Joint Legislative Audit Committee

OFFICE OF THE AUDITOR GENERAL

California Legislature

MIKE CULLEN
CHAIRMAN

January 18, 1977

Senator Ruben Ayala, Chairman
Senate Agriculture and Water Resources Committee
State Capitol, Room 4086

Assemblyman John Thurman, Chairman
Assembly Agriculture Committee
State Capitol, Room 4130

Dear Senator Ayala and Assemblyman Thurman:

I am pleased to forward the Auditor General's report relating to the Dry Bean Research and Marketing Program.

Cordially,

MIKE CULLEN
Chairman

Enclosure

SUITE 750 • 925 L STREET • SACRAMENTO 95814 • (916) 445-0255

Joint Legislative Audit Committee

OFFICE OF THE AUDITOR GENERAL

California Legislature

January 13, 1977 — Letter Report 235.5

Honorable Mike Cullen
Chairman, and Members of the
Joint Legislative Audit Committee
State Capitol
Sacramento, California 95814

Dear Mr. Chairman and Members:

This letter report addresses the administration of the California Dry Bean Research and Marketing Program by the Department of Food and Agriculture. The following audit topics involve legal issues; the Legislative Counsel's opinions supporting our positions are attached.

Conflicting Opinions Concerning the Referendum to Continue the Program

In August 1974, a referendum ballot to determine whether or not the Dry Bean Research and Marketing Program would be continued was mailed to affected producers and handlers. The referendum for reapproval of the program was required by the Dry Bean Research and Marketing Program instituted in July 1970.

The tabulation of the referendum ballots showed that 82 percent of the producers voting and 65 percent of the handlers voting favored continuation of the program. Based on that majority of ballots cast the program was continued and is currently in existence. However, a difference of opinion exists as to whether or not that referendum authorized the reapproval of the marketing program.

The Food and Agriculture Code provides a number of alternative procedures that may be followed to adopt or amend a marketing order. However, in order for a marketing order or major amendment thereto to be approved by referendum, Section 58993(c) of the Food and Agriculture Code provides as follows:

> (c) That it has been approved by producers in a referendum among producers that are directly affected. The director may make the finding (1) if the valid votes case in such referendum represent not less than 40 percent of the total number of producers of the commodity of record with the department, and (2) if the producers that cast ballots in the referendum in favor of the marketing order or amendment to it represent not less than 65 percent of the total number of producers that cast ballots in the referendum and marketed not less than 51 percent of the total quantity of the commodity which was marketed in the next preceding marketing season by all of the producers that cast ballots in the referendum or if the producers that cast ballots in the referendum in favor of the marketing order or amendment represent not less than 51 percent of the total number of producers that cast ballots in the referendum and marketed not less than 65 percent of the total quantity of the commodity which was marketed in the next preceding marketing season by all of the producers who cast ballots in the referendum. (Emphasis added)

The tabulation of the referendum ballots cast showed that the 30 percent of the number of producers that voted in this referendum is less than the 40 percent required by the above-cited code section. The Legislative Counsel, in an opinion dated May 12, 1976 (attached), stated:

> A vote of only 30 percent of the producers by number, of which 86 percent voted for reapproval, is insufficient to approve this marketing order.

The department's position is that the reapproval of the marketing order was in accordance with the terms of the Dry Bean Research and Marketing Program. The terms provide that a majority (51 percent) of the ballots cast is sufficient to continue the program. This majority of ballots cast must be by both number of producers and quantity of beans marketed.

The Legislative Counsel, in the same opinion cited above, stated:

> In view of our conclusion as to the insufficiency of the vote for reapproval under Section 59086, we have not considered the provisions of the marketing order as to the vote required by it for reapproval.

It appears that the uncertainty may result because of Section 59086 of the Food and Agriculture Code. This section provides that the vote for reapproval "shall be the same as used for original approval of a marketing

order"; however, the same section specifies the action that the Director is to take ". . . if no provision is made . . ." for the reapproval. The position of the department is that the phrase, ". . . if no provision is made . . .," applies to all sentences in the section. The opinion of the Legislative Counsel does not support the position of the department.

To eliminate the apparent ambiguity, the fourth sentence of Section 59086 of the Food and Agriculture Code should be amended. If in all cases the provisions for reapproval are to be the same as the provisions for the original approval, the sentence should be amended to read: The provisions governing a vote to reapprove a marketing order shall be the same as the provisions governing the vote to approve the original marketing order.

If varying reapproval provisions may be written into marketing orders, the fourth sentence of Section 59086 should be amended to read: The provisions to reapprove a marketing order shall be the same as the provisions used to approve the original marketing order; however, when a marketing order has its own provisions for reapproval, those marketing order provisions shall govern.

Absence of Written Contract

The California Dry Bean Research and Marketing Program is administered by a private consulting firm retained without a written contract by the California Dry Bean Advisory Board. Members of this firm approve all program cash disbursements, including payments to the firm. The Dry Bean Advisory Board does not review or approve in advance the payments to the firm.

In place of written contracts, the Department of Food and Agriculture has accepted annual resolutions of the Board to retain the consulting firm. The resolution adopted by the Board on July 8, 1975, for the 1975–76 fiscal year, is as follows:

> WHEREAS, Gordon W. Monfort has performed the duties of Manager and Assistant Secretary and his organization, Monfort Associates, has provided the required office facilities and staff services in a manner satisfactory to the Board and the Bureau of Marketing,
>
> BE IT RESOLVED that the Director approve the retention of him and his organization for the 1975–76 Marketing Season for a total amount per annum of $36,408, which shall cover the following: 1) employment of Gordon W. Monfort as Board Manager at an annual rate of $21,384 for at least 70% of his

time, employment of Gerald R. Munson as Assistant Board Manager and Office Manager for an annual rate of $11,664 for at least 45% of his time, and 2) furnishing office space, utilities, special telephone equipment, postage meter mailing machine and office equipment for a total annual cost of $3,360 to be billed to the Board monthly.

For responsible business practice, the Department of Food and Agriculture should require the Board to enter into written contracts for the services provided.

Omission of Items from Resolution

During the 1975–76 fiscal year, total payments to the consulting firm amounted to $52,330. Payments included the expenditures authorized in the above resolution and the costs of other services provided "as needed." A breakdown of these payments follows.

Expenses Specified in Resolution		
Salaries of the Board Manager and Assistant Manager	$33,048	
Facilities Rent	3,360	
Total Costs Authorized By Resolution		$36,408
Expenses Not Specified in Resolution		
Clerical Services (Billed on an Hourly Basis)	9,374	
Miscellaneous Expenses (Postage, Copying, Freight, Etc.)	1,155	
Travel Expenses	3,393	
Additional Management Fees (Large Lima Council)	2,000	
Total Cost of Services Provided "As Needed"		15,922
Total Payments to Consulting Firm for 1975–76 Fiscal Year		$52,330

Both the resolution and the related contract should specify all services the firm is to perform, as well as the amount of the payments they are to receive.

Respectfully submitted,

Wesley E. Ross for

John H. Williams
Auditor General

Staff: Phillips Baker
Gary S. Ross
Nancy Lynn Szczepanik

Attachments: Response of Director, Department of Food and Agriculture

Legislative Counsel's Opinion of May 12, 1976 (Question No. 4 relates to the first audit topic).

Legislative Counsel's Opinion of November 17, 1976 (Question No. 2 relates to the second audit topic and Question No. 3 relates to the third audit topic).

STATE OF CALIFORNIA EDMUND G. BROWN JR., Governor

DEPARTMENT OF FOOD AND AGRICULTURE
1220 N Street
Sacramento
95814

January 11, 1977

Mr. John H. Williams, Auditor General
Joint Legislative Audit Committee
Office of the Auditor General
Suite 750, 925 L Street
Sacramento, California 95814

Dear Mr. Williams

In accordance with your letter of January 7, 1977, we are enclosing a copy of the Department of Food and Agriculture's Response to the Auditor General's Draft Letter Report 235.5 on the Dry Bean Research and Marketing Program.

Sincerely

James G. Youde
Acting Director

Enclosure

DEPARTMENT OF FOOD AND AGRICULTURE'S
RESPONSE TO AUDITOR GENERAL'S DRAFT LETTER REPORT 235.5
ON THE
DRY BEAN RESEARCH AND MARKETING PROGRAM

The Dry Bean Research and Marketing Program (Program) was made effective by the Director of Food and Agriculture July 15, 1970, and has been in continuous operation since. This response is to the Auditor General's draft Letter Report 235.5, with respect to the Program transmitted to us by John H. Williams, Auditor General, on January 7, 1977.

Two major issues are raised in draft Letter Report 235.5: (1) Conflicting Opinions Concerning the Referendum to Continue the Program; and (2) Absence of Written Contract.

With respect to (1) Conflicting Opinions Concerning the Referendum to Continue the Program, we requested, and on June 18, 1976, received, from our Administrative Advisor, Herbert L. Cohen, his opinion (copy attached) as to whether the procedure governing the 1974 referendum for renewal of the Program complied with the requirements of the Food and Agricultural Code. Mr. Cohen concluded that the procedure did comply and gave reasons for his conclusion. We concur with Mr. Cohen's conclusion and reasons.

Unfortunately, the Legislative Counsel's opinion gives no analysis of the first part of Section 59086 and appears to rely exclusively on the penultimate sentence.

The California Marketing Act of 1937 is not alone in providing for reapproval of a program without the requirement of minimum participation in voting. See the Agricultural Producers Marketing Law, Sections 59981 - 59983. Federal marketing order programs also contain reapproval provisions similar to our interpretation of those in the California Marketing Act.

As for clarification of the California Marketing Act in this respect, we concur that the Act should be so clarified, one way or the other, and that the suggested language for such clarification, one way or the other, is satisfactory as set forth in draft Letter Report 235.5.

With respect to (2) Absence of Written Contract, we concur that an appropriate written contract is preferable to the formal approval of a resolution for arrangements for a manager or management of marketing order programs on other than a "direct-hire" basis. Such a contract will be prepared for signature by the California Dry Bean Advisory Board and Monfort Associates, subject to approval by the Director. However, the absence of a written contract has neither resulted in (1) any problems of which we are aware with respect to the Dry Bean Research and Marketing Program, nor (2) a precedent for any other marketing order program without "direct-hire" management to arrange for management without the execution of a formal written agreement or contract.

5824

State of California

Memorandum

To : Mr. Walter E. Wunderlich
Deputy Attorney General
Department of Justice
555 Capitol Mall
Sacramento, CA 95814

Date : June 30, 1976

Place: Sacramento

From : Department of Food and Agriculture

Subject : Attached Opinion--Dry Bean Research and Marketing Program

Yesterday by phone we discussed Herb Cohen's opinion on the propriety of the 1974 Dry Bean referendum.

Please review this opinion and indicate informally whether you agree with him, and if you have substantive questions about this issue, how we might pursue the matter further.

We'll look forward to your response by telephone or informal memo at your earliest convenience.

James G.Youde
Chief Deputy Director
5-7126

cc Herb Cohen

28741

James G. Youde
Chief Deputy Director

June 18, 1976

Sacramento

Telephone: 445-6429

- Herbert L. Cohen
Administrative Adviser

Opinion Request - Dry Bean Research and Marketing Program

You asked for an opinion as to whether the procedure governing the 1974 referendum for renewal of the Dry Bean Research and Marketing Program complied with the requirements of the Food and Agricultural Code. For the reasons stated below, I have concluded the procedure did comply, as to both handlers and producers, and that the Program was, therefore, properly renewed.

The Program became effective on July 15, 1970, following approval: (1) by the assent procedure, as to handlers, as required by Section 58991; and (2) by the assent procedure, as to producers, as authorized by Section 58993(b). The Program contains a provision for renewal within five years, Article XIV, Section A, copy attached.

There is no issue as to the effectiveness of the handler renewal under the referendum procedure of Section A. At issue is whether the Section A procedure, as to producers, contains a less stringent standard than provided by Section 59086, the applicable part of which is quoted below:

> "[I]f no provision is made in any marketing order for reapproval or for termination in less than five years, the director shall at least once each five years hold a hearing, duly noticed and held in accordance with the provisions of this chapter. If the director finds after the hearing that a substantial question exists as to whether such marketing order is contrary to, or does not effectuate the declared purposes or provisions of this chapter within the standards and subject to the limitations and restrictions which are imposed in this chapter, such marketing order shall be submitted for reapproval. The vote for reapproval shall be the same as used for original approval of a marketing order. The director shall determine whether such approval shall be by assent or referendum." (Emphasis added.)

The underscored portions of Section 59086 clearly show that the reneval hearing procedure is conditional upon failure of the marketing order to contain its own renewal procedure within five years. (This should reasonably be construed to mean each five-year period rather than during the first five-year period only.) As Section A so provides, the procedure of Section 59086 is inapplicable to the Program. Under the Section A procedure, approval of both handlers and producers was duly obtained and the Program was, therefore, duly renewed.

SURNAME			

Although this opinion could stop at this point, it is worthwhile examining the purposes of both procedures. Under Section 59086, the contemplated usual method of renewal is by public hearing; a reapproval vote is conditioned upon a finding by the Director of a "substantial question" regarding the functioning of the marketing order. If the Director so finds, "The vote for reapproval shall be the same as used for original approval of a marketing order." (Emphasis added.) Thus, even in this contingency the original assent approval method, as to producers, need not be used for renewal and the referendum procedure of Section 56993(c) could be substituted. However, under Section 56993(c), the valid votes cast must equal at least 40 percent of the producers of record.

Section A calls for a referendum procedure, within each five-year period, under which there is no minimum percentage of producers required to cast valid ballots. (As noted above, there is no issue involving reapproval by handlers.) It does not follow, however, that a small percentage of voting producers are given authority to overrule a nonvoting majority. The Director may call a public hearing to determine the propriety of the Program, whether the required approval is, or is not, obtained. He must do so if minimum approval is not obtained.

Thus the reapproval procedure of Section A serves the same basic purpose as the public hearing procedure of Section 59086, which is to advise the Director of whether further confirmation is needed. The Director has such authority upon his own motion, under the public hearing procedure of Section 59081. As the operation of both Section 59086 and Section A depends on the discretion of the same Director, it cannot be said that either is more stringent than the other. Put another way, if Section 59086 had been applicable, so that a public hearing were held, and the Director found substantially the same support by producers by the hearing process as he found by the voting process of Section A, the results would very likely have been the same. Likewise, if the Director had received numerous prior complaints from producers about the Program, he might have required a confirmation vote in either case. Both procedures rely on the Director's appreciation of the problems involved in the first instance, rather than any mechanical test.

In my opinion, a contention that a reapproval vote by producers was required to be the same as used for original approval of a marketing order" cannot be sustained in the context of the entire Marketing Act.

cc Shahbazian
Rowell

HC/13/13/A/5-6

BERNARD CZESLA
CHIEF DEPUTY

OWEN K. KUNS
EDWARD K. PURCELL
RAY H. WHITAKER

KENT L. DECHAMBEAU
ERNEST H. KUNZI
STANLEY M. LOURIMORE
SHERWIN C. MACKENZIE, JR.
ANN M. MACKEY
EDWARD F. NOWAK
RUSSELL L. SPARLING
PRINCIPAL DEPUTIES

3021 STATE CAPITOL
SACRAMENTO 95814

107 SOUTH BROADWAY
LOS ANGELES 90012

Legislative Counsel of California

GEORGE H. MURPHY

GERALD ROSS ADAMS
DAVID D. ALVES
MARTIN L. ANDERSON
PAUL ANTILLA
JEFFREY D. ARTHUR
CHARLES C. ASBILL
JAMES L. ASHFORD
JOHN CORZINE
BEN E. DALE
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JAMES W. HEINZER
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EILEEN K. JENKINS
MICHAEL J. KERSTEN
L. DOUGLAS KINNEY
JEAN KLINGENSMITH
VICTOR KOZIELSKI
STEPHEN E. LENZI
DANIEL LOUIS
JAMES A. MARSALA
DAVID R. MEEKER
PETER F. MELNICOE
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HUGH P. SCARAMELLA
MARY SHAW
WILLIAM K. STARK
JOHN T. STUDEBAKER
BRIAN L. WALKUP
THOMAS D. WHELAN
JIMMIE WING
CHRISTOPHER ZIRKLE
DEPUTIES

Sacramento, California
May 12, 1976

Honorable Mike Cullen
Assembly Chamber

Marketing Orders - #3201

Dear Mr. Cullen:

You have asked several questions concerning the Dry Bean Research and Marketing Program[1] which we will answer in series.

QUESTION NO. 1

Under the marketing order, which establishes annual assessments each year for dry beans, may the Director of Food and Agriculture establish assessment rates for dry beans produced in California during the marketing season beginning July 1, 1975, and ending June 30, 1976, which will be payable on beans produced during that season, regardless of when they are handled or dealt?

OPINION NO. 1

The director may, under the marketing order, establish assessment rates for dry beans produced in California during the marketing season beginning July 1, 1975, and ending June 30, 1976, which will be payable on beans produced during that season, regardless of when they are handled or dealt.

---

[1] Hereafter referred to as the marketing order.

ANALYSIS NO. 1

The Dry Bean Research and Marketing Program is a marketing order adopted pursuant to the California Marketing Act of 1937[2] (Marketing order, subd. (1) of Sec. A., Art. I). The act contemplates the details as to the assessment and collection of assessments under such a marketing order to be contained in the order (see Sec. 58936, F.& A.C.[3]).

Under the marketing order, there are, in fact, three assessments: on producers, warehousemen, and dealers (marketing order, Art. VII). Such multiple assessments are in accord with the marketing act (Sec. 58922, F.& A.C.).

In this regard, the order providing for assessment during the 1975-76 marketing season provides, in part, as follows:

> "NOW, THEREFORE, I, L. T. Wallace, Director of Food and Agriculture of the State of California, acting pursuant to and by virtue of the authority vested in me by said Act and said Marketing Program, do hereby approve and establish a general combined assessment rate of five cents ($0.05) per one hundred pounds (100 lbs.) upon producers, one cent ($0.01) per hundred pounds (100 lbs.) upon warehousemen, and one cent ($0.01) per hundred pounds (100 lbs.) upon dealers of dry beans prepared for market or marketed which have been produced in California during the marketing season beginning July 1, 1975, and ending June 30, 1976; provided, that such assessment rates as applied on any lot of dry beans shall be so paid as not to require a duplication of assessment against any producer, warehouseman or dealer; . . ." (Emphasis furnished.)

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2 Hereafter referred to as the marketing act (Chapter 1 (commencing with Section 58601) Part 2, Division 21, Food and Agricultural Code).

3 Section references are to the Food and Agricultural Code, unless otherwise identified.

As we read this order, the assessments are payable on beans produced during the marketing season, regardless of when they are handled or dealt.

This conclusion is reinforced by the language of Section 58924, which appears to contemplate such a result, as follows:

> "58924. The amount of the assessment for necessary expenses shall not, however, exceed the following:
>
> "(a) In the case of producers, 2 1/2 percent of the gross dollar volume of sales of the commodity which is affected by all such producers regulated by such marketing order.
>
> "(b) In the case of processors, distributors, or other handlers, 2 1/2 percent of the gross dollar volume of purchases of the commodity which is affected by the marketing order from producers or of the gross dollar volume of sales of the commodity which is affected by the marketing order and handled by all such processors, distributors, or other handlers that are regulated by such marketing order during the marketing season during which such marketing order is effective." (Emphasis added.)

It is therefore our opinion that the Director of Food and Agriculture may, under the marketing order, establish assessment rates for dry beans for the 1975-76 marketing season based on the dry beans produced in California during the marketing season beginning July 1, 1975, and ending June 30, 1976.

QUESTION NO. 2

Can a different year's assessment rate be applied to the producer, to the warehousemen, and the dealer on the same sack of beans ?

OPINION AND ANALYSIS NO. 2

In view of the marketing order provisions set forth in Analysis No. 1, that the various assessment rates on particular dry beans are on the basis of the beans produced in California during specified time period, it is our opinion that a different year's assessment rate cannot be applied on the same sack of beans.

QUESTION NO. 3

When do assessments have to be paid?

OPINION AND ANALYSIS NO. 3

Assessments are required to be paid upon demand of the Director of Food and Agriculture (marketing order, Art. VII, Sec. E, par. 3; Sec. 58929). Of course, the demand by the director cannot be made until the beans are produced or handled, as the case may be, since there would be no basis for assessment until that time (see marketing order, Art. VII, Sec. E, Par. 1; Sec. 58923).

QUESTION NO. 4

You have asked us to assume that in the last vote for reapproval of the marketing order only 30 percent of the producers by number voted, with 86 percent of those voting in favor of reapproval. On that basis, you have asked if a decision to reapprove the marketing order after such a vote was legal.

OPINION NO. 4

A vote of only 30 percent of the producers by number, of which 86 percent voted for reapproval, is insufficient to reapprove the marketing order.

ANALYSIS NO. 4

Section 58993, a part of the marketing act, provides, in pertinent part, as follows:

> "58993. No marketing order or major amendment to it, which directly affects producers or producer marketing, that is issued pursuant to this chapter, shall be made effective by the director unless and until the director finds one or more of the following:
>
> * * *

> "(c) That it has been approved by producers in a referendum among producers that are directly affected. The director may make the finding (1) if the valid votes cast in such referendum represent not less than 40 percent of the total number of producers of the commodity of record with the department, and (2) if the producers that cast ballots in the referendum in favor of the marketing order or amendment to it represent not less than 65 percent of the total number of producers that cast ballots in the referendum and marketed not less than 51 percent of the total quantity of the commodity which was marketed in the next preceding marketing season by all of the producers that cast ballots in the referendum or if the producers that cast ballots in the referendum in favor of the marketing order or amendment represent not less than 51 percent of the total number of producers that cast ballots in the referendum and marketed not less than 65 percent of the total quantity of the commodity which was marketed in the next preceding marketing season by all of the producers who cast ballots in the referendum." (Emphasis added.)

Section 59086 provides the minimum vote on reapproval shall be the same as used for original approval. While we are not informed of the basis of tabulation used for original approval (i.e., weighing and percentages of producers and commodity produced), as can be seen from the above quoted provisions of Section 58993, no marketing order can be approved with less than 40 percent of the producers voting.[4]

QUESTION NO. 5

What priority does the University of California have in research work funded by agricultural marketing orders?

OPINION AND ANALYSIS NO. 5

Section 58892 provides as follows:

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[4] In view of our conclusion as to the insufficiency of the vote for reapproval under Section 59086, we have not considered the provisions of the marketing order as to the vote required by it for reapproval.

"58892. A marketing order may contain provisions for carrying on research studies in the production, processing, or distribution of any commodity and for the expenditure of moneys for such purposes. In any research in production or processing which is carried on pursuant to this section, the Dean of the College of Agriculture of the University of California and the advisory board which is provided for in Article 8 (commencing with Section 58841) of this chapter [appointed by the Director of Food and Agriculture to assist him in the administration of any marketing order] shall cooperate in selecting the research project which is to be carried on from time to time. Insofar as practicable, the projects shall be carried out by such college of agriculture, but if the dean of the college and the advisory board determine that the college has no facilities for a particular project, or that some other research agency has better facilities for it, the project may be carried out by any other research agency which is selected by the dean and the advisory board." (Emphasis added.)

As can be clearly seen from the underlined language any research is required to be carried out by the College of Agriculture of the University of California unless the dean of the college and the advisory board agree otherwise.

Very truly yours,

George H. Murphy
Legislative Counsel

By Victor Kozielski
Victor Kozielski
Deputy Legislative Counsel

VK:sms

BERNARD CZESLA
CHIEF DEPUTY

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PRINCIPAL DEPUTIES

3021 STATE CAPITOL
SACRAMENTO 95814
(916) 445-3057

107 SOUTH BROADWAY
LOS ANGELES 90012

Legislative Counsel of California

GERALD ROSS ADAMS
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DEPUTIES

Sacramento, California
November 17, 1976

Honorable Mike Cullen
5144 State Capitol

Dry Bean Advisory Board; Contract for Services - #15978

Dear Mr. Cullen:

You have submitted a copy of a resolution signed by a representative of the Department of Food and Agriculture on July 26, 1976.[1]

Generally, the resolution declares that the Director of Food and Agriculture[2] approves the retention of G. W. Monfort and his organization for the 1976-77 Market Season at a designated rate for his employment and an associate and for furnishing office space, utilities, special telephone equipment, portable meter mailing machine, and office equipment. It also declares that the Monfort Associates will provide as-needed use of a paper copying machine and the

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1 Hereinafter referred to as the "resolution."

2 Hereinafter referred to as the "director."

as-needed services of Monfort Associates employees as secretarial and clerical help. Furthermore, it declares that the director approves the Dry Bean Advisory Board[3] entering into a contracted relationship with Monfort Associates to provide the above services.

You have asked the questions stated and considered below with respect to such resolution.

QUESTION NO. 1

May the board enter into a contract or agreement provided for by the resolution?

OPINION NO. 1

The board may, with the approval of the director, enter into a contract or agreement provided for by the resolution.

ANALYSIS NO. 1

The California Marketing Act of 1937 (Part 2 (commencing with Section 58601) of Division 21 of the Food and Agricultural Code[4]) provides for the establishment of marketing orders by the director, to regulate producer marketing, the processing, distributing, or handling in any manner of any commodity of this state (Sec. 58741). The Dry Bean Research and Marketing Program (hereinafter referred to as the "marketing order") was adopted pursuant to the California Marketing Act of 1937 (subd. (1), Sec. A, Art. I, Marketing Order). The director is charged with the administration and enforcement of any such marketing order (Secs. 58711, 58712). The law requires the establishment of an advisory board for each marketing order to assist the director in the administration of any marketing order (Sec. 58841).

The board, whose duties are administrative only, may, among other things, administer the marketing order, subject to the approval of the director, and assist the

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[3] Hereinafter referred to as the "board."

[4] All section references, unless otherwise indicated, are to the Food and Agricultural Code.

the director in the collection of such necessary information and data as the director may deem necessary for the administration of the California Marketing Act of 1937 (see subds. (a) and (f), Sec. 58846). Furthermore, the director may authorize the board to enter into contracts or agreements, employ necessary personnel and fix their compensation and terms of employment, and incur such expenses as the director may deem necessary and proper to enable the board properly to perform its duties as authorized by the California Marketing Act of 1937 (see Sec. 58845).

Also, the marketing order grants to the board, among other duties and powers, which may be exercised subject to the approval of the director, the responsibility to administer the provisions of the marketing order, to keep designated minutes, books, and records in connection with the marketing order, and to employ necessary personnel and fix their compensation and terms of employment (see subds. (1), (7), and (8), Sec. L, Art. II, Marketing Order). Further, as to sales promotion and market development plans, the board is authorized, subject to approval of the director, to enter into contracts with any person qualified to render services in formulating and coordinating such plans (Sec. 3, Art. V, Marketing Order).

It is a well established principle that an administrative agency may exercise such additional powers as are necessary for the due and efficient administration of the powers expressly granted by statute, or as fairly may be implied from the statute granting the powers (Dickey v. Raisin Proration Zone No. 1, 24 Cal. 2d 796, 810).

Therefore, in view of the fact that the board, subject to director's approval, is specifically authorized to enter into a contract or agreement and to employ necessary personnel, and has the general responsibility of administering the marketing order, it is our opinion that the board may, with the approval of the director, enter into a contract or agreement provided for by the resolution.

QUESTION NO. 2

Does the resolution create a contractual relationship to bind the parties?

OPINION NO. 2

The resolution does not, in itself, create a contractual relationship to bind the parties.

ANALYSIS NO. 2

Generally, the first essential to the existence of any contractual obligation is that there must be consent of the parties (Stigall v. City of Taft, 58 Cal. 2d 565, 569). Also, a contract to be obligatory on either party, must be mutual and reciprocal in its obligations (Doe v. Culverwell, 35 Cal. 291, 295).

In the case at hand, the resolution is nothing more than a declaration of approval, by the director, for the board to enter into a contract or agreement with Monfort Associates for the services provided for in the resolution. The resolution, by its terms, approves the board entering such contractual relation and specifically authorizes the board chairman to sign such a contract for the board. Clearly the resolution does not purport to be a contract, but rather to be authorization to enter into a contract at a later date. The signature of G. W. Monfort, as the manager of the board, only attests to the validity of the instrument in question as a true and correct copy of a resolution adopted by the board, and is not a signature of a party to any contractual agreement.

Therefore, we think that the resolution does not, in itself, create a contractual relationship to bind the parties.

QUESTION NO. 3

Is the board authorized to make payments for items not provided for in the resolution nor otherwise approved by the director?

OPINION NO. 3

The board is not authorized to make payments for items not provided for in the resolution nor otherwise approved by the director.

ANALYSIS NO. 3

Initially, we note, as discussed in Analysis No. 2, that the resolution is only an authorization for the board to enter into a contract for goods or services. The board is obligated to pay for any item agreed upon under a valid contract. As discussed in Analysis No. 1, above, the board is only authorized to enter into a contract with the approval of the director.

Therefore, it is our opinion that the board is not authorized to make payments for items not provided for in the resolution nor otherwise approved by the director.

Very truly yours,

Owen K. Kuns
Chief Deputy
Legislative Counsel

By Victor Kozielski
Victor Kozielski
Deputy Legislative Counsel

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