



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 92- 92

The Honorable Don Rezac
State Representative, 61st District
12350 Ranch Road
Emmett, Kansas 66422

Re: Counties and County Officers -- Planning and
Zoning; Planning and Zoning in Counties --
Agricultural Purposes; Farm Winery

Synopsis: Operation of a farm winery constitutes an
agricultural purpose and is therefore exempt from
county zoning regulations pursuant to K.S.A. 1991
Supp. 19-2921. Cited herein: K.S.A. 17-1602;
19-2901; K.S.A. 1991 Supp. 19-2921; 41-102, as
amended by L. 1992, ch. 201, § 1; 41-308a, as
amended by L. 1992, ch. 201, § 2; 74-551.

* * *

Dear Representative Rezac:

As state representative for the 61st district, you request
our opinion as to whether operation of a farm winery is
considered an agricultural use pursuant to K.S.A. 1991 Supp.
19-2921 and therefore exempt from the county zoning
requirements.

Counties have the authority to enact zoning regulations
pursuant to K.S.A. 19-2901 et seq. However, such
authority is limited by K.S.A. 1991 Supp. 19-2921 which states
in part:

"Except for flood plain regulations in areas designated as flood plain, regulations adopted pursuant to this act shall not apply to the use of land for agricultural purposes, nor for the erection or maintenance of buildings thereon for such purposes so long as such land and buildings erected thereon are used for agricultural purposes and not otherwise."

Attorney General Opinion No. 90-68 discussed the intent of K.S.A. 19-2921 (Ensley 1988):

"The 'obvious purpose' of K.S.A. 19-2921 was stated in Blauvelt v. Board of Leavenworth County Commissioners, 227 Kan. 110 at 133 (1980): 'to favor agricultural uses and farmers. Since the state's economy is based largely on the family farm it would appear the intent of the legislature was to spare the farmer from more governmental regulation and not discourage the development of this state's farm industry.

"Kansas case law has discussed the term 'agriculture' in various contexts, with the oldest definition of the term found in State ex rel., v. Wheat Farming Co., 137 Kan. 697 (1933), which included the rearing of domestic animals. Carp v. Board of County Commissioners, 190 Kan. 177 (1962), held that agriculture includes animal husbandry - the raising and feeding of livestock. Fields v. Anderson Cattle Co., 193 Kan. 558 (1964), noted that the term 'agriculture' includes the breeding, rearing and feeding of livestock in preparation for market and that the preparation of farm products for market is the dominating purpose of the agriculturalist. In reaching that definition of 'agriculture' Fields cited 3 C.J.S., Agriculture, § 1, p. 366:

'It has been said that agriculture includes at once the science or art and process of supplying human wants by

raising products of the soil and by associated industries. Accordingly, therefore, it may include not only the tillage of the soil and the cultivation of crops, but also the rearing and feeding of all kinds of farm livestock. . . ." Attorney General Opinion No. 90-68.

While K.S.A. 19-2921 has since been amended, we believe the language quoted above remains valid.

Part of the requirements of a farm winery licensee are that:

"Not less than 60% of the products utilized in the manufacture of domestic table wine by a farm winery shall be grown in Kansas except when a lesser proportion is authorized by the director based upon the director's findings and judgment. The label of domestic wine shall indicate that a majority of the products utilized in the manufacture of the wine at such winery were grown in Kansas. . . ." K.S.A. 1991 Supp. 41-308a(c), as amended by L. 1992, ch. 201, § 2.

Furthermore, K.S.A. 1991 Supp. 41-102(j), as amended by L. 1992, ch. 201, § 1, defines domestic table wine as "wine which contains not more than 14% alcohol by volume and which is manufactured without rectification or fortification from agricultural products grown in this state." (Emphasis added). An agricultural product is further defined in the cooperative marketing act to include "horticultural, viticultural, forestry, dairy, livestock, poultry, bee and farm and ranch products." K.S.A. 17-1602.

Although a person receives a farm winery license from the alcoholic beverage control division of the department of revenue, "the secretary of the state board of agriculture may establish a grape growing and wine making advisory program to aid in the technology, promotion and marketing of Kansas grape growing and Kansas farm wineries." K.S.A. 1991 Supp. 74-551. Farm wineries are in the business of the manufacture of domestic table wine which may or may not include the actual growing of grapes. Regardless of this fact, the manufacture of domestic table wine seems to fit within the general definition of agriculture purpose because it is a "science or art and process of supplying human wants by raising products

of the soil and by associated industries." 3 C.J.S.,
Agriculture, § 1.

The Kansas court in deciding what constitutes an agricultural purpose have held that a wildlife hunting preserve met that definition. Corbert v. Bd. of Shawnee County Comm'rs, 14 Kan.App.2d 123, 127 (1990) stated:

"It is a well-established principle that zoning ordinances must be liberally construed in favor of the property owner. Koppel v. City of Fairway, 189 Kan. 710, 713, 371 P.2d 113 (1962). 'Zoning ordinances, being in derogation of the right of private property, should be liberally construed in the property owner's favor, and where exceptions appear they are liberally construed in favor of the property owner.' Koppel, 189 Kan. at 713.

"Considering the legislative policy of favoring agricultural uses and promoting the development of the farm industry, together with the liberal construction given zoning ordinances in favor of property owners, the operation of a wildlife hunting preserve, under the facts of this case, is an 'agricultural purpose' as contemplated by 19-2921 and is exempt from county zoning regulations."

Using this same rationale, we conclude that a farm winery is an agricultural purpose and is therefore exempt from county zoning regulations pursuant to K.S.A. 1991 Supp. 19-2921.

Very truly yours,



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Mary Jane Stattelman
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