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ATTORNEY GENERAL OPINION NO. 88- 69

The Honorable Bill Graves
Secretary of State
2nd Floor, State Capitol
Topeka, Kansas 66612-1594

Re: Corporations -- Agricultural Corporations --
Limitations; Exceptions -- Acquiring by Process of
Law

Synopsis: If a corporation is a creditor of a party owning
agricultural land, the corporation may acquire the
land by the debtor's voluntary surrender of title
if the land is subject to a lien or claim of the
corporation. If a debt does not involve a lien or
claim on the land, then collection of the debt by
voluntary surrender of title may not be used to
vest title in the corporation. Cited herein:
K.S.A. 1987 Supp. 17-5904.

* * *

Dear Secretary Graves:

As Secretary of State, you have requested our opinion
concerning agricultural corporations. Specifically, you have
inquired whether a corporation may acquire agricultural land
by accepting a deed given in satisfaction of debt or in lieu
of foreclosure of a lien.

Corporate ownership of agricultural land is generally
prohibited by K.S.A. 1987 Supp. 17-5904(a), subject to

several exceptions found within that subsection. Of particular interest to your inquiry is paragraph four, which states in relevant part:

"[the restrictions provided do not apply to] [a]gricultural land acquired by a corporation by process of law in the collection of debts . . . 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 [for deed] or procedure. . . ."
K.S.A. 1987 Supp. 17-5904(a)(4).

The issue therefore is whether acceptance of a deed in satisfaction of a debt or in lieu of foreclosure is an acquisition by process of law or a procedure for enforcement of a lien or claim on the land.

The terms "process of law" and "procedure for enforcement" are not defined by the agricultural corporation act. We have previously opined that a corporation may acquire agricultural land which is subject to a contract for deed through foreclosure on the seller's interest pledged as security for a separate loan, but not through a program of purchasing a seller's interests in contracts for deed. Attorney General Opinion No. 83-182. While in reaching that conclusion it was not necessary to define with precision the process or procedure involved, it is clear from the language of K.S.A. 1987 Supp. 17-5904(a)(4) that legal or equitable title to agricultural land must be acquired by some process or procedure in order for the exception to apply.

"Process of law" is the grammatical equivalent of "legal process." The phrase "legal process" was discussed in Robbins-Leavenworth Floor Covering, Inc. v. Leavenworth National Bank & Trust Co., 229 Kan. 511 (1981). In that case, the court stated that the process means "a warrant, writ, order, mandate, or other formal writing, issued by some court, body, or official having authority to issue process, and legal process means process not merely fair on its face, but in fact valid." 229 Kan. at 515. The court then held that legal process does not include a voluntary surrender of property "carried on wholly outside of court . . . without the

aid of its process or decree [citation omitted]." 229 Kan. at 516. In light of Robbins, we believe that when the relationship between a corporation and a landowner involves a debt not rising to the level of a lien or claim on agricultural land, then a voluntary transfer of the property in satisfaction of the debt does not satisfy the exception to corporate ownership of agricultural land provided in K.S.A. 1987 Supp. 17-5904(a)(4).

In comparison, the term "procedure" refers to the mode of enforcing substantive rights and duties. Hanna v. Plumer, 380 U.S. 460, 464, 14 L.Ed.2d 8, 13 (1965); Board of Greenwood County Comm'rs v. Nadel, 228 Kan. 469, 475 (1980). Settlements of claims to avoid litigation have long been favored in the law. E.g. Kennedy v. City of Sawyer, 228 Kan. 439, 461 (1980). We believe that a settlement, in the form of transferring a deed to land, furthering the enforcement of a lien or claim, may satisfy the statutory requirement. The distinction between the differing requirements for official involvement appears on the face of the statute in question. The legislature obviously placed different mandates on different situations. When only a debt is involved which does not rise to a lien or claim on the land, more formalities are required. However, when the agricultural land is already subject to a lien or claim, the statute indicates that any procedure for enforcing the lien or claim is sufficient.

Our opinion is not inconsistent with Attorney General Opinion No. 83-182. Purchasing a seller's interest in a contract for deed is distinguishable from acquiring title to agricultural land in satisfaction of an existing lien or claim on the property. In the former situation, legal title is acquired as an outright purchase of the seller's interest. We opined that this outright purchase does not involve a bona fide encumbrance taken for security as allowed by K.S.A. 1987 Supp. 17-5904(a)(1). Rather, the corporation holds legal title until the purchaser under the contract fulfills the terms of the contract, at which time such legal title vests in the purchaser. Thus, subsequent events will determine in whom title vests. In the latter case, neither legal nor equitable title vests in the corporation except in satisfaction of a lien or claim, regardless of whether the vesting of title occurs as a result of a formal proceeding or a settlement in avoidance of a formal proceeding. In opinion no. 83-182, we noted that if a seller under the contract pledged to a

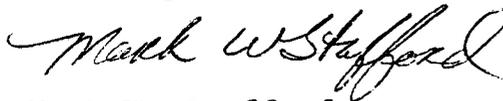
corporation the interest in the contract as security for a separate loan, then the corporation could foreclose on that interest. These situations fit the language of K.S.A. 1987 Supp. 17-5904(a)(4). They are grounded in the assumption that a bona fide encumbrance exists, whether taken as security as allowed by K.S.A. 1987 Supp. 17-5904(a)(1), or taken pursuant to other lawful means. Regardless, the interest is attached to the land. A mere debt does not involve a bona fide encumbrance without further process of law.

In conclusion, it is our opinion that if a corporation is a creditor of a party owning agricultural land, the corporation may acquire the land by the debtor's voluntary surrender of title if the land is subject to a lien or claim of the corporation. If a debt does not involve a lien or claim on the land, then collection of the debt by voluntary surrender of title may not be used to vest title in the corporation.

Very truly yours,



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