ATTONEY 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
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

Julene L. Miller
Deputy Attorney General

RTS:JLM:jm