



STATE OF KANSAS

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ATTORNEY GENERAL OPINION 88-170

Linda S. Trigg
Seward County Attorney
415 North Washington
Liberal, Kansas 67901

Re: Corporations--Agricultural Corporations--
Limitations; Nonfarming Business Exception

Synopsis: Exception number three exempts farmland acquired by a corporation in the acreage as is necessary for the operation of a nonfarming business from the general prohibition against corporate ownership of agricultural land found in K.S.A. 1987 Supp. 17-5904(a). For reasons discussed herein, the acquisition of the land in question is not essential to Hancock's business of lending and finance and thus cannot be acquired under this exemption. Cited herein: K.S.A. 1987 Supp. 17-5904, as amended by L. 1988, ch. 99, §56.

* * *

Dear Ms. Trigg:

As Seward County Attorney you request our opinion regarding exception number three to the general prohibition against the corporate ownership of farmland found at K.S.A. 1987 Supp. 17-5904, as amended by L. 1988, ch. 99, §56. Specifically, you inquire whether agricultural land to be purchased under the nonfarming business exception must be essential to a corporation's nonfarming business.

You indicate that the John Hancock Corporation (Hancock) acquired farmland through foreclosure and wants to purchase the adjacent property in order to enhance the value and marketability of the real estate it presently owns. You further state that the corporation in question is not in the business of farming, will not farm this land and will only collect rent.

As you succinctly state, exception number three exempts farmland acquired by a corporation in the operation of a nonfarming business, so long as the corporation does not directly or indirectly farm the land. However, because the language of the statutory exception is limited to "[a]gricultural land acquired by a corporation in such acreage as is necessary for the operation of a nonfarming business" (emphasis added), you question whether the land must be essential for the operation of Hancock's nonfarming business of lending and finance in order for the corporation to qualify under this exception.

The general prohibition against certain corporate ownership of farmland is found at K.S.A. 1987 Supp. 17-5904, as amended and states:

"(a) 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 restrictions provided in this section do not apply to the following:

. . . .

"(3) 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."

Given no case law interpreting the exception, we find guidance in statutory construction. A fundamental rule of statutory construction is that the purpose and intent of the legislature governs when the intent can be ascertained from both the statute and general consideration of the entire act. State v. Adee, 241 Kan. 825 (1987). Statutes are to be construed in the context of the purpose to be accomplished by the act. State v. Phifer, 241 Kan. 233 (1987); State ex rel., Stephan v. Brotherhood Bank and Trust Co., 8 Kan. App.2d 57 (1987).

The act expressly limits the ownership of agricultural land to certain corporate entities. Corporations being creatures of statute can also be limited in the scope and nature of the business in which they engage. While the exception in question allows corporations to own land acquired for a nonfarming use, it limits the acquisition of land to that necessary to the operation of the nonfarming business. Moreover, examining the historical background of the act we find that K.S.A. 17-5901(a) (repealed in 1981) prohibited all but certain corporations from "engag[ing] in . . . agricultural or horticulture business." Clearly, the repeal of K.S.A. 17-5901(a) supports the contention that the overall purpose of the act is to broadly limit the corporate ownership of agricultural land rather than to narrowly prohibit certain corporations from engaging in farming.

Thus, in conclusion, it is our opinion that exception number three, that exempts the acquisition of farmland from the prohibition against certain corporate ownership of farmland, requires that the acquisition of the land be essential to the nonfarming business. As such, because acquisition of the land in question is not essential to Hancock's business of finance and lending, the corporation cannot acquire such land under this exception.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Guen Easley
Assistant Attorney General