



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 88- 145

The Honorable Carl D. Holmes
State Representative, One Hundred Twenty-Fifth District
P.O. Box 578
Plains, Kansas 67869

Re: Corporations--Agricultural Corporations--
Limitations; Holding Seed Stock

Synopsis: K.S.A. 1987 Supp. 17-5904 generally prohibits certain corporate ownership of agricultural land. Exception number three, however, allows corporations to acquire agricultural land for a nonfarming business, so long as the corporation does not directly or indirectly farm the land. The short term holding of swine for commercial sale does not involve the production of livestock and thus is not farming and not proscribed by the corporate farming act. Cited herein: K.S.A. 47-1001; K.S.A. 1987 Supp. 17-5902 et seq.; 17-5904(3).

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Dear Representative Holmes:

As Representative for the One Hundred Twenty-Fifth District you request our opinion concerning the corporate farming act, K.S.A. 1987 Supp. 17-5902 et seq. That act prohibits certain corporations from directly or indirectly, owning, acquiring or otherwise obtaining agricultural land in this state. Specifically you inquire whether DeKalb Swine Breeders, Inc. may purchase, own, lease or use agricultural

land for the purpose of holding seed stock for commercial sale.

You indicate that DeKalb Swine Breeders, Inc. engages in the research, development, distribution and marketing of hybrid seed stock (breeding stock). The corporation in question wishes to sell the seed stock and will not breed or farrow these animals at these commercial sales centers.

K.S.A. 1987 Supp. 17-5904(a) provides:

"No 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.

The statute then lists fourteen exceptions to the general prohibition. Pertinent to this opinion is the third exception:

"Agricultural land acquired by a corporation in such acreage as is necessary for the operation of a nonfarming business. Such land may not be used for farming except under lease to one or more natural persons, a family farm corporation, authorized farm corporation, family trust, authorized trust or testamentary trust. The corporation shall not engage, either directly or indirectly, in the farming operation and shall not receive any financial benefit, other than rent, from the farming operation." K.S.A. 1987 Supp. 17-5904(a)(3). (Emphasis added.)

"Agricultural land" is defined in the act as "land suitable for use in farming." K.S.A. 1987 Supp. 17-5903(g). The above exception generally provides that a corporation may own agricultural land if the land is not used by the corporation, either directly or indirectly, for farming. Whether we have a nonfarming business depends upon whether the holding of seed stock constitutes "farming." The term is defined at K.S.A. 1987 Supp. 17-5903(h) as follows:

"'Farming' means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing or the production of livestock. Farming does not include the production of timber, forest products, nursery products or sod, and farming does not include a contract to provide spraying, harvesting or other farm services." (Emphasis added.)

Thus the question turns upon whether the holding of seed stock (breeding stock) constitutes the "production of livestock." Because the terms are not defined in the corporate farming act, we must interpret them to give them the effect intended by the legislature. State, ex rel, v. Unified School District, 218 Kan. 47 (1975).

A well recognized rule for determining legislative intent is that identical words or terms used in different statutes on a specific subject (emphasis added) are interpreted to have the same meaning in the absence of anything to indicate a different meaning was intended. Farmers Co-op v. Kansas Bd. of Appeals, 236 Kan. 632 (1975), citing Callaway v. City of Overland Park, 211 Kan. 646 (1973). Article 10, chapter 47 of the Kansas Statutes concerns public livestock markets that, by definition in K.S.A. 47-1001(f) appear to describe our factual circumstances:

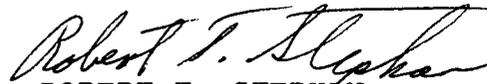
"[A]ny business conducted or operated for compensation or profit as a public market for livestock, consisting of pens, or other enclosures, and their appurtenances, in which livestock are received, held, sold, or kept for sale or shipment."

Even though the public livestock market act is not applicable, these statutes deal with the holding of livestock for commercial sale and as such deal with the specific subject in question. We find the definition of "producer" in K.S.A. 47-1001(d) helpful in determining whether the holding of breed stock for commercial sale constitutes the production of livestock. A "producer" is defined as any person engaged in the business of breeding, grazing or feeding livestock. Since DeKalb will not be engaging in the business of breeding,

grazing or feeding livestock on this land, they will not be producing livestock nor engaging in farming. See T-Bone, Inc. v. Martin, 236 Kan. 632, 644 (1985) (feeding involves a process of three to six months where livestock are fed concentrated diets of grain, roughage and supplements to produce the maximum gain in the shortest period of time.) We note that we have assumed the animals held will remain for only a brief period of time for purposes of commercial sale and not for purposes of growing these animals and thereby producing livestock.

We conclude that the short term holding of seed stock (breeding stock) for commercial sale does not in our opinion constitute farming by a corporation. And thus the acquisition of agricultural land by a corporation for this purpose does not violate the corporate farming act because it comes within exception (3) found in K.S.A. 1987 Supp. 17-5904.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Guen Easley
Assistant Attorney General

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