

[305] April 18, 1997

Mr. James Ferguson, Chairman Soil and Water Conservation Commission Route 3, Box 43 Clyde, North Carolina 28721

Re: Advisory Opinion: Agricultural Cost-Share Program, N.C.G.S. 143-215.74

Dear Chairman Ferguson:

You have asked this office to provide guidance to the Soil and Water Conservation Commission and local districts concerning the provision of agricultural cost-share grants for eligible farming practices from grant cycles which are subsequent to the installation of the practice. The specific question has been raised by the Duplin Soil and Water Conservation District, which currently has insufficient funds to provide cost-shares on swine farm lagoon retrofits necessary to protect water quality in compliance with State law and rules. The Duplin SWCD would like to encourage the immediate completion of these lagoon retrofits, and other eligible practices, by committing future cost-share grants.

The agriculture cost-share program is authorized by N.C.G.S. § 143-215.74, and has as its primary purpose the reduction of agricultural nonpoint source pollution. The program has been successful, and the Commission has legitimate concerns over the desirability of such future commitments, in light of the shortage of funds to assist on all potentially suitable projects. There are both legal and policy questions at issue.

We have reviewed the agricultural cost-share provisions, and several pertinent Constitutional provisions, and offer the following legal guidance to you. There is nothing in N.C.G.S. § 143-215.74, nor any Constitutional principle, which would prevent the Commission, should it decide to do so, from allowing cost-share grants to be given for eligible practices in grant cycles which are subsequent to the practice installation. However, neither the current Commission nor the current district boards may bind future boards to such commitments, nor may contracts be entered which would obligate a future Commission or a future district board to provide such cost-share funds if there presently are no appropriations for it. 63A AmJur 2d, Public Officers and Employees, § 333 (1984). Additionally, you should keep in mind Article I, § 32 of the Constitution of North Carolina, which provides as follows: "No person or set of persons is entitled to exclusive or separate emoluments or privileges from the community but in consideration of public services." Thus, if the Commission determines that it is prudent to allow this procedure, it would have to also be made available for any district allocation, and for any eligible recipient, similarly situated. In other words, you would not be empowered to authorize Duplin SWCD's expenditures without extending the policy to other similar situations.

Thus, we believe there is adequate legal authority to support such a grant process, so long as the understanding is made clear between the district board and the farmer installing the practice that there is no obligation to provide a future grant if appropriations are not received. We will be glad to work with you on appropriate resolutions for the Commission or the district board to adopt, and on any necessary cost-share agreement language amendments, should you decide to authorize this process.

Andrew A. Vanore, Jr. Chief Deputy Attorney General

Daniel C. Oakley Senior Deputy Attorney General