



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 88- 113

The Honorable Bob Vancrum
State Representative, Twenty-Ninth District
9004 W. 104th Street
Overland Park, Kansas 66212

Re: Corporations--Agricultural Corporations--Contracts
for the Production of Swine

Synopsis: In light of 1988 legislative changes, production contracts that do not involve pork processors as defined by L. 1988, ch. 99., sec. 56 and that by statute do not result in the acquisition of agricultural land, do not violate the corporate farming act, K.S.A. 17-5902 et seq. Cited herein: K.S.A. 17-5902 et seq., as amended by L. 1988, ch. 99, §§ 53-56; K.S.A. 47-1501(c).

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Dear Representative Vancrum:

As Representative for the Twenty-Ninth District, you request our opinion regarding the corporate farming act, K.S.A. 17-5902 et seq., as amended by the 1988 legislature (L. 1988, ch. 99., sections 53-56). Specifically you inquire whether several types of production contracts violate the corporate farming act in light of 1988 legislative changes.

You indicate that a multi-state foreign corporation (incorporated in another state) desires to enter into several types of contracts for the production of hogs (swine) with one or more persons or entities authorized under the corporate

farming act to own or lease agricultural land in Kansas (hereinafter referred to as the "farmer"). You indicate further that these contracts are production contracts in that they are farming contracts entered into for the production of livestock. (See K.S.A. 1987 Supp. 17-5903(h), the definition of farming.) You also indicate that the contracts do not involve processors of pork as defined by L. 1988, ch. 99, sec. 53.

The contracts for the production of swine concern both the breeding of hogs and the raising of hogs for slaughter. The corporation desires to contract with one or more farmers in Kansas to produce hogs at two levels of production. The first level involves the production of hogs to be used by the corporation either to supply farmers with breeding stock for the second level of production or for slaughter. The corporation would then enter into the second level contracts with farmers in Kansas under which the corporation would sell to the farmer breeding stock produced at the first level to produce genetically unique breeding stock for sale to commercial hog producers.

Generally, the corporate farming act, K.S.A. 17-5902 et seq. and amendments, prohibits certain corporations from directly or indirectly, owning, acquiring or otherwise obtaining or leasing agricultural land in this state. K.S.A. 1987 Supp. 17-5904. With one exception (where pork processors are involved), the 1988 legislature has excepted production contracts from this prohibition. Exception 14(b) to K.S.A. 1987 Supp. 17-5904 found at L. 1988, ch. 99., sec. 56 states:

"Except as provided for in section 54, production contracts entered into by a corporation, trust, limited partnership or corporate partnership and a person engaged in farming for the production of agricultural products shall not be construed to mean the ownership, acquisition, obtainment or lease, either directly or indirectly, of any agricultural land in this state."

Thus, production contracts between certain corporate entities (a corporation, trust, limited partnership, or corporate partnership) and a person engaged in farming cannot be construed to violate the general prohibition against corporate entities owing or obtaining agricultural land, because, by statute, such a contract does not result in the owning or


obtaining of agricultural land by the corporate entity. While the legislature has not defined production contracts, we find the definition of farming adequate. Farming is defined by K.S.A. 1987 Supp. 17-5903(h) as "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." (Emphasis added). See K.S.A. 47-1501(c), livestock includes swine. See also T-Bone Feeders, Inc. v. Martin, 236 Kan. 641, 649 (1985) a feedlot operation is not a farming or ranching operation. We note that we are dealing not with a feedlot operation but with a farming production contract, cultivation of land for the production of livestock. See Farmers Co-Op v. Kansas Board of Tax Appeals, 236 Kan. 632, 640 (1985).

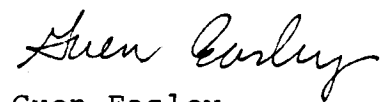
We therefore do not hesitate to opine that the production contracts in question do not violate the corporate farming act. In our judgment, the specifics within each of the different types of contracts you present do not change the general nature of the contracts as production contracts. In all instances, in spite of the transfer of ownership of the hogs between the corporate entity and the farmer at various levels, the contracts remain production contracts where the farmer contracts to produce livestock, an agricultural product.

We note that there is an exception in subsection 14(b) (L. 1988, ch. 99. sec. 56), i.e. "[e]xcept as provided in Section 54." Section 54 is part of and supplemental to the provisions of K.S.A. 17-5902 through 17-5904 and amendments and involves contracts with pork processors. Since you have indicated in your facts that the contracts in question do not involve any processor of pork, we do not need to address whether the contracts in question violate section 54.

In conclusion, it is our opinion that in light of the 1988 legislative changes, production contracts that do not involve pork processors as defined by L. 1988, ch. 99. sec. 56 and that by statute do not result in the acquisition of agricultural land, do not violate the corporate farming act, K.S.A. 1987 Supp. 17-5902 et seq.

Very truly yours,


ROBERT T. STEPHAN
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Guen Easley
Assistant Attorney General