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ATTORNEY GENERAL OPINION NO. 92- 115

The Honorable Alex Scott  
State Representative, Sixty-Fifth District  
835 West Fifth  
Junction City, Kansas 66441-3219

Re: Corporations--Agricultural Corporations--  
Limitations; Exceptions; Penalties; Production  
Contract Requirements

Synopsis: Corporations with production contracts that do not involve pork processors are exempt from the proscription against corporate ownership of farmland found at K.S.A. 1991 Supp. 17-5904. In order to qualify under this exemption a corporation must enter into a contract with a person engaged in farming for the production of agricultural products that are the subject of the production contract with the corporation. Cited herein: K.S.A. 1991 Supp. 17-5904; K.S.A. 17-5905.

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Dear Representative Scott:

As representative for the sixty-fifth district you inquire whether a production contract under the following facts comes within the exemption contained in subsection (b) of K.S.A. 1991 Supp. 17-5904.

You indicate that a multi-state foreign corporation (incorporated in another state) desires to contract for the production of hogs in Kansas with certain farmers actively engaged in farming operations. The corporation owns what it

believes to be genetically superior breeding stock, and it has further developed animal husbandry programs and management techniques for the large scale, low cost production of hogs.

The corporation will help with the financing of a large scale facility to be built and owned by the farmer. The farmer will have the option of contracting with the corporation for technical support on increasing production in accordance with the programs and techniques developed by the corporation. On the other hand, the farmer, at his option, could manage and operate the facility himself, as provided in the production contract. In either case, the farmer would be required to furnish all necessary labor and no personnel from the corporation would be employed in the facility.

Some of the farmers may be involved in only farrowing operations and nursery operations. There would be a number that would additionally or separately be involved in finishing floors or facilities for the feeding out of the pigs to market weight. All of the hogs produced by the farmer pursuant to the production agreements would either be fed out for sale to slaughter by the corporation or would be transferred as breeding stock to other facilities with which the corporation has a production agreement. The production contracts would contain a prohibition against entry of any hogs into the farmer's facility except hogs furnished by the corporation. Because of the great degree of specialization and technical nature of this business, contracts would detail specific requirements to protect the health and breeding of the hogs as well as specific records to be maintained with respect to hog production, health and the like.

Your question is whether the facts stated above come within subsection (b) of K.S.A. 1991 Supp. 17-5904. Generally, the corporate farming act, K.S.A. 17-5902 et seq., prohibits certain corporations from directly or indirectly, owning, acquiring or otherwise obtaining or leasing agricultural land in this state. K.S.A. 1991 Supp. 17-5904. With one exception found at K.S.A. 17-5905 (where pork processors are involved), the 1988 legislature excepted production contracts from this prohibition. L. 1988, ch. 99, sec. 56. Subsection (b), dealing with production contracts, states:

"(b) Except as provided for in K.S.A. 17-5905, and amendments thereto, production contracts entered into by a corporation, trust, limited liability company, 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."

The statute dictates that production contracts, as specified, shall not be construed to mean ownership in land. Thus at issue is whether the facts indicate that the corporation is contracting with a person "engaged in farming for the production of agricultural products." The questions of how farming is defined in this act and whether the production of hogs is the production of livestock have been addressed in Attorney General Opinion No. 91-133. The analysis that finds that the production of hogs is the production of livestock is hereby incorporated by reference. A person engaged in the production of hogs is engaged in producing livestock and thus the facts meet the first requisite "engaged in farming."

The next requisite is that the farming must be "for the production of agricultural products." We must determine whether this requirement necessitates that the farmer with whom the corporation contracts, be engaged in the production of the agricultural product that is the subject of the contract, thereby having a significant tie to the land being used by the corporation. In other words, for purposes of this exemption does the farmer have to be engaged in producing hogs and not just engaged in farming generally. The following rules of construction aid our analysis: where the interpretation of a statute is a question of law, the statute must be interpreted to give it the effect intended by the legislature, State, ex rel., v. Unified School District, 218 Kan. 47 (1975); when the intent can be ascertained from the statute, that intent of the legislature governs, Szobozlay v. Glessner, 233 Kan. 475 (1984); words in common usage are to be given their ordinary meaning in arriving at a proper construction of the statute, Stephens v. Van Arsale, 227 Kan. 676 (1980); when a statute is susceptible to more than one construction, it must be construed to give expression to the legislature's intent and purpose, though such construction is not within the strict literal interpretation of the statute, In re Birdsong, 216 Kan. 297 (1975).

If the legislature intended for subsection (b) to apply whenever a corporation contracts with a farmer who is not involved in the production that is the subject of the

contract, then first the legislature would not have needed to define the farmer as one engaged in the production of the agricultural products and more critically, the argument contravenes the intent and purpose of the prohibition, that by not owning agricultural land corporations will not engage in farming. See K.S.A. 1991 Supp. 17-5904 subsection (a)(3), specifically, and generally (a)(2), (a)(4), (a)(6), (a)(9). Taken to its logical conclusion this argument would allow a corporation to in effect contract with a farmer for the use of a farmer's land. In our judgment, this conclusion clearly contradicts the intent and purpose of the act.

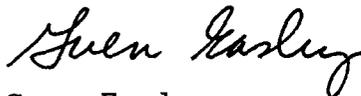
Under the facts presented the farmer will be involved in a farrow to finish operation. Both the farrowing operation that involves giving birth to litters of piglets and the nursery operation that involves weaning and raising the pigs are the production of livestock. While it is questionable whether the finishing operation is the production of livestock see T-Bone Feeders, Inc. v. Martin, 236 Kan. 632, 648 (distinguishing a feedlot from farming in definitions found at K.S.A. 17-5903), added to the other two operations the farmer is engaged in producing livestock and thus is engaged in producing what is the subject of the production contract in question.

In conclusion it is our opinion that K.S.A. 1991 Supp. 17-5904(b), which exempts certain production contracts from the prohibition against corporate ownership of farmland, requires that the farmer be engaged in the production of the agricultural product that is the subject of the production contract with the corporation. The facts stated herein come within this exemption.

Very truly yours,



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Guen Easley  
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