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February 24, 1987

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ATTORNEY GENERAL OPINION NO. 87- 35

The Honorable Susan Roenbaugh
State Representative
One Hundred Fourteenth District
State Capitol, Room 170-W
Topeka, Kansas 66612

Re: Constitution of the State of Kansas--Finance and
Taxation--Exemption of Property for Economic
Development Purposes

Corporations--Agricultural Corporations--Swine and
Poultry Confinement Facilities

Synopsis: The passage of 1987 House Bill No. 2076, a proposed amendment to the corporate farming law, would not serve to make swine and poultry confinement facilities eligible for property tax exemptions pursuant to Article 11, Section 13 of the Kansas Constitution. Cited herein: K.S.A. 1986 Supp. 17-5904; K.S.A. 84-9-109; Kan. Const., Art. 11, §13; 1987 House Bill No. 2076.

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Dear Representative Roenbaugh:

As Representative for the One Hundred Fourteenth District, you have requested our opinion concerning Article 11, Section 13 of the Kansas Constitution and its relation to 1987 House Bill No. 2076. Specifically, you question whether swine and poultry confinement facilities, if exempted from the proscription on corporate farming, would be eligible for a tax

abatement pursuant to Article 11, Section 13 of the Kansas Constitution.

Kansas' corporate farming law provides that "[n]o corporation, trust, limited partnership or corporate partnership, other than a family farm corporation, authorized farm corporation, limited agricultural partnership, 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." K.S.A. 1986 Supp. 17-5904(a). 1987 House Bill No. 2076, if passed, would exempt swine confinement facilities and poultry confinement facilities from this general proscription. 1987 House Bill No. 2076, §2(a)(8). "Swine confinement facility" and "poultry confinement facility" are defined in Section 1 of the bill as follows:

"(p) 'Swine confinement facility' means the structures and related equipment used for housing, breeding, farrowing or feeding of swine in an enclosed environment. The term includes within its meaning only such agricultural land as is necessary for proper disposal of liquid and solid wastes and for isolation of the facility to reasonably protect the confined animals from exposure to disease.

"(q) 'Poultry confinement facility' means the structures and related equipment used for housing, breeding, laying of eggs or feeding of poultry in a restricted environment. The term includes within its meaning only such agricultural land as is necessary for proper disposal of liquid and solid wastes and for isolation of the facility to reasonably protect the confined poultry from exposure to disease. As used in this subsection, 'poultry' means chickens, turkeys, ducks, geese or other fowl."

Thus, if passed, 1987 House Bill No. 2076 would allow certain corporate hog and poultry operations to do business in Kansas.

Article 11, Section 13(a) of the Constitution of the State of Kansas provides as follows:

"The board of county commissioners of any county or the governing body of any city may, by resolution or ordinance, as the case requires, exempt from all ad valorem taxation all or any portion of the appraised valuation of: (1) All buildings, together with the land upon which such buildings are located, and all tangible personal property associated therewith used exclusively by a business for the purpose of: (A) Manufacturing articles of commerce; (B) conducting research and development; or (C) storing goods or commodities which are sold or traded in interstate commerce, which commences operations after the date on which this amendment is approved by the electors of this state; or (2) all buildings, or added improvements to buildings constructed after the date on which this amendment is approved by the electors of this state, together with the land upon which such buildings or added improvements are located, and all tangible personal property purchased after such date and associated therewith, used exclusively for the purpose of: (A) Manufacturing articles of commerce; (B) conducting research and development; or (C) storing goods or commodities which are sold or traded in interstate commerce, which is necessary to facilitate the expansion of any such existing business, if as a result of such expansion, new employment is created."

The question to be determined is whether swine and poultry confinement facilities manufacture articles of commerce, conduct research and development, or store goods or commodities which are sold or traded in interstate commerce.

It is clear that such operations do not conduct research and development. It is equally clear, in our opinion, that the corporate swine and poultry confinement facilities to be authorized by 1987 House Bill No. 2076 do not manufacture articles of commerce. In general, a constitutional provision "is not to be narrowly or technically construed, but its language 'should be held to mean what the words imply to the

common understanding of men,'" and "in ascertaining the meaning of constitutional provisions courts should consider what appears to have been the intent and understanding of the people at their adoption." State v. Highwood Service, Inc., 205 Kan. 821, 825, 826 (1970), citing Higgins v. Cardinal Manufacturing Co., 188 Kan. 11 (1961). Thus, words used in constitutional provisions should be given their ordinary meanings. However, constitutional and statutory provisions exempting property from taxation are to be strictly construed and all doubts resolved against the exemption. Thus, the property to be exempted must clearly be of the type contemplated by the exempting provision and the burden of establishing exemption from taxation is on the one claiming it. Topeka Presbyterian Manor v. Board of County Commissioners, 195 Kan. 90, 93, 94 (1965).

Black's Law Dictionary 869 (5th ed. 1979) defines "manufacture" in verb form as follows:

"From Latin words manus and factura, literally, put together by hand. Now it means the process of making products by hand or machinery. United States v. Anderson, D.C. Cal., 45 F.Supp. 943, 946. Meaning of word 'manufacture,' which is defined as the making of goods or wares by manual labor or by machinery, especially on a large scale, has expanded as workmanship and art have advanced, so that now nearly all artificial products of human industry, nearly all such materials as have acquired changed conditions or new and specific combinations, whether from the direct action of the human hand, from chemical processes devised and directed by human skill, or by the employment of machinery, are commonly designated as 'manufactured.'"

The noun "manufacture" is defined as:

"The process or operation of making goods or any material produced by hand, by machinery or by other agency; anything made from raw materials by the hand, by machinery, or by art. The production of articles for use from raw or prepared materials by giving such materials new

forms, qualities, properties or combinations, whether by hand labor or machine. Cain's Coffee Co. v. City of Muskogee, 171 Okl. 635, 44 P.2d 50, 52.

"In patent law, any useful product made directly by human labor, or by the aid of machinery directed and controlled by human power, and either from raw materials, or from materials worked up into a new form. Also the process by which such products are made or fashioned."

In view of these definitions and the construction rules espoused above, it is our opinion that neither the housing, breeding, farrowing or feeding of swine, nor the housing, breeding, laying of eggs or feeding of poultry would be considered as "manufacturing" articles of commerce.

The question of whether swine and poultry containment facilities store goods or commodities which are sold or traded in commerce is more difficult to answer. It appears that this language is intended to reach inventory held for imminent sale. The definitions of goods and inventory in the Uniform Commercial Code (UCC), K.S.A. 84-1-101 et seq., may therefore be of assistance in determining whether swine and poultry are considered as inventory while in the possession of a containment facility. K.S.A. 84-9-109 provides that:

"Goods are

. . . .

"(3) 'farm products' if they are crops or livestock or supplies used or produced in farming operations or if they are products of crops or livestock in their unmanufactured states (such as ginned cotton, wool-clip, maple syrup, milk and eggs), and if they are in the possession of a debtor engaged in raising, fattening, grazing or other farming operations. If goods are farm products they are neither equipment nor inventory;

"(4) 'inventory' if they are held by a person who holds them for sale or lease or to be furnished under contracts of service

or if he has so furnished them, or if they are raw materials, work in process or materials used or consumed in a business. Inventory of a person is not to be classified as his equipment."

The Official UCC Comment provides further insight into these definitions:

"2. The classes of goods are mutually exclusive; . . . the principal use to which the property is put should be considered as determinative.

. . . .

"3. The principal test to determine whether goods are inventory is that they are held for immediate or ultimate sale. Implicit in the definition is the criterion that the prospective sale is in the ordinary course of business.

. . . .

"4. Goods are 'farm products' only if they are in the possession of a debtor engaged in farming operations. Animals in a herd of livestock are covered whether they are acquired by purchase or result from natural increase. Products of crops or livestock remain farm products so long as they are in the possession of a debtor engaged in farming operations and have not been subjected to a manufacturing process. . . . '[F]arming operations' includes raising livestock as well as crops; similarly, since eggs are products of livestock, livestock includes fowl.

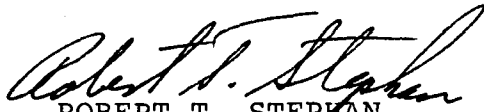
"When crops or livestock or their products come into the possession of a person not engaged in farming operations they cease to be 'farm products.' If they come into the possession of a marketing agency for sale or distribution or of a manufacturer or processor as raw materials, they become inventory." K.S.A. 84-9-109, Official UCC Comment.

The courts have held that cattle in the possession of a cattle feeder are "farm products" rather than "inventory," Security Natl. Bank v. Belleville Livestock, 619 F.2d 840, 850 (10th Cir. 1979), but that cattle placed in a feedlot and no longer in the possession of the individual engaged in farming operations constitute "inventory," Garden City Production Credit Association v. International Cattle Systems, 32 U.C.C.Rep. 1207 (D.Kan. 1981).

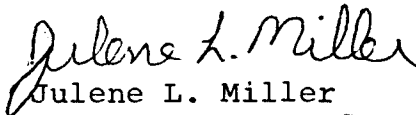
Swine and poultry, while in confinement facilities, are more like farm products than inventory. The primary business of the confinement facility is breeding and reproduction rather than holding for slaughter and sale. Again, insofar as tax exemptions are to be strictly construed, we cannot say that swine and poultry confinement facilities are eligible for the exemption provided in Kan. Const., Art. 11, §13(1)(C).

In conclusion, the passage of 1987 House bill No. 2076, a proposed amendment to the corporate farming law, would not serve to make swine and poultry confinement facilities eligible for property tax exemptions pursuant to Article 11, Section 13 of the Kansas Constitution.

Very truly yours,



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