ATTORNEY GENERAL OPINION NO. 88–53

The Honorable Rick Bowden
State Representative, Ninety-Third District
State Capitol, Room 281-W
Topeka, Kansas 66612

Re: Corporations -- Agricultural Corporations -- Definition of "Farming"; Hydroponic Vegetable Production


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Dear Representative Bowden:

As State Representative for the Ninety-Third District, you request our opinion concerning the corporate farming law. You inform us that Kansas Gas and Electric Company wishes to pursue hydroponic vegetable production on land currently owned by KG&E for industrial purposes. Hydroponics is the growing of plants in solution.

K.S.A. 1987 Supp. 17-5904(a) provides as follows:

"No corporation, trust, limited partnership or corporate partnership, other than a family farm corporation, authorized farm corporation, limited agricultural partnership, 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 statute then lists fourteen exceptions to the general  
prohibition. Pertinent to this opinion is the third exception:

"Agricultural land acquired by a  
corporation in such acreage as is  
necessary for the operation of a  
nonfarming business. Such land may not  
be used for farming except under lease to  
one or more natural persons, a family farm  
corporation, authorized farm corporation,  
family trust, authorized trust or  
testamentary trust. The corporation shall  
not engage, either directly or indirectly,  
in the farming operation and shall not  
receive any financial benefit, other than  
rent, from the farming operation." K.S.A.  
1987 Supp. 17-5904(a)(3). (Emphasis  
added).

"Agricultural land" is defined in the act as "land suitable  
for use in farming." K.S.A. 1987 Supp. 17-5903(g). The  
above exception provides that a corporation may own  
agricultural land if the land is not used for farming.

The question is whether hydroponic vegetable production  
constitutes "farming." The term is defined at K.S.A. 1987  
Supp. 17-5903(h) as follows:

"'Farming' means the cultivation of land  
for the production of agricultural crops,  
the raising of poultry, the production of  
eggs, the production of milk, the  
production of fruit or other horticultural  
crops, grazing or the production of  
livestock. Farming does not include the  
production of timber, forest products,  
nursery products or sod, and farming does  
not include a contract to provide  
spraying, harvesting or other farm  
services."

Vegetables are horticultural crops. Thus, the corporation's  
proposed method of producing vegetables would constitute
farming. Therefore, we must conclude that hydroponic vegetable production by a corporation would violate the corporate farming law.

Very truly yours,

ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS

Rita L. Noll
Assistant Attorney General

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