



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

April 5, 1978

ATTORNEY GENERAL OPINION NO. 78- 145

Mr. Gary L. Flory
County Counselor
Post Office Box 1103
McPherson, Kansas 67460

Re: Counties--Zoning--Livestock Feedlots

Synopsis: A county may not enforce its zoning regulations against commercial livestock operations.

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Dear Mr. Flory:

As county counselor of McPherson County, Kansas, you request my opinion whether the board of county commissioners has the authority to enforce county zoning regulations against commercial livestock feedlots.

K.S.A. 19-2927 *et seq.* authorize the county to adopt zoning regulations. K.S.A. 19-2929 provides that "[n]o regulation shall apply to the use of land for agricultural purposes." In *Fields v. Anderson Cattle Co.*, 193 Kan. 558, 396 P.2d 276 (1964), the court considered this precise question, whether "the operation of livestock feedlots [is] an industrial or an agricultural enterprise," and concluded that commercial livestock feedlots in that case, involving up to 15,000 head of cattle and 12,000 head of sheep, were agricultural pursuits, and not industrial operations. As such, they were held exempt from the county zoning regulations. In *Brookover Feed Yards, Inc. v. Carlton*, 213 Kan. 684, 518 P.2d 470 (1974), the court held that the employees of a corporation operating a commercial feedlot were exempt from coverage under the Employment Security Law, K.S.A. 44-701, as "agricultural labor."

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Thus, I must concur with your conclusion, that commercial live-stock feedlots constitute an agricultural use, against which county zoning regulations may not be applied. There are obvious reasons to argue with this conclusion, certainly. Under K.S.A. 19-2927, county zoning regulations are authorized

"[f]or the purpose of promoting the public health, safety, morals, comfort, general welfare, and conserving and protecting property and building values throughout the county"

A large commercial feedlot may pose precisely the same need for regulation as any commercial industrial use, in order to promote orderly county planning, to conserve and protect property and building values, and to promote the public health and general comfort and welfare. Nonetheless for so long as the Kansas Supreme Court adheres to the cited decision in *Fields*, the question must be regarded as settled.

I should point out that cities may regulate certain commercial feedlots which are located within the three mile limit of its territorial zoning powers. K.S.A. 12-715 provides in pertinent part thus:

"Any city shall be authorized to adopt zoning regulations affecting land located outside the city but within three (3) miles thereof under the following conditions, except that nothing in this act shall be construed as authorizing any city to adopt regulations applying to or affecting any land in excess of three (3) acres under one ownership which is used only for agricultural purposes. . . ."

K.S.A. 47-1501 *et seq.* requires the licensing of certain livestock feedlots, including those with more than one thousand head of livestock at one time during the license year. K.S.A 47-1502 states thus:

"Feeding of livestock, and animal husbandry, for the purpose of this act shall be considered

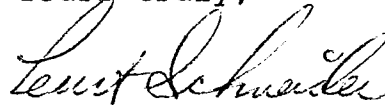
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to be, and shall be construed to be, an agricultural pursuit: *Provided*, Such agricultural pursuit may be subject to any city zoning provisions created under the laws of Kansas or any subdivision thereof."

It is not at all clear to what the phrase "any subdivision thereof" refers. Given the express reference to "city zoning provisions," presumptively, county zoning regulations are not included hereunder.

Certainly, licensed livestock feedlots may be subject to city zoning, but so far as appears, they are not subject to county zoning ordinance. Thus, as stated above, I am constrained to concur fully in your opinion on the question, that livestock feedlots are not subject to the zoning regulations adopted by the board of county commissioners.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj