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ATTORNEY GENERAL OPINION NO. 87- 59

The Honorable Keith Roe
State Representative, One Hundred Ninth District
State Capitol, Room 155-E
Topeka, Kansas 66612

Re: Corporations--Agricultural Corporations--
Definitions

Synopsis: To qualify as a family farming corporation, at least one stockholder must reside on the farm, or be actively engaged in the labor or management of the farming operation. A single shareholder who supplies the labor for the farming operation meets this requirement. There is no minimum percentage of stock which this person must own. In addition, the corporation may designate a bank incorporated under the laws of this state as a registered agent. Cited herein; K.S.A. 1986 Supp. 9-701; K.S.A. 9-1601; K.S.A. 1986 Supp. 17-5903; 17-5904; K.S.A. 17-6202(a).

* * *

Dear Representative Roe:

As State Representative for the One Hundred Ninth District, you have requested our opinion concerning family farm corporations. You give us the following set of facts and inquire whether the family farm corporation exception to K.S.A. 1986 Supp. 17-5904 is met by those facts:

"A family from Switzerland and a close friend who is a Kansas farmer wish to

establish a Kansas family farm corporation. The majority of the stockholders would be family members with a common ancestor within the third degree of relationship by blood, residing in Switzerland. One or two of these majority stockholders would be the officers of the corporation. The minority stockholder would be an unrelated natural person residing in Kansas and would also operate and supply the labor for the family farm."

"Family farm corporation" is defined in K.S.A. 1986 Supp. 17-5903(j). Such an entity is one exception to the general rule which prohibits ownership of agricultural land in this state by corporations. See generally, K.S.A. 1986 Supp. 17-5904. K.S.A. 1986 Supp. 17-5903(j) (1) requires that the corporation be founded for the purpose of farming and the ownership of agricultural land. That section further requires that the majority of voting stock of the corporation be held by, and that the majority of stockholders be, persons related to one another. The situation you present meets these requirements. Also met is the requirement of subsection (2) that all stockholders be natural persons.

The third requirement is found at K.S.A. 17-5904(j) (3) which provides that at least one stockholder must either reside on the farm or be actively engaged in the labor or management of the operation. You inquire whether a minority stockholder who is not a family member but who operates and supplies the labor for the farming operation would meet the requirement of subsection (j) (3). It is our opinion that a minority stockholder who supplies the labor meets this criteria. The statute provides no minimum percentage of stock that a person must own to perform this function, nor does it state that such person must be one of the family members.

In that we have found all requirements to be met, we need not consider whether the non-resident family members serving as officers of the corporation would qualify as "actively engaged in the management of the farming corporation."

You also inquire whether a trust department of a Kansas bank may function as a registered agent for a Kansas corporation. A domestic corporation may serve as registered agent for another corporation. K.S.A. 17-6202(a). For purposes of the Kansas Banking Code, a bank is defined as a state bank which is incorporated under the laws of Kansas. K.S.A. 1986

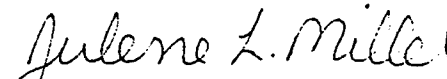
Supp. 9-701(a). A bank is authorized to be an agent for another person upon issuance of a permit by the commissioner of banking pursuant to K.S.A. 9-1601. If a bank incorporated under the laws of this state and authorized by K.S.A. 9-1601 agrees to act as a registered agent for another corporation, we perceive no barrier to the trust department of such bank performing the necessary functions of such agency.

In conclusion, it is our opinion that a person who owns a minority of shares in a family farming corporation and who supplies the labor for the operation satisfies the need for a shareholder to manage, operate, or furnish labor for the corporation. In addition, a corporation may designate a state bank as its registered agent as required by K.S.A. 17-6202.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



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