



STATE OF KANSAS

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July 9, 1984

ATTORNEY GENERAL OPINION NO. 84- 65

The Honorable Leroy A. Hayden
Senator, Thirty-Ninth District
P.O. Box 458
Satanta, Kansas 67870

Re: Corporations -- Agricultural Corporations -- Corporate
Ownership of Agricultural Land; Prohibited Practices

Synopsis: Corporate ownership of agricultural land in Kansas is prohibited except as allowed by the provisions of K.S.A. 17-5904. Any arrangement whereby a landowner transfers title to his property to a corporation or partnership made up of the landowner and a foreign corporation would be outside any of the permitted exceptions contained in the statute, and would accordingly be illegal. Cited herein: K.S.A. 1983 Supp. 17-5903, K.S.A. 17-5904.

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Dear Senator Hayden:

As State Senator for the Thirty-Ninth District, which encompasses much of the southwestern part of Kansas, you request our opinion concerning the corporate farming act, K.S.A. 17-5901 et seq. Specifically, you request our opinion on the legality of an arrangement by which a landowner who is currently farming land transfers the assets of the business to a new entity which is made up of the landowner and a foreign corporation which provides the financing. Although you do not say whether the new entity created is a partnership or a corporation, for the purposes of this analysis such a distinction is irrelevant. In

either case, the new entity is jointly owned and controlled by the former landowner and the foreign corporation, which we understand to be a Texas-based company called First Financial Guarantee Corporation.

K.S.A. 17-5904 was enacted in 1981 (ch. 106, §2) as part of an overhaul of statutes dealing with corporate farming and corporate ownership of agricultural land. In pertinent part, the statute states as follows:

"(a) No corporation, trust, limited corporate partnership or corporate partnership, other than a family farm corporation, authorized farm corporation, 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:

"(1) A bona fide encumbrance taken for purposes of security.

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"(4) Agricultural land acquired by a corporation by process of law in the collection of debts, or pursuant to a contract for deed executed prior to the effective date of this act, or by any procedure for the enforcement of a lien or claim thereon, whether created by mortgage or otherwise, if such corporation divests itself of any such agricultural land within 10 years after such process of law, contract or procedure.

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"(b) Any corporation, trust, limited corporate partnership or corporate partnership, other than a family farm corporation, authorized farm corporation, family trust, authorized trust or testamentary trust, violating the provisions of this section shall be subject to a civil penalty of not more than \$50,000 and shall divest itself of any land acquired in violation of this section within one year after judgment is entered in the action."
(Emphasis added.)

Each one of the entities mentioned in subsection (a) of the statute which are prohibited from owning agricultural land (corporation, trust, limited corporate partnership or corporate partnership) is defined at K.S.A. 1983 Supp. 17-5903, as are those entities which may so act (family farm corporation, authorized farm corporation, family trust, authorized trust or testamentary trust). From the language of each of the definitions, none of the exceptions apply in the situation you posit. In the case of family farm corporations and authorized farm corporations, all stockholders must be either natural persons or, if not, then acting in a fiduciary capacity for natural persons. K.S.A. 1983 Supp. 17-5903(i)(2), (j)(2). The same distinction is made in the case of family trusts and authorized trusts, although it is the beneficiaries, rather than the stockholders, who would be "natural" (i.e. non-corporate) persons. K.S.A. 1983 Supp. 17-5903(1)(2), (m)(2).

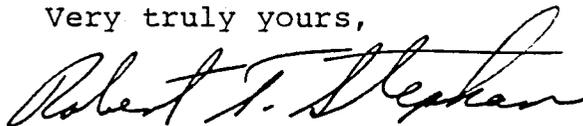
Instead, the entity which would be created through the agreement between the landowner and the finance company would, of necessity, be either a corporation, a limited corporate partnership or a corporate partnership, all of which are precluded from ownership of agricultural land except under the enumerated exceptions in K.S.A. 17-5904(a). For the purposes of this prohibition, we note that it is irrelevant whether a corporation is a domestic or foreign one, or whether it has been authorized to do business in Kansas.

In examining the thirteen exceptions to the general prohibition against corporate ownership of agricultural land, we can find none which would sanction the type of situation outlined above, where a corporation sets up another entity in cooperation with a landowner. While the practical effect of such an arrangement protects the investment made by the corporation in the enterprise, it cannot in any way be classed as a mere encumbrance [subparagraph (1)] or a procedure for the enforcement of a lien or claim [subparagraph (4)]; While subsection (12) allows agricultural land to be owned by corporate partnerships or limited corporate partnerships, this grant is qualified by the requirement that all partners must be natural persons or one of the authorized corporate entities under K.S.A. 1983 Supp. 17-5903. Further, while a "grandfather" clause does exist at subsection (7), its effect goes to agricultural land which is owned by a corporation or other prohibited entity "on the effective date of this act" which was July 1, 1981. Clearly, any such arrangement which only now is being contemplated cannot come within the scope of this saving clause, and, if actually made, would be subject to the civil penalty in K.S.A. 17-5904(b) of up to \$50,000 and dissolution within a year after the court's judgment was entered in the case.

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Therefore, it is our opinion that corporate ownership of agricultural land in Kansas is prohibited except as allowed by the provisions of K.S.A. 17-5904. Any arrangement whereby a landowner and a foreign corporation would be outside any of the permitted exceptions contained in the statute, and would accordingly be illegal.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard
Deputy Attorney General

RTS:JSS:crw