



STATE OF KANSAS

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April 8, 1988

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ATTORNEY GENERAL OPINION NO. 88- 54

The Honorable Barbara P. Allen
State Representative, Twenty-First District
State Capitol, Room 175-W
Topeka, Kansas 66612

Re: Corporations -- Agricultural Corporations --
Corporate Ownership of Agricultural Land;
Exemption; Change of Corporate Domicile

Synopsis: A corporation domiciled in a foreign country which
meets the requirements of K.S.A. 1987 Supp.
17-5904(a)(7)(B) will not forfeit its exemption
from the corporate farming law if the corporation
changes its domicile to the State of Delaware.
Cited herein: K.S.A. 17-5901; K.S.A. 1987 Supp.
17-5904.

* * *

Dear Representative Allen:

As State Representative for the Twenty-First District, you
have requested our interpretation of a provision contained in
K.S.A. 1987 Supp. 17-5904 concerning corporate ownership of
agricultural land.

K.S.A. 17-5901 et seq. establishes the ownership limits
and authorized uses of agricultural land in Kansas by a
corporation. K.S.A. 1987 Supp. 17-5904(a) provides:

"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."

Violators of the corporate farming law are subject to a civil penalty of not more than \$50,000 and must be divested of the land within one year of judgment. Actions to enforce the law may be brought in district court by the Attorney General or district or county attorney. K.S.A. 1987 Supp. 17-5904(b).

The act lists fourteen exceptions to the general prohibition against corporations holding an interest in agricultural land. Exception seven is pertinent to the issue presented in this opinion:

"Agricultural land owned or leased or held under a lease purchase agreement as described in K.S.A. 12-1741 and amendments thereto by a corporation, corporate partnership, limited corporate partnership or trust on the effective date of this act if . . . (B) any such entity was in compliance with the provisions of K.S.A. 17-5901 prior to its repeal by this act, provided such entity shall not own or lease any greater acreage of agricultural land than it owned or leased prior to the effective date of this act unless it is in compliance with the provisions of this act, and absence of evidence in the records of the county where such land is located of a judicial determination that such entity violated the provisions of K.S.A. 17-5901 shall constitute proof that the provisions of this act do not apply to such agricultural land, and that such entity was in compliance with the provisions of K.S.A. 17-5901 prior to its repeal. . . ." K.S.A. 1987 Supp. 17-5904(a)(7).

Thus, corporations may own or lease agricultural land if they held such land in compliance with the prior statute on July 1, 1981. Specifically, your inquiry is whether this grandfathering provision is forfeited if a corporation

domiciled in a foreign country which owns agricultural land in Kansas changes its domicile to the State of Delaware.

For purposes of this opinion we assume that the corporation in question meets the provisions of K.S.A. 1987 Supp. 17-5904(a)(7)(B) to qualify under the grandfathering exemption. The question is whether a new entity is created when a corporation changes its domicile. If so, the grandfathering exemption is lost and the corporation is prohibited from holding agricultural land.

In Consolidated Beef Industries, Inc. v. Schuyler, 239 Kan. 38, 40-41 (1986), the Kansas Supreme Court stated:

"The generally accepted rule is that a corporation's charter and the laws of its domicile govern with respect to the fact and duration of corporate existence and the rights and liabilities of its officers, stockholders, and directors."

In 20 C.J.S. Corporations § 1802, the general rule is stated as follows:

"Every corporation necessarily carries its charter wherever it goes, for that is the law of its existence.

"[I]t is held that a corporation's charter and the laws of its domicile govern with respect to the fact and duration of the existence of the corporation. . . ."


In the present situation, the foreign corporation is to be domiciled in the State of Delaware. Thus, we must examine Delaware law to determine corporate existence. Section 388 of the Delaware General Corporation Law concerns domestication of non-United States corporations. In pertinent part, the law provides:

"Upon filing with the Secretary of State of the certificate of domestication and certificate of incorporation, the corporation shall be domesticated in this State, and the corporation shall thereafter be subject to this title, except that notwithstanding § 106 of this title, the existence of the corporation

shall be deemed to have commenced on the date the corporation commenced its existence in the jurisdiction in which the corporation was first formed, incorporated or otherwise came into being." Del. Code Annot. (1986 Supp.), c. 8, § 388(d). (Emphasis added).

Under Delaware law, a new entity is not created when a foreign corporation domesticates in that state. The existence of the corporation in question will date back to its formation in the foreign country. Therefore, we must conclude that in the present situation the change of domicile will not affect the corporation's exemption from the corporate farming law under the grandfathering provision of K.S.A. 1987 Supp. 17-5904(a)(7).

Very truly yours,



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