designated by the Board. We feel it's very important for the Commission to be the initial point of audit for the assessments but also that the funds be deposited in the account designated by the Board within two business days of receipt by the Commission. We are confident in the financial controls that protect the funds held in the account from misuse or fraud, while allowing the farmer board to have direct control.

We want to reiterate that an individual designated by the Commission would have 24/7 access to view and audit the transactions that take place on this account and that the Commission will receive quarterly reports and annual audit reports as required by the Act and Order. As adopted in the SCCB's Bylaws, it is our intent to include, in addition to other items as deemed necessary by the Board, in these quarterly reports:

- Balance sheet;
- Income and expense statement or statement of receipts and disbursements; and
- Comparison of expenses with budget.

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We are further committed to the development of strong policies and procedures that protect the investment of South Carolina's corn farmers regardless of inevitable changes to Board members or staff. We welcome feedback from you and the Commission as we work to create and implement these safeguards over the coming months.

Each of us as members of the SCCB are committed to full transparency, financial accountability, and adherence to all state auditing requirements. However, we must also ensure that the producer-led governance model intended by the Agricultural Commodities Marketing Act and Marketing Order # 14 for South Carolina corn remains intact. We look forward to continued conversations with your agency and the Agriculture Commission to finalize these procedures.

Your letters to this Office followed a few days after the SCCB's letter to Commissioner Weathers. In follow-ups by phone and email, SDCA's general counsel advised that the assessment funds deposited into the SCCB's external account were initially deposited there and were never deposited in the government-held account established pursuant to the Act.

Chairperson Price asks:

- Does a commodity board have the authority to deposit and hold assessment funds in an external account without the Commission's approval and contrary to the Commission's instructions?
- If a board does not have such authority but proceeds with depositing assessment funds into such an account regardless, what enforcement mechanisms are available to the Commission to correct and/or prevent such actions?

In addition to asking essentially the same questions as Chairperson Price, Commissioner Weathers also seeks guidance on:

- Whether the SCCB has the authority to direct the Commission to collect assessment funds from first purchasers and to deposit them into the designated external SCCB account within two business days and
- SCDA's role in this dispute and the appropriate steps it should take to ensure compliance with state law while supporting the effective administration of commodity boards.

As discussed below, it is our opinion that a commodity board lacks authority to maintain an external bank account for assessment funds without the Commission's permission and contrary

to the Commission's direction. Nor does a commodity board have the authority to direct the Commission to deposit assessment funds into such an outside account. If a board maintains an external account in defiance of the Commission's instructions and the Commission is otherwise unable to gain the board's cooperation, the Commission may bring an action for a court to enforce provisions of the Act and the marketing order. The Act provides no role for the SCDA in any court enforcement of the Act or marketing order.

Law/Analysis

The Agricultural Commodities Marketing Act (the Act) was enacted with the declared purpose "to promote the general welfare of the State by enabling producers of agricultural commodities to help themselves in establishing orderly, fair, sound, efficient, and unhampered marketing, grading and standardizing of the commodities they produce and in promoting and increasing the sale and proper use of such commodities." S.C. Code Ann. § 46-17-20 (Rev. 2017). The declared policy of the Act is:

(a) To aid agricultural producers in preventing economic waste in the marketing of their agricultural commodities and in developing more efficient methods of marketing agricultural products.

(b) To enable agricultural producers of this State, with the aid of the State:

(1) To develop, and engage in research and educational programs to develop better and more efficient marketing and utilization of agricultural products;

(2) To establish orderly marketing of agricultural commodities;

(3) To provide for uniform grading and proper preparation of agricultural commodities for market;

(4) To provide methods and means including, but not limited to, public relations and promotion for the maintenance of present markets and for the development of new or larger markets, both domestic and foreign, for agricultural commodities produced within this State and for the prevention, modification, or elimination of trade barriers which obstruct the free flow of such agricultural commodities to market;

(5) To eliminate or reduce economic waste in the marketing or use of agricultural commodities;

(6) To restore and maintain adequate purchasing power for agricultural producers.

(c) To protect the interest of consumers by assuring a sufficient pure and wholesome supply of agricultural commodities of good quality at all seasons and times.

S.C. Code Ann. § 46-17-30.

The Commission is assigned broad authority and responsibilities under the Act. The Commission is required to enforce the Act and to administer the Act under its direct control and supervision. S.C. Code Ann. § 46-17-50(b) (requiring the Commission to enforce the Act); § 46-17-50(a) (requiring Commission to administer the Act under its direct control and supervision). On this issue of supervision, the Act provides the following direction:

The Commission shall determine if the actions by the commodity board conform with the purposes of this chapter and with the purpose of marketing agreements or orders. The Commission shall approve or disapprove actions of the board on the basis of such compliance or noncompliance.

S.C. Code Ann § 46-17-280.

Marketing orders and agreements are at the heart of the act, as producer-paid assessments levied pursuant to them fund the promotion, research, and education activities that satisfy the Act's purpose and policy. We focus on the language involving marketing orders as the questions before us concern a commodity board and its marketing order. The Commission is empowered to issue, amend, or terminate a marketing order following procedures outlined in the Act. S.C. Code § 46-17-50(b). This process begins when ten or more producers of a commodity petition the Commission or when the Commission has reason to believe the proposed action will further the Act's policy. *Id.* The Commission is responsible for all subsequent steps in the process including conducting a referendum to determine whether the affected producers assent to the issuance, amendment, or termination of a marketing order. S.C. Code Ann. § 46-17-140 (requiring referendum to determine producer assent). If the Commission determines the producers have assented, the order, amendment, or termination will be issued. Every provision of the resulting marketing order, amended order, or order termination will have the effect of law and will be binding on every affected producer and handler within the specified area. S.C. Code Ann. § 46-17-150.

The Commission is required to administer each marketing order with the advice and approval of the commodity board. S.C. Code Ann. § 46-17-180. Commodity boards are established by the marketing orders and their members must be producers of the individual commodity. S.C. Code Ann. § 46-17-190 (establishment of the commodity boards); S.C. Code Ann. § 46-17-200 (qualifications of commodity board members). Among their power and duties, each board is required to advise the Commission on assessments provided by any order and on the collection, deposit, and disbursement of all assessment funds. S.C. Code Ann. § 46-17-270(d). The commodity board may also administer and enforce the marketing order if designated to do so by the Commission or prescribed to do so by the marketing order. S.C. Code Ann. § 46-17-270(f).

Assessments are levied on each unit of agricultural commodity with the total annual assessments to be paid by the producers. S.C. Code Ann. § 46-17-310. The Commission is required to collect the assessments. Id. Every marketing order “shall prescribe the time, place, and method for payment and collection of assessments” and the Commission “may take such action and means as provided by the order ... to collect such assessment.” S.C. Code Ann. § 46-17-330. The Commission is required to deposit all assessment funds into a separate account in the name of the commodity board and designated for the specific marketing order. S.C. Code Ann. § 46-17-370. Assessment funds collected by the Commission may only be used by the Commission or the commodity board for the expenses and costs connected with the administration, amendment, or termination of the marketing order. S.C. Code Ann. § 46-17-340. Overhead expenses of the SCDA with respect to each marketing order “shall be paid by funds appropriated by law and shall not be borne by any assessment.” Id. Expenses incurred pursuant to the marketing order shall be paid from the account “by check, draft, or voucher” in the manner and by the individuals identified in the marketing order. S.C. Code Ann. § 46-17-370. Both the Commission and the commodity board are required to keep accurate records of all related financial transactions including all assessments, collections, receipts, deposits, withdrawals, and disbursements. S.C. Code Ann. § 46-17-380.

Violations of any provision of the Act or any provision of a marketing order or agreement are misdemeanors punishable by a fine of no less than fifty dollars nor more than five hundred dollars, by imprisonment for no fewer than ten days or more than six months, or both. S.C. Code Ann. § 46-17-400. Willful failure or refusal to furnish a report required by the Act or willful submission of a false or fraudulent report required by the Act is also a misdemeanor. Id. “Each violation during any day shall constitute a separate offense.” S.C. Code Ann. § 46-17-400(b).

On the issue of liability, Section 46-17-470 provides:

The members of any commodity board, including employees thereof, and the Commission shall not be held responsible individually in any way whatsoever to any producer, processor, distributor or other handler or any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, except for their own individual acts of dishonesty or crime. No person or employee shall be held responsible individually for any act or omission of any other member of any commission. The liability of the members of the Commission shall be several and not joint and no member shall be liable for the default of any other member.

The stated purpose of the marketing order for corn is “to provide funds for the establishment of market development and research programs to aid, assist and enhance the South Carolina corn producing industry to promote the sale, marketing, production and distribution of

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corn and corn products.” Section II, Marketing Order # 14 for South Carolina Corn, effective date July 1, 2024, available at https://agriculture.sc.gov/wp-content/uploads/2024/04/Marketing-Order-14-for-South-Carolina-Corn_FINAL_04-12-24.pdf. The order provides for assessment of corn at a rate of one-half of one percent of the net market price of corn at the first point of sale. *Id.* at Section IV(I). First purchasers are required to deduct the assessment from the money due to the producer, accumulate the assessment money during the quarter, and remit the accumulated assessments to the Commission within 30 days following the end of each quarter. *Id.* at Section III(b) (deduct and accumulate assessments) and Section III(c) (remit accumulated assessments). One of the listed powers and duties of the SCCB is to assist the Commission in the collection of assessments. *Id.* at Section VIII(i). Additionally, as permitted by section 46-17-270(f) of the Act, the marketing order provides the SCCB has the power and duty to “administer, enforce, direct, and control” the provisions of the marketing order. *Id.* at Section VIII(a). The Commission, however, is responsible for depositing the assessments into a separate account in the name of the SCCB. *Id.* at Section V(a). The order specifies that assessment funds be used by the SCCB only for paying costs or expense arising from carrying out the purposes of the Act and the order. *Id.* at V(d). The board may make appropriate disbursements from the account by bank draft or by check signed by the Chair of the SCCB and another board member or employee designated by majority vote of the board. *Id.* at Section V(c).

In answer to Chairperson Price’s initial question, it is this Office’s opinion that a commodity board does not have the authority to hold assessment monies in an outside account without the Commission’s approval and in contradiction to the Commission’s instructions. Both the Agricultural Commodities Marketing Act and the Marketing Order for South Carolina Corn require that assessments be remitted to, collected by, and deposited by the Commission into an account in the name of the South Carolina Corn Board. Neither the Act nor the marketing order specify where the account must be maintained, but the General Assembly clearly put the Commission in charge of administering and enforcing the Act. It appears from your letters that a government-held account has been established pursuant to the Act and the Commission has chosen that account as the only appropriate account to hold corn assessment funds. The Act and the marketing order restrict the use of assessment funds, but the SCCB is free to pay appropriate expenses directly from that account. Nothing in the Act or the marketing order permits the SCCB to hold the assessments in an account outside the Commission’s oversight. Pursuant to the deference doctrine, “courts defer to an administrative agency’s interpretations with respect to the statutes entrusted to its administration or its own regulations ‘unless there is a compelling reason to differ.’” *Kiawah Dev. Partners, II v. S.C. Dep’t of Health and Env’tl Control*, 411 S.C. 16, 34, 766 S.E.2d 707, 718 (2014) (quoting *S.C. Coastal Conservation League v. S.C. Dep’t of Health and Env’tl Control*, 363 S.C. 67, 75, 610 S.E. 2d 482, 486 (2005)). Absent a compelling reason, a court will defer to the Commission’s decisions regarding the appropriate account to hold the assessment funds.

Chairperson Price next asks what enforcement mechanisms are available to the Commission when a board exceeds its authority by maintaining an external account for assessment funds despite the Commission's instructions that it not do so. Among its many specific duties, the Commission is required to determine if the actions of a commodity board conform with the purposes of the Act and the marketing order or agreement and to approve or disapprove of the board's actions based on that compliance or noncompliance. S.C. Code Ann. § 46-17-280. The courts are specifically vested with the jurisdiction (1) to enforce the Act and every marketing agreement or order issued pursuant to it, (2) to enjoin individuals from violating the Act, and (3) to require individuals, by mandamus, to perform their responsibilities under the Act or any marketing order or agreement. S.C. Code Ann. § 46-17-410(a). An action may be brought by the Commission, by any commodity board, or by any person affected by a marketing order upon joining the chair of the Commission as a party. S.C. Code Ann. § 46-17-410(b). If the Commission is unable to gain a commodity board's compliance with a provision of the Act, a marketing order, or a marketing agreement, the Commission may file suit. Additionally, although the provision authorizing a lawsuit is silent on the issue of attorney fees, we note the Commission is authorized by Section 46-17-340 to use collected assessment funds to pay the expenses and costs associated with the administration of a marketing order. See S.C. Code § 46-17-340 (assessment funds collected pursuant to a marketing order to be used by the Commission and the commodity board only to pay the expenses and costs from the administration, amendment, or termination of the marketing order).

There is also the potential for criminal and civil liability. It is at least arguable that by refusing to comply with the Commission's directives regarding the assessment funds in the external account, the SCCB board members have violated the Act and are subject to criminal prosecution pursuant to Section 46-17-400. As to civil liability, although Section 46-17-470 limits the liability of commodity board members and employees generally, including for mistakes and errors in judgment, that protection is not available to an individual who engages in dishonest or criminal activity. By holding the funds in an outside account against the Commission's directives, the SCCB loses the Commission's protective oversight and increases the risk that someone will engage in dishonest or criminal conduct with respect to the assessment funds. If the assessment funds the SCCB holds in an external account are lost or inappropriately used, those who engaged in dishonest or criminal conduct would lose the protection from liability envisioned by the Act all together and may be held personally liable for any loss or inappropriate use of assessment funds. In an opinion considering Winthrop University's practice of allowing out-of-state graduate students to pay instate tuition, we concluded Winthrop officials were not permitted to give the unauthorized discounts and the officials, or their sureties, could be held personally liable for the public funds that they failed to collect. Op. S.C. Att'y Gen., 1997 WL 208002 (March 3, 1997). We are mindful that we have previously concluded commodity assessments are not public funds. Op. S.C. Att'y Gen., 1978 WL 22577 at *2 (May 20, 1978). However, the fact that these funds are farmers' dollars, rather than taxpayers dollars, does not change our analysis. By failing to

follow the procedures outlined by our General Assembly and refusing to follow the direction of the Commission, the SCCB puts farmers' dollars at risk and potentially renders each board member personally liable for any loss of those funds.

We now address the additional issues submitted by Commissioner Weathers. Nothing in the Act or the marketing order for corn entitles the SCCB to direct the Commission to deposit assessment funds into a separate account it created outside the Commission's oversight. The Act was created to enable commodity producers "to help themselves...." S.C. Code Ann. § 46-17-20. The General Assembly was free to provide the commodity boards with the ability to fully manage all aspects of the assessment funds, but it did not do so. That does not mean the commodity boards are left without the means to help themselves. As discussed, the SCCB is free to pay permissible costs and expenses from the government-held account approved by the Commission. Additionally, like the Commission, each commodity board is specifically authorized by Section 46-17-410 to bring an action for specific performance or injunction against anyone who violates obligations imposed by the Act or any marketing order or agreement. S.C. Code Ann. § 46-17-410(b). Further, any individual in-state producer who is dissatisfied with any assessment levied and collected has the option to apply for and receive a refund of the full amount of the assessment. S.C. Code Ann. § 46-17-360; see also Marketing Order # 14 for corn, Section VI.

As to Commissioner Weathers' final inquiry, the SCDA does not specifically have any role in the enforcement of the Act or any marketing order or agreement in court. The only plaintiffs envisioned by Section 46-17-410(b) are the Commission, a commodity board, and any individual affected by a marketing order or agreement upon joining the chair of the Commission as a party. Under the Act, the SCDA has several responsibilities but is not a specific plaintiff envisioned and identified by statute. See S.C. Code Ann. § 46-17-60 (SCDA serves as repository for the Commission's files); S.C. Code Ann. § 46-17-90 (providing that a member of the SCDA designated by the Commission serves as hearing examiner for the Commission's public hearings); S.C. Code Ann. § 46-17-170(b) (requiring the Commission to mail notice of filing obligations to handlers using their addresses on file with the SCDA); S.C. Code Ann. § 46-17-190 (providing that a member of the SCDA is among persons eligible to serve as ex officio member on each commodity board).

Conclusion

The Agricultural Commodities Marketing Act is designed to help farmers help themselves. Farmers fund the marketing-related activities with their assessments and direct the activities through their boards. However, the Act has specific requirements and has charged the Commission with enforcing them. The Act requires that the Commission collect assessment funds and deposit those funds into an account in the name of the individual commodity board. The Act restricts the use of the assessment funds and provides a framework for disbursements from the account while allowing the details to be established by the individual marketing order or agreement. An

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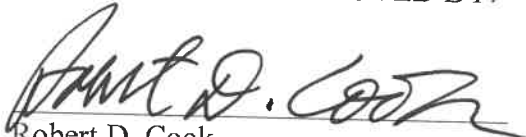
individual marketing order may, as the corn order does, permit the board to pay appropriate expenses directly from the account. However, neither the Act nor a marketing order such as the one for corn authorizes a commodity board to deposit all or part of the assessment funds to its own outside account and manage the assessment funds from there. Nor is a commodity board empowered to direct the Commission to deposit the assessment funds into an account the board opened separate from the one created pursuant to the Act. When a commodity board deposits and holds assessment funds in an outside account in defiance of the Commission's direction and authority, the Commission can turn to the courts for relief to enforce the Act and marketing order, to enjoin those who violate the act, and to command specific performance of individuals with duties under the act and marketing order. The Act does not give the SCDA a role in enforcing the Act or any marketing order or agreement as that role is otherwise assigned by statute. Please note that for the purposes of analyzing your questions we have assumed the facts as they were presented as this Office cannot find facts in an opinion. See Op. S.C. Att'y Gen., 2006 WL 1207271 at *2 (April 4, 2006) (noting this Office does not have the authority to find facts).

Sincerely,



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REVIEWED AND APPROVED BY:



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