

OFFICIAL OPINION NO. 76-19, Grant of money out of the rural rehabilitation fund for a feed mill at South Dakota State University

February 10, 1976

Mr. Robert Duxbury, Secretary
Department of Agriculture
Sigurd Anderson Building
Pierre, South Dakota 57501

OFFICIAL OPINION NO. 76-19

Grant of money out of the rural rehabilitation fund for a feed mill at South Dakota State University

Dear Mr. Duxbury:

You have asked for an opinion on the following statement of facts.

The Rural Rehabilitation Corporation of South Dakota was incorporated under the laws of the State of South Dakota in June, 1934. From May, 1937, until the latter part of 1973, the United States Government, through its Secretary of Agriculture, administered certain assets of this corporation in accordance with the terms of transfer and trust agreements and also pursuant to the authority contained in the Rural Rehabilitation Corporation Trust Liquidation Acts, which became effective on May 3, 1950 (40 U.S.C.A. 440 *et seq.* 1964 ed.). The present Liquidation Agreement became effective on April 17, 1970, and has been amended by an Amendment to South Dakota Liquidation Agreement which became effective on March 30, 1973. However, all of the assets that were administered in trust by the United States Department of Agriculture under said agreement and other previous agreements have been returned to the South Dakota Secretary of Agriculture for administration by him, but said agreement as amended, is still in effect with respect to administration of the assets by the Secretary of Agriculture of the State of South Dakota. Judgment was entered in the Circuit Court, Hughes County, South Dakota, dissolving the Rural Rehabilitation Corporation of South Dakota on July 25, 1939.

On June 30, 1975, the South Dakota Department of Agriculture, Rehabilitation Corporation Fund's balance sheet, which was provided to the state director of the Farmers Home

Administration and the United States Department of Agriculture, showed total assets of \$5,320,933.74.

The question presented is whether the assets of the Rural Rehabilitation Corporation can be used to provide a grant to the State of South Dakota for the purpose of providing building and equipment for a feed mill to be erected on the campus of South Dakota State University.

The South Dakota Rural Rehabilitation Corporation was the subject of legislation during the 1951 session of the South Dakota Legislature, which passed Ch. 4 of the Session Laws of 1951, which is now found at SDCL 38-6. This act, among other things, designated the Secretary of Agriculture of the State of South Dakota to make application to and receive from the Secretary of Agriculture of the United States pursuant to Public Law 499, 81st Congress, approved May 3, 1950, the trust assets, either funds or property, held by the United States as trustee in behalf of the South Dakota Rehabilitation Corporation. Section 38-6-3 authorizes the Secretary of Agriculture with the approval of the Governor, to enter into agreements with the Secretary of Agriculture of the United States pursuant to section 2(f) of Public Law 499, 81st Congress, authorizing the Secretary of Agriculture of the United States to accept, administer and use in the State of South Dakota, all or part of such trust assets. This was done until the latter part of 1973.

Since the latter part of 1973, the Secretary of Agriculture of South Dakota has administered these funds pursuant to § 38-6-4 which reads:

Notwithstanding any other provisions of law, funds and the proceeds of the trust assets which are not authorized to be administered by the secretary of agriculture of the United States under the provisions of § 38-6-3 shall be received by the secretary of agriculture under the application made pursuant to § 38-6-1 and by him deposited with the state treasurer for use by the secretary for such of the rural rehabilitation purposes permissible under the charter of the now dissolved South Dakota Rural Rehabilitation Corporation as may from time to time be agreed upon by the secretary of agriculture with the approval of the Governor and the secretary of agriculture of the United States subject to the applicable provisions of said Public Law 499, or for the purposes of § 38-6-3.

The Use Agreement between the Secretary of Agriculture of the State of South Dakota, approved by the Governor, and the Administrator of the Farmers Home Administration of

the United States Department of Agriculture under the effective date of September 27,] 974, provides that "the parties hereto covenant and agree as follows:

I. *Definition*

II. *Eligibility*. The farmers or other parties to whom assets are loaned or granted by the State or any other agent thereof for purposes authorized herein must meet the following requirements:

A. *Direct Assistance*. . . .

B. *Indirect Assistance*. If any assets are loaned or granted to a cooperative, club, corporation, or other entity to indirectly provide assistance to such farmers or members of their families for purposes authorized herein, such entity must likewise be unable to provide the needed financing from its own resources or to obtain such financing from conventional sources in the area at rates and terms the entity can reasonably be expected to meet.

The Agreement then sets forth the "Program Uses of Assets." Under the heading of "Program Uses of Assets" there are four categories:

A. Loans, which is not applicable to the questions asked.

B. Reserve Funds, again, not applicable to the question asked.

C. Grants; this provides for the granting of assets to the following areas:

1. Youth and Education Grants.

2. Counseling, Technical, and Service Grants.

3. Agriculture Youth Institute Grants.

4. FFA and similar organizational grants.

5. Young Farmer and Rancher Seminar Grants.

D. Other Rural Rehabilitation Purposes.

Under the *Grants* provision of the agreement, I cannot find any area that would allow the assets to be used for the purposes you state in your question.

There is a possibility that the assets could be used if the Agreement were broader under the provision of "Other Rural Rehabilitation Purposes." This section reads: "To accomplish such other rural rehabilitation purposes permissible under the aforesaid Corporation's charter as may from time to time be agreed upon between the State and the Government."

As you know, the process for amending this agreement takes about six to eight months. Also, there is no guarantee that the federal government would accept such an amendment, because the objective of the Rural Rehabilitation Corporation was three-fold:

"To assist persons (1) in need; and (2) in rehabilitating themselves; and (3) in the attainment of economic security and comfort according to the principles and standards of the United States of America."

The answer, therefore, to your question is "NO." I do not find that the State of South Dakota meets the eligibility requirements of the Agreement, nor does the proposed grant fit into any of the grant programs set forth in the Agreement. I might add that to merely change the grantee to South Dakota State University would not change the opinion I have reached here.

Respectfully submitted,

WILLIAM J. JANKLOW
ATTORNEY GENERAL

WJJ:RVJ:mhb