

May 24, 1996

Tim D. McGreevy, Administrator
Idaho Pea and Lentil Commission
5071 Highway 8 West
Moscow, ID 83843

**THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE**

Re: Qualification of Commission Member

Dear Mr. McGreevy:

This letter is in response to your April 29, 1996, request in which you ask whether a particular individual “is eligible to run for the vacant position on the Commission’s Board of Directors.” The answer to your inquiry is that, under the facts given, the person is qualified to serve as a commissioner in a “dealer or processor” capacity. In addition, the commission, within reasonable and statutory boundaries, has the authority to determine such qualifications of its commission members within the requirements set by law.

I.

BACKGROUND

The background to this request is an individual who is seeking a vacant position on the commission as a “dealer or processor.” The facts, as you relate them, are as follows:

The individual in question satisfies the qualifications stated in Idaho Code § 22-3505, except that the processing plant in which he is a partner is physically in the State of Washington, approximately 400 yards from the Washington/Idaho border. Fifty percent of the processing plant’s business is done with Idaho growers and pulses grown in Idaho. He has substantial ownership in an Idaho-based farm which serves as a receiving station for the processing plant, trucks containers and bulk lentils in Idaho, and raises 6,000 acres of wheat, lentils and chickpeas.

In addition, based on our telephone conversation in response to my request for additional information, you related the following facts: The individual sells, markets, warehouses and distributes dry peas and lentils within the State of Idaho; the individual's Idaho operations are conducted by a partnership in which the individual is a partner; and the individual's Idaho-based businesses constitute "first purchasers" pursuant to Idaho Code § 22-3503(4), in which the business pays the assessments required by Idaho Code §§ 22-3515 and 22-3517.

II.

ANALYSIS

A. Requirements for Dealer or Processor Commission Membership

Idaho Code § 22-3502 creates the Idaho Pea and Lentil Commission with seven members. Five members are growers whose qualifications are set forth in Idaho Code §§ 22-3503(5) and 22-3504, and two "members shall be processors or dealers." Idaho Code § 22-3502. The qualifications for processor or dealer membership are found in Idaho Code §§ 22-3503(8) and (9) and Idaho Code § 22-3505.

Idaho Code § 22-3503 defines the terms "dealer" and "processor" as follows:

(8) "Dealer" means any person, group, association, partnership or corporation which acts as principal or agent or otherwise in selling, marketing, warehousing, or distributing dry peas or lentils not produced by such person, group, association, partnership or corporation.

(9) "Processor" means any person, group, association, partnership or corporation which acts as principal or agent or otherwise in processing dry peas or lentils not produced by such person, group, association, partnership or corporation.

Thus, a "dealer" sells, markets, warehouses or distributes peas and lentils not produced by him or her and a "processor" processes peas or lentils not produced by him or her.¹

Idaho Code § 22-3505 sets forth the qualifications of dealer and processor members as follows:

Dealer and processor members of the commission shall be residents of the state of Idaho and be selected because of their ability and disposition to serve the state's interest and for knowledge of the state's natural resources. They shall be practical dealers or processors of dry peas or lentils and shall

be citizens over twenty-five (25) years of age and who have been, either individually or as officers or employees of a corporation, firm, partnership, association, or other business having a place of business within the state of Idaho and actually engaged in the processing, selling, marketing or distributing of dry peas or lentils within the state of Idaho for a period of five (5) years and has during that period derived a substantial portion of its income therefrom.

This code section can be broken down into both objective and subjective criteria. The criteria for dealer and processor membership, with explanation in parentheses, are as follows:

- A resident of the State of Idaho.
- Ability and disposition to serve the state's interest (as opposed to the interests of the member or another entity).
- Knowledge of the state's natural resources.
- A practical processor or dealer of dry peas or lentils (meaning that the person must actually work as dealer or processor, and not be a former or non-working dealer or processor).
- Over the age of 25.
- Work with a business having a place of business within Idaho.
- Be actually engaged in processing, selling, marketing or distributing dry peas or lentils within the State of Idaho for a period of five years.
- For the last five years has derived a substantial portion of the business's income from such activity.

This list represents the qualifications for a dealer or processor member of the commission.

B. The Commission's Authority to Determine Qualifications of its Members

The Idaho Pea and Lentil Commission has the authority and duty to preliminarily determine the qualifications of its members pursuant to Idaho Code § 22-3506, which provides the process for selecting commission members. Subsection (1)(a) provides that the grower, "dealer and processor shall nominate from among themselves, by petition, at least two (2) names for each position to be filled on the commission." Subsection (1)(c) provides that "petitions for dealer or processor members shall be signed by not less than eight (8) qualified processors or dealers." (Emphasis added.) The petitions are filed with the Pea and Lentil Commission which assures their compliance with the statute. The names are then forwarded to the governor who appoints the dealer or processor member based upon the nominee petitions. In the event of any vacancies on the commission, Idaho Code § 22-3506(3) requires the "Idaho pea and lentil growers association to submit to the governor at least two (2) qualified names for each vacancy supported by the proper

nominating petitions.” (Emphasis added.) Thus, the commission must make a determination as to qualifications of a potential member.²

C. Qualifications of the Individual in Question

The commission must apply the qualifications to the individual in question based on the facts. First, your letter states that “the individual in question satisfies the qualifications stated in Idaho Code § 22-3505” From that we assume that the person is a resident of the State of Idaho, has the ability and disposition to serve the state’s interests, is knowledgeable of the state’s natural resources, is a practical dealer or processor, is over 25 years of age, has been actively involved in processing, selling, marketing or distributing dry peas and lentils for five years and during such time has derived a substantial portion of business income therefrom.

Your letter states that the issue arises from the location of the actual processing plant which is in Washington. Thus, the remaining issues are whether such person (1) is involved in a business having a place of business within the State of Idaho and (2) is actually engaged in processing, selling, marketing, or distributing dry peas or lentils in Idaho.

From your letter, the person has substantial ownership in an Idaho-based firm that raises 6,000 acres of wheat, lentils and chickpeas.³ You also note that the farm serves as the “receiving station for the processing plant, [and he or she] trucks containers and bulk lentils in Idaho” In our telephone conversation following my request for additional information, you stated that, although the individual does not process dry peas or lentils in Idaho, he or she does sell, market, warehouse and distribute dry peas and lentils in Idaho. Such operation is conducted by an Idaho partnership in which the individual is a partner. Further, the Idaho business makes purchases of dry peas and lentils from growers in Idaho that constitute “first purchases” pursuant to Idaho Code § 22-3503(4).

Since the statutory requirement is that the person be “engaged in the processing, selling, marketing or distributing of dry peas or lentils within the State of Idaho,” such qualification is met by the candidate. Also, since the partnership is an Idaho partnership operating within the state, then such person is involved in a business within Idaho that qualifies under the statute. Although the person may not fit the definition of a “processor” in Idaho, such person does fit the definition of a “dealer” in Idaho. Since the membership seat for a dealer or processor member of the commission may be filled by either a dealer or a processor, such person is qualified to be a dealer or processor member of the commission.

III.

CONCLUSION

The Idaho Pea and Lentil Commission has the authority to reasonably determine the qualifications of commission members. On the facts presented to us, the candidate in question qualifies as a dealer or processor member of the commission. If you require further analysis or interpretation, please do not hesitate to contact me.

Very truly yours,

KEVIN D. SATTERLEE
Deputy Attorney General
Contracts & Administrative Law Division

¹ Thus, the member can be qualified as either a dealer or a processor and as long as the qualifications of one or the other, or both, are present. Although Idaho Code § 22-3505 speaks to “dealer and processor” members, a thorough review of the act finds that the two (2) allotted seats on the commission may be filled with either dealers or processors or both.

² Decisions of the commission are reviewable through Idaho Code §§ 67-5201 *et seq.*, and through the courts on appeal of administrative decisions.

³ Such may qualify the person as a grower member. However, that is not the question presented for this opinion and is irrelevant since the seat for which the person is being considered is a dealer or processor seat.