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HENRY MCMASTER
ATTORNEY GENERAL

September 13, 2006

Marshall Flowers, Chairman
The Agriculture Commission of South Carolina
Post Office Box 11280
Columbia, South Carolina 29211

Dear Mr. Flowers:

We recently received your letter requesting an opinion concerning the authority of the South Carolina Agriculture Commission (the "Commission") with regard to the collection of peanut assessments. Accordingly to your letter, you ask: "does the Agriculture Commission have statutory authority under the Agriculture Commodities Marketing Act to enter into a memorandum of understanding with the United States Department of Agriculture (USDA) concerning the collection of peanut assessments under our State Peanut Marketing Order." However, in speaking with Wayne Mack in your office, we understand you primarily are concerned with ascertaining the Commission's authority to collect peanut assessments. Thus, we only address that issue in this opinion.

Law/Analysis

We begin with the premise that the Commission is a creature of statute and thus, its authority is limited to that provided, either expressly or implicitly, by the Legislature. Nucor Steel, a Div. of Nucor Corp. v. South Carolina Pub. Service Comm'n, 310 S.C. 539, 543, 426 S.E.2d 319, 321-22 (1992) (stating the authority of an agency created by statute "is limited to that granted by the legislature."). In your letter, you pointed us to the Agricultural Commodities Marketing Act (the "Act"), which governs the marketing of agricultural products within the state of South Carolina. S.C. Code Ann. §§ 46-17-10 et seq. (1987 & Supp. 2005). Thus, we examine the Act to determine the Commission's authority to collect peanut assessments while keeping in mind the cardinal rule of statutory construction, which is to "ascertain and effectuate the intention of the Legislature." Floyd v. Nationwide Mut. Ins. Co., 367 S.C. 253, 260, 626 S.E.2d 6, 10 (2005).

In our general review of the Act, we note the broad authority afforded to the Commission. According to section 46-17-50 of the South Carolina Code (1987), the Legislature charged the Commission with enforcement of the Act's provisions. Furthermore, section 46-17-50 provides: "This chapter shall be administered under the direct control and supervision of the Commission, including such administrative requirements of marketing orders and agreements not specifically assigned to commodity boards." S.C. Code Ann. 46-17-50(a).

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The Act contains several provisions specifically dealing with the levy of assessments on agricultural commodities. In particular, section 46-17-310 of the South Carolina Code (1987) states:

There is hereby levied, and the Commission shall collect, upon each affected unit of any agricultural commodity specified in any marketing agreement or order an annual assessment which shall be paid by the producer upon each unit sold or marketed by him. Such assessments shall be expressed as a stated amount of money per unit. The total amount of such annual assessment to be paid by all producers of such commodity shall not exceed five percent of the total market value of all affected units sold or marketed or delivered for sale or marketing by all producers of such units during the year to which the assessment applies.

(emphasis added). According to the plain language of this provision, the Legislature charged the Commission with the collection of levies assessed on all agricultural commodities. Furthermore, section 46-17-330 of the South Carolina Code (1987) explains the payment and collection of assessments under marketing orders established for specific agricultural commodities.

Each marketing order and agreement shall prescribe the time, place, and method for payment and collection of assessments upon any uniform basis applicable alike to all producers subject to such assessment. For such purposes the Commission may take such action and means as provided by the order or agreement to collect such assessment. Unless otherwise provided in any marketing order or agreement, assessments payable by producers shall be paid prior to the time when the affected unit is shipped off the farm, and assessments payable to handlers shall be paid prior to the time when the affected units are received by or for the account of the first handler. No affected units shall be transported, sold, marketed or otherwise handled or disposed of until every due assessment has been paid and the receipt issued.

S.C. Code Ann. § 46-17-330 (emphasis added). Again, this provision expresses the Legislature's intent to place responsibility for the collection of such assessments in the hands of the Commission.

Because your inquiry deals with the collection of peanut assessments, in our analysis we also reviewed Marketing Order No. 6 for South Carolina Peanuts (the "Peanut Marketing Order"). S.C. Code Ann. Regs. 5-160 et seq. (1976). With certain exceptions, the Peanut Marketing Order establishes a \$2.00 per ton assessment upon peanuts produced in South Carolina. S.C. Code Ann. Regs. 5-164 (1976). Furthermore, another provision contained in the Peanut Marketing Order states as follows with regard to the collection of such assessments:

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Such assessments shall be collected from the producers by the handler or distributor of the peanuts who shall deduct the full amount of assessment from the total proceeds due to the producers and shall remit to the Commission on a monthly basis on or before the tenth (10th) day of the month immediately following such deductions all assessments so collected. Peanuts stored in private or public storage within the State of South Carolina shall not be liable for assessment until sale is made, provided that peanuts placed in storage for Commodity Credit Corporation loan purposes shall be considered to have been sold for purposes of compliance with the provisions of the Act and this section. It shall be the responsibility of the producer of such peanuts to make and pay to the Commission such assessment as may be due immediately upon concluding such Commodity Credit Corporation loan without regard to future disposition of such loan or of the peanuts in question.

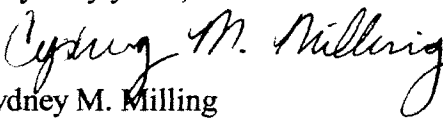
Any producer who shall be within the meaning of the term producer-distributor or producer-handler shall remit such assessment due to the Commission at the time specified above.

S.C. Code Ann. Regs. 5-164 (1976) (emphasis added). Consistent with the provisions of the Act, the Peanut Marketing Order, requires payment of levied assessments be made to the Commission.

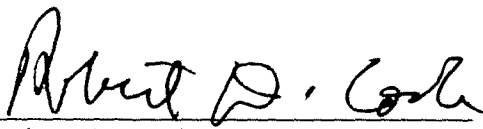
Conclusion

The Act and the Peanut Marketing Order evidence the Legislature's clear intention that the Commission collect assessments levied on agricultural commodities in general and peanut assessments in particular. Accordingly, to address your primary concern, we find the Commission has authority to collect peanut assessments. If you desire further analysis of the collection of peanut assessments in accordance with your request letter, please do not hesitate to contact us.

Very truly yours,


Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:


Robert D. Cook
Assistant Deputy Attorney General