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ATTORNEY GENERAL OPINION NO. 91- 133

The Honorable Carol H. Sader
State Representative, Twenty-Second District
8612 Linden Drive
Shawnee Mission, Kansas 66207

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

Synopsis: A limited liability agricultural company is not subject to the prohibition against the corporate ownership of farmland found in K.S.A. 17-5904, as amended. In order to qualify as a limited liability agricultural company the definitional requirements in K.S.A. 17-5903, as amended must be met. While the proposed structure described herein appears to meet all the definitional requirements, the facts as presented do not indicate whether the requirement of control of the operation is sufficiently met. For this reason our conclusion is qualified. Cited herein: K.S.A. 17-5902 et seq.; K.S.A. 17-5903 and 17-5904, as amended by L. 1991, ch. 76, §§ 9 and 10; K.S.A. 1990 Supp. 17-7601 et seq.

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Dear Representative Sader:

As state representative for the twenty-second district you inquire whether a proposed structure (as described below) satisfies the requirements for a limited liability agricultural company, thereby exempting it from the prohibition against corporate ownership of agricultural land

imposed by K.S.A. 17-5904, as amended by L. 1991, ch. 76, sec. 10.

Generally a limited liability company is one organized and existing under the Kansas limited liability company act found at K.S.A. 1990 Supp. 17-7601 et seq. The corporate farming act K.S.A. 17-5902 et seq., as amended, defines a limited liability agricultural company as:

"[A] limited liability company founded for the purpose of farming and ownership of agricultural land in which:

"(1) The members do not exceed 10 in number;

(2) the members are all natural persons, persons acting in a fiduciary capacity for the benefit of natural persons or nonprofit corporations, or general partnerships other than corporate partnerships formed under the laws of the state of Kansas; and

"(3) at least one of the members is a person residing on the farm or actively engaged in the labor or management of the farming operation. If only one member is meeting the requirement of this provision and such member dies, the requirement of this provision does not apply for the period of time that the member's estate is being administered in any district court in Kansas." L. 1991, ch. 76, § 9(u).

We must determine whether the proposed structure meets the requirements listed above. The company will consist of a group of six or seven natural persons who propose to purchase land in Kansas and enter into a production contract with a farm cooperative that owns hogs. The company proposes to manage a swine breeding facility for the production of hogs and control both fundamental and day-to-day operations of the facility.

The facts as presented appear to meet the three requirements in subsection (u) defining a limited liability agricultural company. The only question remaining is whether the proposed activity of the company constitutes farming. The company

proposes to manage and control a swine breeding facility for the production of hogs. Farming is defined in subsection (h) of K.S.A. 17-5903, as amended by L. 1991, ch. 76, sec. 9 as:

"[T]he 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." (Emphasis added.)

Most pertinently farming is defined as the production of livestock. Thus, our question turns upon whether the operation in question constitutes the "production of livestock." Because the terms are not defined in the corporate farming act, we must interpret them to give them the effect intended by the legislature. State, ex rel., v. Unified School District, 218 Kan. 47 (1975). A well recognized rule for determining legislative intent is that identical words or terms used in different statutes on a specific subject are interpreted to have the same meaning in the absence of anything to indicate a different meaning was intended. Farmers Co-op v. Kansas Bd. of Appeals, 236 Kan. 632 (1975), citing Callaway v. City of Overland Park, 211 Kan. 646 (1973) (emphasis added).

Identical words appear in the public livestock market act (K.S.A. 47-1001 et seq.) dealing with the specific subject of producing livestock. Since there is no indication that the legislature intended a producer of livestock to be different than a producer in the corporate farming act we look to the definition contained therein. A "producer" is defined as any person engaged in the business of breeding, grazing or feeding livestock. The operation in question will be in the business of breeding, within the definition of producing livestock. The company will thus be engaged in farming in that it will be producing livestock.

Thus, the proposed structure appears to meet all of the definitional requirements. We note, however, that the farming operation of a limited liability agricultural company must

include at least one member of the company who resides on the farm or actively engages in the labor or management of the farming operation, see definitional requirements above, specifically (A)(3). As presented the facts do not indicate whether sufficient control will exist because the amount of control will be determined by the contract between the owners of the hogs and the company that proposes to breed them. The question of control is however a factual one and for this reason is not addressed in our opinion but qualifies our conclusion.

In conclusion a limited liability agricultural company is not subject to the prohibition against the corporate ownership of farmland found in K.S.A. 17-5904, as amended. In order to qualify as a limited liability agricultural company the definitional requirements in K.S.A. 17-5903 as amended by L. 1991, ch. 76, § 9 must be met. With one factual qualification the proposed structure described herein appears to meet the definitional requirements.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Guen Easley
Assistant Attorney General