



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN  
ATTORNEY GENERAL

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MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751  
TELECOPIER: 296-6296

ATTORNEY GENERAL OPINION NO. 91- 97

The Honorable Eric R. Yost  
State Senator, Thirtieth District  
913 Funston Court  
Wichita, Kansas 67207

Re: Corporations--Agricultural Corporations  
--Limitations; Nonfarming Business Exception

Synopsis: K.S.A. 17-5904, as amended, generally prohibits corporate ownership of farmland, unless an exception applies. Exception number three exempts farmland acquired by a corporation or a limited liability company "as is necessary for the operation of a nonfarming business." Whether agricultural land is necessary depends on the nature of the business and the purpose for which the land is acquired. A corporation qualifies for this exception if it needs the land for an actual present or future use.

Zoning regulations do not affect the proscription in K.S.A. 17-5904. However applications for zoning changes are part of the transition period contemplated by exemption number 3 that allows a corporation or a limited liability company to acquire agricultural land for a nonfarming use. Cited herein: K.S.A. 17-5904, as amended by L. 1991, ch. 76, § 10; K.S.A. 19-2908; 19-2921; 19-2929; 19-2960.

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Dear Senator Yost:

As state senator for the thirtieth district you request our opinion regarding exception number three to the general prohibition against the corporate ownership of farmland found at K.S.A. 17-5904. This exception permits a corporation to acquire agricultural land "in such acreage as is necessary for the operation of a non-farming business." Specifically, you inquire:

1. Whether there is an objective test that a corporation may use to determine whether their acquisition of land comes within exception number three.
2. What effect, if any, does a local zoning classification have in determining whether land is "agricultural land" thus invoking analysis under K.S.A. 17-5904?

The general prohibition against the corporate ownership of farmland, K.S.A. 17-5904, as amended by L. 1991, ch. 76, § 10 states:

"(a) No corporation, trust, limited liability company, 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 restrictions provided in this section do not apply to the following:"

Exception number three states:

"(3) Agricultural land acquired by a corporation or a limited liability company 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."

The phrase "as is necessary" is not defined by the act nor interpreted by case law; there is thus no "objective" test. At issue is the meaning of the phrase "as is necessary." To construe a statute we must apply the fundamental rule of statutory construction to which all other rules of construction are subordinate. This rule states that the purpose and intent of the legislature governs when the intent can be ascertained from both the statute and general consideration of the entire act. State v. Adee, 241 Kan. 825 (1987).

The language of the general prohibition in K.S.A. 17-5904 prohibits a corporation (other than those six listed) from either directly or indirectly owning, acquiring or otherwise obtaining or leasing agricultural land. Exception number three is more specific and makes clear that the proscribed activity involves corporations engaging in farming.

"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."

Clearly exception number three does not aim to repeat the general proscription against corporations owning agricultural land. The general prohibition is quite clear. See subsection (a). Exception number three's purpose must thus be different. A perusal of the language indicates that exception number three's purpose is to prevent corporations from engaging in farming operations and to prevent them from buying more agricultural land than necessary for their operation thereby encouraging ownership of the land by those not prohibited from farming the land.

Given the overall purpose of the exception, the question of necessity must in our judgment be determined by the facts. Thus, whether acquisition of agricultural land is necessary to a corporation depends on the nature of the business in which the corporation is authorized to engage and the purpose for which the land is acquired. See 19 C.J.S. Corporations § 646(c) (1990). In our judgment, whether land will have some present or future actual use is critical to the determination

of need. This conclusion is consistent with Attorney General Opinion No. 88-170 where we concluded that a corporation's acquisition of agricultural land for the purpose of marketing other land did not come within exception number three. See 19 C.J.S. Corporations, § 646 (1990).

Your second question is whether the proscription against corporate ownership of agricultural land is materially affected when agricultural land is zoned under county land use policies to include a variety of uses from suburban residential to heavy industrial, but the land remains unused. Agricultural land is defined by the act as "land suitable for use in farming." K.S.A. 17-5903(g) See subsection (h) for a definition of farming. Although counties and townships are authorized by statute to regulate land use by zoning, zoning does not prevent the use of land for agricultural purposes. Zoning regulations control only when agricultural uses are abandoned. Board of County Commissioners v. Brown, 183 Kan. 19 (1958); Blauvelt v. Board of County Commissioners, 227 Kan. 110 (1980). See K.S.A. 19-2908 exempting land used for agricultural purposes from township zoning regulations; similarly, K.S.A. 19-2929, certain counties having a first, second, or third class city; K.S.A. 19-2921 certain counties; K.S.A. 19-2960, urban areas.

Your question, however, does not involve a current actual farming use of land and thus is not answered by the application of the above statutes. Your question involves land that remains unused, although zoned for nonagricultural use. Rephrased your question is whether this zoning (land zoned for nonagricultural uses) allows a corporation to own the land. The issue presented by your question is whether zoning changes the character of land so that a corporation may acquire it without violating K.S.A. 17-5904, the proscription against corporate ownership of farmland. In our opinion it does not.

Unless a corporation can acquire land under one of the 14 exemptions to the general proscription against the corporate ownership of farmland, it cannot own agricultural land as it is defined by the corporate farming act. It is irrelevant to the application of this act that there may be a better use for the land; if the land is suitable for farming, it is agricultural land. While zoning does not remove or change the character of the land as agricultural land, actual use of the land does. For this reason, exemption number 3 is relevant.

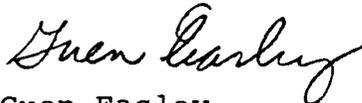
Exemption no. 3 allows a corporation or a limited liability company to acquire agricultural land as is necessary for a nonfarming use. Thus if acquired for a nonfarming use, the land, once used, does lose its character as agricultural land. The problem is the transition time between purchase and actual use of the land.

Zoning is generally part of the transition period between land purchase and land use. In our opinion exemption number 3 in K.S.A. 17-5904 contemplates a transition period wherein a corporation or a limited liability company may purchase agricultural land, may need to seek a zoning change and then use the land for a nonfarming business. A corporation however may not farm the land during the transition period except in accordance with K.S.A. 17-5904.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Guen Easley  
Assistant Attorney General

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