Discussion

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My comments are not from a legal perspective, but rather from the perspective of a commodity group administrator.

I enjoyed all three papers presented in this session, but of particular interest tome was Wayne Watkinson's overview of the evolution of voluntary and legislative checkoffs. During my twenty-eight-year tenure on the Meat Board staff I have experienced my organization moving through each of the stages Watkinson describes. The Meat Board was the first voluntary checkoff in American agriculture for market development. In the 1950s and 1960s we experienced, particularly on the beef side, the development of state beef councils which led to the formation of the Beef Industry Council of the Meat Board as the federation of state beef councils. In the farm act of 1985, the Beef Industry Council was identified as the federation of qualified state beef councils.

Watkinson observed, "There does not appear to be any disagreement that the industry decides how to spend its funds, provided they do so within the authority of the authorizing legislation." I agree with that statement. It is also my experience that it really works that way. As an administrator, however, I have concerns with court decisions such as the Frame case in the beef industry. The Frame case was a split decision. The two judges who voted with the industry's position stated the following in their decision:

> ...we find that the amount of government oversight of the program is considerable, and conclude that no lawmaking authority has been entrusted to the members of the beef industry. Both the Act and the Order render the actions of the Cattlemen's Board subject to the Secretary's pervasive surveillance and authority.......Therefore, we hold that the Beef Promotion Act does not constitute an unlawful delegation of legislative authority. In essence, the Cattlemen's Board and the Operating Committee serve an advisory function, and in the case of collection of assessments, a ministerial one. Congress itself has set the amount of the assessments, while ultimately it is the Secretary who decides how the funds will be spent.

I would like for Watkinson's paper to more completely harmonize what appears to be very different viewpoints. Watkinson further states:

> ...these are promotion programs, not government programs or trade associations. Nevertheless, the issue relating to influencing government action places several activities within the proverbial "gray" area due to the significant influence

> government has on the markets of most products.

Later he says:

> In many cases, trade associations that normally protect the interest of an industry lack sufficient funds to generate the information in question.

I am surprised with that view in the midst of the increasing legal challenges against commodity checkoff programs and the trend toward mandatory checkoffs (no refunds). Is Watkinson suggesting that more checkoff dollars be used in the "gray" area of influencing government policy? It seems to me that increased programming in the "gray" will increase the vulnerability of checkoff programs.

I recall a dairyman who called me three or four years ago during the most recent congressional discussion about a "Whole Dairy Herd Buy Out" program. The caller was concerned that his beef checkoff dollars were being used by the National Cattlemen's Association (NCA) to work against his best interests as a dairyman. I assured him that was not the case. NCA is regularly audited and they account for their three million dues dollars and keep them separate from the $5 to $6 million checkoff dollars they contract for with the Beef Board. Then the caller said, "Are you suggesting that NCA is not a stronger organization to lobby against the dairy industry with a $10 million budget total organization than just a $3 to $5 million?" Perhaps that dairyman's question underscored what the law means by "*indirect* lobbying."

I agree with Watkinson's comments that there will be more legal challenges in the future and we need to clarify the "gray" areas. I think it's important that those of us involved with commodity checkoffs view them as a partnership between industry and government and work to harmonize our differences.

My time is too limited for any in-depth discussion of the other two papers. I was impressed, however, with Henry Kinnucan's presentation—for each $1 government invests in international programs it returns $6. That has to be one of the best returns on any government program!

Regarding Olan Forker's presentation on evaluation, I believe there is a strong interest in the need for quantitative evaluation of checkoff programs. Many staff managers see the value in sharing market data. However, farmers and ranchers who pay the checkoff believe they are in competition with other commodities and have reservations about their marketing data becoming public. I think the question is *not* whether we should evaluate, but how public the evaluation and the data it generates become. The checkoff programs are quasi-public, therefore the data cannot be as confidential as a private company. So, the question becomes, how public is public—who controls the data?

NOTES

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