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ATTORNEY GENERAL OPINION NO. 92- 35

The Honorable Janis K. Lee
State Senator, Fifty-Sixth District
State Capitol, Room 402-S
Topeka, Kansas 66612

Re: Corporations--Agricultural Corporations--
Limitations; Exceptions, Penalties

Synopsis: K.S.A. 1991 Supp. 17-5904(a)(10) of the corporate farming act allows the corporate acquisition of farmland if the land will be used for bona fide research or scientific or experimental farming. The facts as presented herein come within this exception. Cited herein: K.S.A. 1991 Supp. 17-5904.

* * *

Dear Senator Lee:

As senator for the thirty-sixth district you inquire whether the following facts warrant application of exception number 10 to the prohibition against the corporate ownership of farmland found in K.S.A. 1991 Supp. 17-5904(a). Exception number 10 allows a corporation to acquire agricultural land if the land is to be used for bona fide research or scientific or experimental farming. You indicate that Osborne Industries Inc. (Osborne) proposes to establish a research farm for the following purposes:

"(i) to demonstrate and test some advanced electronic methods of livestock management that have not been demonstrated and tested

except on a few farms in Europe, (ii) to conduct research on other new products that have not been studied owing to the difficulty and the potential disease-spreading liability involved with using independently owned farms, and (iii) to educate the public. The Osborne Research Farm will be available to, and will cooperate with, regional universities which desire to extend their courses of study in agriculture to include research projects conducted at the farm. In addition, the Osborne Research Farm will be fully equipped with a closed-circuit television which will allow visitors, young and old, to view and experience the full gamut of the farm's operations from one convenient location.

"The Osborne Research Farm will be comprised of approximately 10 buildings and state-of-the-art three-stage waste management system located on an approximately 40 acre tract of land in Osborne County, Kansas. The research will be conducted by testing new methods and products on a medium-sized herd of hogs. The herd will be divided into the following two groups, each comprised of approximately 500 sows and 75 boars: (i) a test group on which experimental methods and products will be tested and, (ii) a control group on which conventional methods and products will be used. The results obtained with each group will then be compared to determine the degree of success or failure of each method or product. Offspring produced during the course of operations of the Osborne Research Farm will be fed at the farm and sold for slaughter. No hogs will be bred for sale prior to feeding and slaughter, nor will hogs be bred for sale to farmers as breeding stock (seed stock)."

Whether these facts constitute bona fide educational research or scientific or experimental farming for the purpose of allowing the acquisition of farmland depends on how the terms

are defined. Not otherwise defined by the act, words and phrases used in a statute should be construed according to context and the approved usage of the language. Words in common use are to be given their natural and ordinary meaning. State ex rel. Stephan v. Kansas Racing Commission, 246 Kan. 708, 719 (1990).

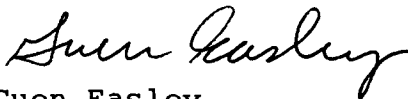
An experiment is defined commonly as a test made to demonstrate a known truth, to examine the validity of a hypotheses, or to determine the efficacy of something previously untried. The American Heritage Dictionary of the English Language 462 (1978). The experimental farming described above comes within this definition. See Humane Society of United States v. E.P.A., 790 F.2d 106 (D.C. Cir. 1986) (a broad and simple definition of experimentation favored for the purpose of qualifying for an experimental use permit for a pesticide).

In conclusion it is our opinion that the facts a presented come within exception number 10 and thereby allow the corporate acquisition of farmland.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



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Assistant Attorney General

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