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OPINION COMMITTEE

September 30, 2002

The Honorable John Cornyn
Attorney General of Texas
Price Daniel Building
209 West 14th Street
Austin, Texas 78701
ATTN: Opinion Committee

RQ-0619-8c

FILE # ML-42831-02
I.D. # 42831

Re: Request for Attorney General Opinion

Dear General Cornyn:

Pursuant to Texas Government Code, Sec. 402.042, I hereby request, on behalf of the Texas Corn Producers Board (TCPB), an agricultural commodity board established under the Texas Agriculture Code, Chapter 41, a legal opinion from the Office of the Attorney General on the issues of: (1) whether or not "corn ensilage" may be included in the definition of "corn" for purposes of implementing the current TCPB producer assessment on corn; and (2) whether such an assessment on "corn ensilage" may be collected without conducting another grower referendum seeking grower approval of the assessment.

The TCPB believes that "corn ensilage" should automatically be eligible for assessment as part of the current TCPB check-off program, and wishes to begin assessing corn ensilage using a conversion formula from per ton (wet) weight to bushel, and begin collecting the assessment at collection points such as dairies or individual buyers of ensilage without conducting another grower referendum seeking approval of the assessment. I have attached copies of correspondence received by the department from the TCPB regarding this matter, for your information.

The Texas Commodity Referendum Law, Texas Agriculture Code, Chapter 41, under which the board was established, gives the petitioning entity (in this case the Texas Corn Growers' Association) and later the Board, the ability to determine how and in what amount an assessment may be collected. Section 41.023, Notice of Referendum and Election, (a) (4) from Chapter 41, states that a description of the manner in which the assessment is to be collected and the proceeds administered is to be included in the public notice announcing the referendum to establish an assessment, and on the referendum ballot. Producers approve or disapprove the assessment as it is stated on the ballot.

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In the case of the TCPB assessment on corn, a referendum of corn producers was held in 1980 resulting in the establishment of the TCPB and a maximum assessment in the amount of 1/2 cent per bushel of corn marketed. The collection of the TCPB assessment was set up to collect at the warehouse (first point of sale) on bushels of dry kernel corn. After giving the required notices to first points of collection, the TCPB began collecting the assessment. This method and basis of collection has been utilized for the past 20+ years.

For further clarification, corn ensilage includes kernels of corn as an ingredient, but also includes other substances, such as corn plant parts, whatever else is picked up in the field, and water, while the current assessment is on dry corn kernels. Ensilage is sold as a wet substance by the ton, while dry kernel corn is sold by the pound or bushel. Regardless of the ability to convert a ton of ensilage to a bushel, while the commodity being assessed may include the corn now being assessed, it could be considered a much different commodity from dry kernel corn. In regards to assessment collection points, the current assessment is collected at the warehouse or elevator, while ensilage is generally sold directly from the farm to dairies and other cattle-feeding operations, some of which are owned by individuals. Finally, only dry kernel corn has been assessed by the TCPB thus far, corn ensilage has not been assessed in the 20+ year history of the TCPB assessment.

I respectfully request your opinion on this matter. Should you need additional information, please contact Dolores Alvarado Hibbs at (512) 463-4075.

Sincerely,



Martin A. Hubert
Deputy Commissioner

cc: Mr. David Gibson, Executive Director, Texas Corn Producers Board
Mr. Joe Reed, Chairman, Texas Corn Producers Board
The Honorable David Swinford, Chairman, House Agriculture and Livestock Committee