



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 83- 182

The Honorable Arthur Douville
State Representative, 20th District
9600 Woodson
Overland Park, Kansas 66207

Re: Corporations -- Agricultural Corporations --
Limitations on Ownership of Land; Exceptions for
Security Interests

Synopsis: K.S.A. 17-5904 prohibits corporations from owning, acquiring or otherwise obtaining or leasing any agricultural land in Kansas, except as provided therein. While subsection (1) allows bona fide encumbrances to be taken by corporations for the purpose of security, such language refers to mortgages or other equitable interests, and does not include legal title retained by a vendor in a contract for deed and thereafter sold to a corporation. By contrast, a corporation could acquire agricultural land which is subject to a contract for deed under the provisions of subsection (4), through foreclosure on a vendor's interest which had been pledged as security for a separate loan. Accordingly, a corporation could not acquire legal title in agricultural land through a program of purchasing vendors' interests in contracts for deed. Cited herein: K.S.A. 17-5904.

* * *

Dear Representative Douville:

You have requested our opinion on a question concerning K.S.A. 17-5904, which regulates the ownership by corporations of agricultural land in Kansas. Specifically, you inform us that a corporation wishes to establish a secondary market for installment sales contracts, by purchasing vendors' interests in contracts for deed (thereby acquiring legal title in the

property). Equitable title would remain with the purchaser, who would thereafter make his payments to the corporation, rather than the original landowner, who would assign his right to receive the proceeds to the corporation. The deed would be transferred upon completion of the contract, at which time both legal and equitable title would merge in the purchaser. In view of the numerous provisions which exist governing corporate ownership of agricultural land, you inquire whether such activity by a corporation is permitted.

K.S.A. 17-5904 was enacted in 1981 (ch. 106, §2) as part of an overhaul of statutes dealing with corporate farming and corporate ownership of agricultural land. In pertinent part, the statute states as follows:

"(a) 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. The restrictions provided in this section do not apply to the following:

"(1) A bona fide encumbrance taken for purposes of security.

. . . .

"(4) Agricultural land acquired by a corporation by process of law in the collection of debts, or pursuant to a contract for deed executed prior to the effective date of this act, or by any procedure for the enforcement of a lien or claim thereon, whether created by mortgage or otherwise, if such corporation divests itself of any such agricultural land within 10 years after such process of law, contract or procedure.

. . . .

"(b) Any corporation, trust, limited corporate partnership or corporate partnership, other than a family farm corporation, authorized farm corporation, family trust, authorized trust or testamentary trust, violating the provisions of this section shall be subject to a civil penalty of not more than \$50,000 and shall divest itself of any land acquired in violation of this section within one year

after judgment is entered in the action. The district courts of this state may prevent and restrain violations of this section through the issuance of an injunction. The attorney general or district or county attorney shall institute suits on behalf of the state to enforce the provisions of this section." (Emphasis added.)

As noted above, the situation which you posit involves the purchase by a corporation of the seller's interest in a contract for deed. Under such a contract, the seller retains legal title until the buyer completes his payments, with the buyer having an equitable interest which increases as he performs. This arrangement may be contrasted with the taking of a mortgage on realty, in which the buyer has legal title while the seller or lender retains an equitable interest (in the form of the mortgage) which decreases as payments are made. While in many respects these situations are two sides of the same coin, only in the case of a contract for deed is legal title retained by the seller, or, as here, the corporation.

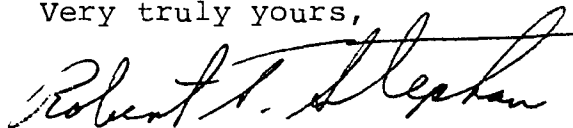
This distinction becomes important when the provisions of the statute are examined. Subsection (1) exempts bona fide encumbrances taken for purposes of security, which would clearly apply to mortgages held by a corporation. We are informed that the Iowa Attorney General's office recently concluded that this exemption (which also appears in their statutes at §172C.4(1), 1983 Code of Iowa) also extends to the retention of bare legal title in a contract for deed situation and that as a result possession of such title by a corporation would be permitted. Given the commonly understood meaning of the term "encumbrance", however, we cannot concur with this conclusion. According to Black's Law Dictionary, 4th ed. (1968), the term is defined (at page 908) as a charge or liability to which land is subject, such as a mortgage, lien, judgment, lease, covenant, easement or right of redemption. In each of these cases, legal title remains with the owner, with the encumbrances imposed by action of another. In this sense, land sold under a contract for deed is encumbered by the presence of the equitable interest of the purchaser, which would transfer with any sale of the legal title. Therefore, the vendor's interest, which a corporation would acquire, cannot be said to be an encumbrance, in that it constitutes the legal title itself, and not a charge or liability on the title.

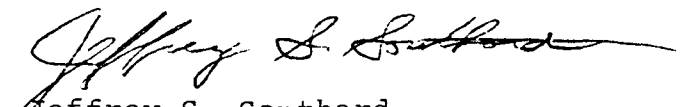
This is not to say, however, that there exist no circumstances under which a corporation could obtain title to land by acquiring rights under a contract for deed. For example, if a

corporation loaned money to an individual who had sold agricultural land under a contract for deed to another, the contract could be taken as security by the corporation for repayment of the loan. Should default occur, the corporation would acquire legal title under the contract for deed as well as the right to receive payments from the buyer. This would be a situation of the type posited by subsection (4) of K.S.A. 17-5904, since the interest would have been obtained through process of law in the collection of a debt or the enforcement of a lien. Should the buyer then default, the corporation would have full title, legal and equitable. In either event, it would thereafter have 10 years to dispose of its interest. [Note: We read the language of subsection (4) concerning contracts for deed as referring to situations where the corporation is the buyer, not the vendor, and thus inapplicable here.]

In conclusion, K.S.A. 17-5904 prohibits corporations from owning, acquiring or otherwise obtaining or leasing any agricultural land in Kansas, except as provided therein. While subsection (1) allows bona fide encumbrances to be taken by corporations for the purpose of security, such language refers to mortgages or other equitable interests, and does not include legal title retained by a vendor in a contract for deed and thereafter sold to a corporation. By contrast, a corporation could acquire agricultural land which is subject to a contract for deed under the provisions of subsection (4), through foreclosure on a vendor's interest which had been pledged as security for a separate loan. Accordingly, a corporation could not acquire legal title in agricultural land through a program of purchasing vendors' interests in contracts for deed.

Very truly yours,


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