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ATTORNEY GENERAL OPINION NO. 83- 160

Jamie Schwartz, Secretary  
Kansas Department of Economic Development  
503 Kansas Avenue, 6th Floor  
Topeka, Kansas 66603

Re: Corporations -- Agricultural Corporations --  
Ownership of Agricultural Land; Operation of  
Feed Lot

Synopsis: A foreign corporation, authorized to do business in Kansas, may own agricultural land in this state, irrespective of acreage, for the purpose of operating a feedlot for the feeding and slaughtering of hogs. As an incidental aspect of the feedlot operation, such corporation may engage in the breeding of the hogs from within its own stock for feeding and slaughter but may not breed hogs for sale prior to feeding and slaughter. Cited herein: K.S.A. 17-5901, 17-5903, as amended by 1983 Session Laws, Ch. 88, §72, K.S.A. 17-5904, 17-7301, 7 U.S.C.A. §202.

\* \* \*

Dear Secretary Schwartz:

You have requested our opinion concerning whether a corporation, desiring to operate a feedlot for hogs, is precluded from the ownership of agricultural land in this state, pursuant to K.S.A. 17-5904, because of its desire to incorporate an incidental breeding operation on its feedlot premises.

We are advised that a foreign corporation has requested permission to purchase approximately 300 acres of Kansas land for the operation and maintenance of a feedlot for the feeding and slaughtering of hogs. As part of this feedlot operation, the corporation desires to breed its stock. The hogs will be breed, feed and slaughtered on the feedlot premises.

Jamie Schwartz  
Page Two

The hogs are not breed for sale before slaughter. The corporation has incorporated this breeding procedure into its feedlot operation in order to maintain the quality of the herd and to maintain health standards.

K.S.A. 17-5901 et seq., establishes the ownership limits and uses of agricultural land in Kansas by a corporation. K.S.A. 17-5904 reads in pertinent part as follows:

"No corporation, trust, limited corporate partnership or corporate partnership, other than a family farm corporation, authorized farm corporation, family trust, authorized trust or testamentary trust shall, either directly or indirectly, own, acquire or otherwise obtain or lease any agricultural land in this state."

In examining those entities that are allowed uncontrolled ownership of Kansas farm land, as set out above, we find that in this case, the corporation is not one of those entities, as defined by K.S.A. 17-5903, as amended by 1983 Session Laws, Ch. 88, §72. Therefore, we look to the exceptions contained in K.S.A. 17-5904, which states in pertinent part:

"The restrictions provided in this section do not apply to the following:

. . . .

"(8) Agricultural land held or leased by a corporation for use as a feedlot."

It must be noted that the statutes make no distinction between land ownership by a domestic or foreign corporation, K.S.A. 17-5903(a), as amended [see e.g., Alien Ownership of Kansas Farmland: can it be Prohibited?, David A. Williams, 20 W.L.J. 514 (1981)] and we are assuming for purposes of this opinion that any such foreign corporation would be licensed and authorized to do business in this state pursuant to K.S.A. 17-7301 et seq.

A feedlot is defined at K.S.A. 17-5903(e), as amended, as "a lot, yard, corral, or other area in which livestock fed for slaughter are confined. The term includes within its meaning agricultural land in such acreage as is necessary for the operation of the feedlot." We naturally assume that the land in question is agricultural land as defined in K.S.A. 17-5903(f) as amended.

It is obvious from a reading of the entire Act that it is the intent of the legislature to limit the commercial use of agricultural land by corporations. While a corporation may own agricultural land for the operation of a feedlot, it must be noted that the statutes make no prohibitions against the operation of a slaughterhouse, as a slaughterhouse is not included within the definition of farming. K.S.A. 17-5903(g), as amended. However, the production of livestock, or, in this case the breeding of hogs, could be considered farming. K.S.A. 17-5903(g), as amended.

Your question concerns whether the operation of a breeding house can be included within the definition of a feedlot. Our research has disclosed no case which specifically includes breeding as part of a feedlot operation. However, the definition of "stockyard" as set out in 7 U.S.C.A., §202 is helpful:

"the term 'stockyard' means any place, establishment, or facility commonly known as stockyards, conducted, operated, or managed for profit or nonprofit as a public market for livestock producers, feeders, market agencies, and buyers, consisting of pens, or other inclosures, and their appurtenances, in which live cattle, sheep, swine, horses, mules, or goats are received, held, or kept for sale or shipment in commerce." See e.g., Denver Union Stock Yard Co. v. United States, 21 F.Supp. 83 (D. Colo. 1937).

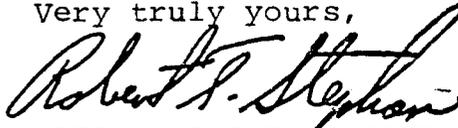
While the statute above applies to public stockyards, it is useful in determining what is included within the activities of a stockyard or feedlot.

We are advised by the Kansas Animal Health Department that a "farrow to finish" operation is common among hog feeders. "Farrow" as defined by Websters Seventh New Collegiate Dictionary, p. 303 (1969), means "to bring forth young" swine. "Farrow to finish" is the breeding and feeding of hogs on the same premise. In this particular situation, the corporation has implemented a "farrowing" operation into its feedlot operation, as an internal method to reduce disease (See Pauls and Whites International Ltd., Proposal to Establish a 2218 Sow Breeding and Fattening Unit in the U.S.A. p. 17.) We have also been assured by the corporation that none of the hogs "farrowed" would be sold on a commercial basis but would be used exclusively to fatten for slaughter purposes on the premises of the feedlot. Additionally, based upon the diagram of the operation, as supplied by the corporation, it is readily apparent that the breeding of the hogs is an integral part of, or incidental to, this particular operation.

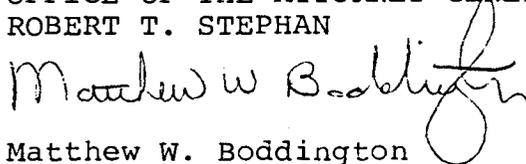
It is a primary rule of statutory construction that when the intent or purpose of the legislature can be ascertained, it must be followed. City of Salina v. Jagers, 228 Kan. 155 (1980). And "[w]here a statute is susceptible to more than one construction, it must be given that construction which, when considered in its entirety, gives expression to its intent and purpose." Reeves v. Board of County Com'rs of Johnson County, 226 Kan. 397, 402 (1979). However, even though the Act is restrictive as to corporate uses of agricultural land, if we examine closely the definition of feedlot, it is sufficiently broad so as to encompass any incidental activities necessary to the operation of the feedlot. Such incidental aspects of a feedlot operation for hogs could include the breeding of the pigs for the purpose of stocking the feedlot. It must be kept in mind, however, that these incidental activities must be strictly confined to the feedlot operation.

Therefore, we have little hesitancy in concluding that a corporation, authorized to do business in Kansas, may own agricultural land, irrespective of acreage, for the purpose of operating a feedlot for the feeding and slaughtering of hogs. As an incidental aspect of the feedlot operation, a corporation may engage in the breeding of the hogs from within its own stock for feeding and slaughter but may not breed hogs for sale prior to feeding and slaughter.

Very truly yours,



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ROBERT T. STEPHAN



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RTS:BJS:MWB:hle