



Minnesota's Agricultural
Commodities Promotion
Councils

March 23, 1979

A Report

by

The Program Evaluation Division
Office of the Legislative Auditor

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This report on Minnesota's agricultural commodities promotion councils has been assembled by the Program Evaluation Division of the Office of the Legislative Auditor. On March 7, 1979, the Subcommittee on Topic Selection of the Legislative Audit Commission authorized a preliminary study of the councils. The subcommittee was specifically concerned with the councils' financial statements and their methods of refunding the automatic contributions farmers make to the councils. A discussion of these and other issues comprise the main body of this report.

The report has two parts: Part I is a synopsis of the councils' legal status and activities and Part II is a summary of the study's findings with recommendations where appropriate. The recommendations follow in brief:

1. We recommend that the Legislative Commission to Review Administrative Rules (LCRAR) ascertain whether the promotion councils are subject to and in compliance with the "Administrative Procedure Act."
2. We recommend that the LCRAR ascertain whether the Department of Agriculture's procedure for adopting rules and guidelines is in compliance with the "Administrative Procedure Act."
3. We recommend that the Department of Agriculture promulgate rules which would prevent automatic double contributions from farmers to the promotion councils.
4. We recommend that statutes be revised to insure the uniformity of refund procedures and to authorize the Department of Agriculture to process all refund applications and monitor refund procedures.
5. We recommend a full financial and compliance audit of the wheat council.
6. We recommend that the Department of Agriculture be given legislative authority to audit the council's financial records.
7. We recommend that the Department of Agriculture study ways of applying uniform procedures and requirements to all promotion councils and that they report their findings and recommendations to the Legislature.

The research for this study and the preparation of this report were completed by Roger Brooks.

PART I

INTRODUCTION

Although Minnesota is primarily a manufacturing state, agriculture has been instrumental in its development and remains a cornerstone of its economy. Today the total value of its agricultural products is almost \$3 billion annually, accounting for about eight percent of the state's economic activity. Including the value of farm-related processing, manufacturing, and transportation, this proportion probably exceeds 30 percent. About seven percent of the Minnesota workforce is employed in agricultural production.

As a result of legislation passed by the Minnesota Legislature over the past 14 years, the state has become increasingly involved in the promotion of Minnesota's agricultural commodities. Five statutes have defined the state's role in encouraging research and promotion of specific commodities: "Turkey Research Production and Marketing" (M.S. 29.14-29.19), "The Potato Industry Promotion Act" (M.S. 30.261-30.479), "The Minnesota Soybean Research and Promotion Act" (M.S. 21A.01-21A.19), "The Dairy Promotion Act" (M.S. 32B.01-32B.13), and "The Agricultural Commodities Promotion Act" (M.S. 17.51-17.69). These statutes authorize the establishment of agricultural commodities research and promotion councils.

The general objectives of the councils are to maintain and stimulate the agricultural economy of Minnesota by promoting the sale of specific agricultural commodities and to fund research on disease prevention and improved production methods. These objectives are attained by contracting for specific services with state and national agricultural associations, public relations firms, and academic research institutions.

Eight councils now exist, representing state producers of turkeys, potatoes, soybeans, dairy products, wild rice, beef, eggs and wheat.¹ The councils for the last four of these producer groups operate under the terms of "The Agricultural Commodities Promotion Act", which was intended to provide authorization for any producer group meeting the requirements to establish their own council.

¹ The formal designations are: The Minnesota Turkey Research and Market Development Council (St. Paul), The Minnesota Area #1 Potato Council (East Grand Forks), The Minnesota Soybean Research and Promotion Council (Mankato), The Minnesota Dairy Research and Promotion Council (St. Paul), The Minnesota Wild Rice Research and Promotion Council (Aitkin), The Minnesota Beef Council (Minneapolis), The Minnesota Egg Promotion Council (Bloomington), and The Minnesota Wheat Research and Promotion Council (Red Lake Falls).

Guidelines for council activities are outlined in promotion orders, which are issued with the advice and consent of each new council by the Commissioner of Agriculture. These documents establish a program for promotion, advertising, production, research and development for all phases of product marketing, and provide rules for council membership and for the collection of fees from farmers in each producer group. A promotion order is adopted when it has been approved in a referendum election in which all producers of the given commodity are eligible to cast ballots.

The Minnesota Department of Agriculture (MDA) is the primary food and farming regulatory agency in the state. In FY 1979 it will spend about \$27 million to develop and protect the state's agricultural resources and to provide assistance to Minnesota farmers and consumers. But its specific administrative responsibilities toward the research and promotion councils costs only about \$60,000 per year. Approximately this amount is refunded to the state each year by the councils, resulting in very little, if any, overall cost to the state.

The real burden for supporting council activities, as noted in Part II, falls to the state's farmers. Ninety-one percent of the approximately 115,000 farmers in Minnesota are involved with one or more promotion councils.

PART II

FINDINGS AND RECOMMENDATIONS

Our preliminary study of the agricultural commodities promotion councils has focused on several specific areas of concern to legislators: the status and responsibilities of the councils, the responsibilities of the Department of Agriculture toward the councils, the method of financing council activities, the procedures for refunding check-off fees to nonparticipating farmers, financial auditing procedures, and statutory inconsistencies. In some instances our findings are exclusively descriptive, while in others we have prescribed further investigation or study.

A. The Status and Responsibilities of the Councils

The formal status of the promotion councils vis-a-vis the state of Minnesota is complex and should be subjected to legal analysis for final determination. The councils serve private economic interests and receive no public funds. Moreover, Assistant Commissioner of Agriculture Rollin Dennistoun has stated that the MDA does not possess independent authority to review council financial records or to monitor other council activities.

On the other hand, the councils operate under the authority of state statute. The MDA--as noted below--is heavily involved in their activities, and they are assumed by MDA to be bound by the state Open Meetings law and state election laws. In addition, there is strong evidence that the councils are state agencies under the terms of the "Administrative Procedure Act" (M.S. 15.0411) since they do have "state-wide jurisdiction" and they are "authorized by law to make rules."²

The formal status of the councils is important for two reasons: a) to clarify the authority of the Legislative Auditor to investigate council records if so directed by the Legislative Audit Commission; and b) to determine whether the councils have fulfilled their rule-making responsibilities if they are bound by the requirements of the "Administrative Procedure Act."

A preliminary review of this issue by Marshall Whitlock, Executive Secretary of the Legislative Commission to Review Administrative Rules (LCRAR), has led to the tentative conclusion that the councils are bound by the "Administrative Procedure Act" and that they have failed to promulgate rules as authorized in statute.

We recommend further investigation of this issue by the LCRAR to establish whether the councils are in compliance with relevant statutes.

² An exception is the potato council which has jurisdiction only in the northwestern part of the state.

B. Responsibilities of the MDA

Since the eight promotion councils operate as self-supporting and semi-autonomous agencies, the MDA has no general authority over council activities. However, the Department is intimately involved in council operations and retains two full-time employees to assist the councils.

The MDA has five major areas of responsibility toward the promotion councils. First, the Department conducts council elections, assists in formulating promotion orders, and holds referendums required for the adoption of promotion orders. Elections are held by mail for the potato, wild rice, turkey, and egg councils; average response is about 20-30% of eligible farmers. Elections are held at 104 polling places for the soybean, beef, dairy, and wheat councils; normal turnout is less than 10 percent of those eligible to vote.

Second, the MDA provides refund request forms for all farmers who decide not to support the councils and processes refund requests for all except the potato and wheat councils. The Department certifies the amount of the request based on proof submitted by the farmer, and sends the request forms to the appropriate councils so that a refund check can be sent to the nonparticipating producer. These procedures are outlined in section D.

Third, MDA representatives attend council meetings and participate in their discussions. The Commissioner of Agriculture serves as chairman of the potato, wild rice, beef, eggs, and wheat councils. The MDA estimates that its personnel participated in 70 council meetings and 30 related meetings during FY 1978.

Fourth, the Department works with the Attorney General's office to insure that the councils are operating in compliance with appropriate statutes. Although councils are permitted to retain their own legal counsel, they have generally done so only for limited periods and for specific purposes. On a day-to-day basis, the MDA acts as an informal liason between the councils and the Attorney General's office for the purpose of providing legal guidance to the councils.

Fifth, six of the eight councils have their financial records audited annually by the MDA Financial Audits Division at their own request and by mutual contract. The two remaining councils, turkey and wheat, have chosen to have their financial records prepared privately.

In order to carry out its responsibility to assist councils the MDA has prepared certain documentation. One of these documents, "Procedures and Responsibilities for Minnesota Research and Promotion Councils and Promotional Orders" (prepared December, 1974; revised January, 1979), appears to be a "statement

of general applicability and future effect . . . made to implement or make specific the law enforced or administered by it" (M.S. 15.0411), and therefore may fall under the terms of the "Administrative Procedure Act." It is the tentative conclusion of the Executive Secretary of the Legislative Commission to Review Administrative Rules that the terms of the act are applicable in this case and that, accordingly, the document in question should have been adopted in conformity with the procedures for rule adoption mandated in M.S. 15.0412.

Therefore we recommend that the LCRAR study those MDA documents which relate to promotion councils to determine the validity of this preliminary conclusion.

C. Council Financing

There are two issues which relate to the way council activities are financed. The first involves "start-up" funds, while the second concerns money for on-going council operations. First, funds which enable the MDA to conduct referendums on setting up councils and promotion orders have come from several sources. In some cases, the Legislature has provided this "start-up" money. For example, \$15,000 was appropriated for the wild rice council in 1973. Subsequently, this was repaid with money from a grant the Upper Great Lakes Regional Commission provided to the council for the same purpose. A financial audit by the Legislative Auditor in 1976 confirmed the repayment of state money. Other councils have used funds from growers associations or national commodity groups to finance the MDA "start-up" efforts.

Second, funds for continuing council activities are generated by promotion orders issued by the Commissioner of Agriculture. Any commodity covered by a promotion order is subject to a check-off at the time it is transferred from the farmer to a first purchaser or other legal claimant. Check-off fees are collected from farmers by the first purchaser (or processor, handler, or lienholder) and remitted to the appropriate council within a specified time. Table 1 indicates the different methods of financing councils as mandated in the eight promotion orders thus far issued.

The check-off system produces varying amounts of money for the eight existing councils. (See Appendix I) In 1978, the dairy council received more than \$4.4 million in check-off money, while the wild rice council received just \$26,000. Nearly all of the councils' income is generated by the check-off system, but some additional funds may come from growers associations or national promotion councils.

In the case of soybeans, eggs, and wheat, the check-off is paid by the farmer if and when the commodity is used as collateral on a loan. This can lead to a double check-off if the farmer retains possession of the commodity and later sells

TABLE I

Methods of Financing Agricultural Promotion Councils

| <u>Promotion Order</u> | <u>Check-off Rate</u> | <u>Check-off Collected</u> | <u>Check-off Remitted to Council</u> |
|------------------------|---|--|---------------------------------------|
| Turkey | 3/4¢ on birds under 10 lbs. 1 1/2¢ on birds over 10 lbs. | At evisceration | (unspecified) |
| Potato | 2¢ per cwt. | When delivered to 1st handler | Quarterly |
| Soybeans | 1¢ per bushel | At first purchase or when used as loan collateral | By 10th of month following collection |
| Wild Rice | 3¢ per pound of processed rice | Whichever is first: 1. process fees paid by producer 2. finished rice picked up from processor 3. finished rice is sold | By 10th of month following collection |
| Beef | 15¢ per animal marketed for slaughter | At first purchase (producer-packers and producer-processors remit fees on their own). | By 10th of month following collection |
| Dairy | 1/2 of 1% of gross value | At first purchase (producer-processors remit fees on their own monthly). | Within 30 days of fee collection |
| Eggs | 4¢ per 30 doz. case | At first purchase or when used as loan collateral | By 10th of month following collection |
| Wheat | 1¢ per bushel | At first purchase or when used as loan collateral | By 10th of month following collection |

it. There is no uniform system for preventing a double check-off, placing the burden on the farmer to acquire a refund for this overpayment.

We recommend that the MDA study this problem and promulgate rules establishing a uniform system for preventing double check-offs.

D. Refund Procedures

The check-off of money is mandated by statute for the commodities which are covered by promotion orders. As indicated previously, although farmers are required to make a payment when they transfer their commodity to another party, a farmer can subsequently request a refund. The relevant statutes outline varying methods for processing refund requests:

1. The turkey promotion statute requires that forms furnished by the MDA are to be filed in the office of the Commissioner within 60 days following the payment of check-off fees.

2. The Potato Industry Promotion Act requires non-participating growers to notify the council in writing before July 15 of each year of his intention to claim a refund. If he then requests a refund between July 1 and July 30 of the next year, he is paid for fees assessed in the previous year.

3. The soybean statute permits the council or the MDA to process refund requests which must be filed on MDA forms within 60 days following the payment of check-off fees. Refunds are supposed to be made by the Commissioner.

4. The Dairy Promotion Act specifies that refund requests go to the MDA within six months of the payment of check-off fees.

5. Finally, the Agricultural Commodities Promotion Act, under which the wild rice, beef, eggs, and wheat councils have been financed, requires that requests for refunds be made on MDA forms within 60 days following payment. Applications are sent to the MDA or to the council, either of which may make the refund.

This inconsistent set of requirements places an undue burden on the MDA and on the farmer who deals with more than one council. In practice, the MDA does not handle council money and cannot, therefore, make refunds itself. As a result, it is difficult for the MDA Commissioner to comply fully with the statute which authorizes him to make refunds to soybean growers.

The department does process refund applications and certifies the amount of the refund from documentary evidence provided by the farmer. All forms are then forwarded to the appropriate council which issues the refund check. This procedure,

which applies to all of the councils except the potato and wheat councils, insures that farmers' receipts and financial records are not made public. The MDA estimates that it processed 18,000 refund applications totalling more than \$1 million in FY 1978.

The potato and wheat councils handle all refund procedures themselves. There are indications of complaints from some farmers that they have difficulty getting forms and must reveal financial data to the council. We have not authenticated these complaints, but current statutes permit the general procedures used by these councils. The MDA however, cites a lack of cooperation from the wheat council in setting up mutually agreeable refund procedures.

We recommend that statutory changes be legislated to improve the uniformity of refund procedures, to give the MDA sole responsibility for processing and certifying refund applications, and to give the MDA authority to monitor the refunding of check-off fees. In addition, we recommend that the MDA retain copies of refund applications so that Department monitoring of refund procedures can be effectuated.

E. Auditing Procedures

The statutes under which the councils operate require that an annual audit of council funds be made by a "certified" or "qualified" auditing firm. In practice, six of the councils are audited annually by the Financial Audits Division of the MDA, while two others, turkey and wheat, are audited by private auditing firms.

A full analysis of procedures used to audit council funds would have to be done by the Financial Audits Division of the Office of the Legislative Auditor. The Program Evaluation Division does not have the resources to do such an analysis nor does it undertake financial and compliance audits. However, our preliminary study has made the following relevant findings:

1. Most concern has focused on the financial reporting of the wheat council. Its first and only audit to date, covering the period July 10, 1977 to June 30, 1978, was conducted by a public accountant in Red Lake Falls, Minnesota. There is concern from legislators and from the MDA about whether this audit fulfills the requirement that auditing be done by a "qualified auditing firm" and whether it was done in accordance with generally accepted auditing principles. We recommend a full financial and compliance audit by the Financial Audits Division of the Office of the Legislative Auditor. We also recommend that, in order to address these concerns in the future, the MDA should be given explicit legislative authority to conduct its own audits of council financial records at the discretion of the commissioner.

2. The statutes governing the turkey, potato, and dairy councils are silent on the use of council money for legislative or political purposes, and there is no obvious evidence from their audited financial statements that any money is used for these purposes. Such use of funds is explicitly prohibited in the "Agricultural Commodities Promotion Act" (governing the wild rice, beef, egg, and wheat councils). However, the soybean statute permits the use of funds for legislative--but not other political--activities. According to its last financial statement, the soybean council spent about \$28,000 on legislative activities for one year.

3. None of the audited financial statements permits a definitive determination of the proportion of council funds which is channeled to national (as opposed to Minnesota) research and promotion organizations. It does appear, however, that there are wide variations among the councils on this issue. For example, 97 percent of the promotion money spent by the soybean council goes to fund a contract with the American Soybean Association, while about 67 percent of the dairy council's promotion money is spent on contracts with national dairy associations. On the other hand, nearly 100 percent of the potato council's promotion money is spent with the Red River Valley Potato Growers Association, a Minnesota-based organization. However, the validity of these indicators can be established only by a financial audit.

4. There has never been a formal audit of the first purchasers of those agricultural commodities which are subject to a check-off system to determine whether they are in compliance with all legal requirements in the collection of fees from farmers, the handling of check-off funds, and the remission of funds to the appropriate councils. The MDA has stated that the councils have the right to have such audits of first purchasers conducted, and has offered to give whatever assistance they can to the councils for these efforts.

F. Statutory Inconsistencies

Statutory inconsistencies in the methods of financing councils, refunding check-off fees, and conducting audits have been described in previous sections. These and other problems arise, in part, from the fact that promotion councils do not operate under uniform and integrated legislative authority. As already noted, the turkey, potato, soybean, and dairy councils each have their own distinctive legislative authorization, while the remaining councils are governed by a single, general statute.

Some diversity may be merited since the geographic, marketing, or other inherent characteristics of each commodity may necessitate unique sets of council procedures. However, this diversity inhibits the effectiveness and efficiency of the MDA's efforts to oversee and assist the councils. It also may foster confusion and frustration for farmers who have to deal with more than one council.

We recommend that the MDA study ways of applying uniform requirements to all promotion councils. Specifically, we recommend that the MDA determine: a) how existing statutes governing the promotion councils might be amended to improve procedural consistency or b) whether existing statutes might be repealed in favor of a single, uniform statute governing all aspects of council operations. They should report their findings to the Legislature with recommendations for legislative action.

APPENDIX I

AGRICULTURAL COMMODITIES PROMOTION COUNCILS
1977 - 1978 COMPARATIVE INCOME STATEMENTS

| | <u>TURKEY¹</u> | <u>POTATO²</u> | <u>SOYBEAN³</u> |
|----------------------------------|---------------------------|---------------------------|----------------------------|
| REVENUES | | | |
| Checkoff | \$ 289,465 | \$ 132,337 | \$ 965,743 |
| Refunds | <u>-12,833 (4.4) *</u> | <u>-12,153 (9.2) *</u> | <u>-24,078 (2.5) *</u> |
| Net Checkoff | 276,632 (99.6) | 120,184 (95.0) | 941,665 (98.9) |
| Other Income | 1,206 (0.4) | 6,279 (5.0) | 10,217 (1.1) |
| Total Revenue | <u>\$ 277,838 (100.0)</u> | <u>\$ 126,463 (100.0)</u> | <u>\$ 951,882 (100.0)</u> |
| EXPENDITURES | | | |
| Promotion | \$ 28,735 (10.4) | \$ 100,832 (79.7) | \$ 621,131 (65.3) |
| Research | 215,652 (77.6) | - | 128,376 (13.5) |
| Admin. Expense | 28,843 (10.4) | 10,015 (7.9) | 113,610 (11.9) |
| Council | 852 (.3) | 2,116 (1.7) | 9,679 (1.0) |
| MDA | 1,500 (.5) | 2,576 (2.1) | 6,480 (0.7) |
| Total Expenditures | <u>\$ 275,582 (99.2)</u> | <u>\$ 115,539 (91.4)</u> | <u>\$ 879,276 (92.4)</u> |
| OPERATING MARGIN | <u>2,256 (0.8)</u> | <u>10,924 (8.6)</u> | <u>72,606 (7.6)</u> |
| TOTAL EXPENDITURES AND MARGIN | <u>\$ 277,838 (100.0)</u> | <u>\$ 126,463 (100.0)</u> | <u>\$ 951,882 (100.0)</u> |

¹Year ending 2/28/78

²Year ending 6/30/78

³Year ending 8/31/78

* Refunds as a percentage of check-offs

APPENDIX I (continued)

AGRICULTURAL COMMODITIES PROMOTION COUNCILS
1977 - 1978 COMPARATIVE INCOME STATEMENTS

| | <u>WILD RICE¹</u> | <u>BEEF²</u> | <u>DAIRY³</u> |
|-------------------------------|------------------------------|-------------------------|----------------------------|
| REVENUES | | | |
| Checkoff Refunds | \$26,816 | \$217,432 | \$4,425,125 |
| Net Checkoff | <u>- 988 (3.7) *</u> | <u>- 2,626 (1.2) *</u> | <u>-1,092,892 (24.7) *</u> |
| Other Income | 25,828 (90.5) | 214,806 (96.9) | 3,332,233 (97.8) |
| Total Revenue | <u>2,698 (9.5)</u> | <u>6,910 (3.1)</u> | <u>73,679 (2.2)</u> |
| | \$28,526 (100.0) | \$221,716 (100.0) | \$3,405,912 (100.0) |
| EXPENDITURES | | | |
| Promotion | \$12,240 (42.9) | \$131,495 (59.3) | \$3,132,645 (92.0) |
| Research | 2,000 (7.0) | 62,654 (28.3) | - |
| Admin. Expense | 1,985 (7.0) | 43,353 (19.6) | 144,708 (4.2) |
| Council | 3,582 (12.5) | 16,686 (7.5) | 30,399 (0.9) |
| MDA | <u>2,280 (8.0)</u> | <u>4,000 (1.8)</u> | <u>34,036 (1.0)</u> |
| Total Expenditures | \$22,087 (77.4) | \$258,188 (116.5) | \$3,341,788 (98.1) |
| OPERATING MARGIN | <u>6,439 (22.6)</u> | <u>-36,472 (-16.5)</u> | <u>64,124 (1.9)</u> |
| TOTAL EXPENDITURES AND MARGIN | \$28,526 (100.0) | \$221,716 (100.0) | \$3,405,912 (100.0) |

¹Year ending 10/31/78

²Year ending 6/30/78

³Year ending 12/31/78

* Refunds as a percentage of check-offs

APPENDIX I (continued)

AGRICULTURAL COMMODITIES PROMOTION COUNCILS
1977 - 1978 COMPARATIVE INCOME STATEMENTS

| | <u>EGGS¹</u> | <u>WHEAT²</u> |
|-------------------------------|---------------------------|---------------------------|
| REVENUES | | |
| Checkoff Refunds | \$ 205,374 | \$ 1,062,113 |
| Net Checkoff | <u>-72,768 (35.4) *</u> | <u>-138,106 (13.0) *</u> |
| Other Income | 132,606 (83.5) | 924,007 (98.5) |
| Total Revenue | <u>\$ 158,835 (100.0)</u> | <u>\$ 937,656 (100.0)</u> |
| EXPENDITURES | | |
| Promotion | \$ 77,362 (48.7) | \$ 215,067 (22.9) |
| Research | - | 68,000 (7.3) |
| Admin. Expense | 39,141 (24.6) | 84,303 (9.0) |
| Council | 3,907 (2.5) | 24,018 (2.6) |
| MDA | <u>3,200 (2.0)</u> | <u>6,000 (0.6)</u> |
| Total Expenditures | <u>\$ 123,610 (77.8)</u> | <u>\$ 397,388 (42.4)</u> |
| OPERATING MARGIN | <u>35,225 (22.2)</u> | <u>540,268 (57.6)</u> |
| TOTAL EXPENDITURES AND MARGIN | <u>\$ 158,835 (100.0)</u> | <u>\$ 937,656 (100.0)</u> |

¹Year ending 6/30/78

²For 7/10/77 - 6/30/78

* Refunds as a percentage of check-offs