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January 19, 2018

ATTORNEY GENERAL OPINION NO. 2018- 4

The Honorable Jackie McClaskey, Secretary
Kansas Department of Agriculture
1320 Research Park Drive
Manhattan, Kansas 66502

Re: Counties and County Officers—Planning and Zoning—Zoning Regulations
Inapplicable to Existing Structures or Agricultural Land

Synopsis: K.S.A. 19-2921 prohibits a county from imposing zoning regulations upon
land used for agricultural purposes. Cited herein: K.S.A. 2017 Supp. 19-
101a; K.S.A. 19-2921.

* * *

Dear Secretary McClaskey:

As the Secretary of Agriculture for the State of Kansas, you ask for our opinion on a
question regarding the agricultural purposes zoning exemptions in K.S.A. 19-2921.
Specifically, you ask:

If a tract of land, less than 10 acres in size, contains both a rural dwelling
and an agricultural use (livestock, crops, ag buildings, etc.) does the
language in K.S.A. 19-2921, which states that 'so long as such land and
buildings erected thereon are used for agricultural purposes and not
otherwise,' mean that a county may use zoning regulations to regulate an
agricultural use of land because the agricultural use is not the exclusive use
of such tract of land?

In other words, your question is whether the county may use zoning regulations on land
that is used for agricultural purposes when a building on such land is not used for

agricultural purposes. For the reasons stated below, we believe the answer to your question is no.

Counties are granted power to enact county zoning codes under the county home rule provision.¹ Such power is limited by K.S.A. 19-2921, which states, in pertinent part:

*Except for flood plain regulations in areas designated as a 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.*²

From the plain reading of this statutory provision, it is clear that there are two statutory exemptions to county zoning regulation in K.S.A. 19-2921. The first exemption prohibits the application of county zoning regulations to *land* that is used for agricultural purposes. The second exemption is for the erection or maintenance of *buildings* used for agricultural purposes. These exemptions are separated by a comma and the word “nor” in the statute, which indicates a legislative intent to create two separate and distinct exemptions. The first exemption requires the land to be used for agricultural purposes in order for the exemption to apply. The second exemption can only be invoked when the land *and* the buildings are used exclusively for agricultural purposes.

In your question, you ask us to assume there is an “agricultural use” and provide examples of your use of the term. Specifically, you define “agricultural use” to mean livestock, crops, agricultural buildings and the like. These uses have previously been determined or opined to be an “agricultural purpose” pursuant to K.S.A. 19-2921.³ Therefore, we construe the term “agricultural use” from your question to mean “agricultural purpose” pursuant to K.S.A. 19-2921.

You also ask us to assume there is a rural dwelling on the land being used for an agricultural purpose. Although you did not provide us with a definition or examples of what you mean by “rural dwelling,” you did provide us with a copy of Attorney General Opinion No. 1979-260, which concluded “[a] rural dwelling is not a ‘building’ used for agricultural purposes within the meaning of the proviso in K.S.A. 19-2921.” Therefore, for the purposes of this opinion we construe the term “rural dwelling” from your question to mean a building not used for agricultural purposes.⁴

¹ K.S.A. 2017 Supp. 19-101a.

² Emphasis added.

³ See *Fields v. Anderson Cattle Co.*, 193 Kan. 558, 565 (1964) (livestock); Attorney General Opinion 1979-260 (crops); Attorney General Opinion 1992-092 (farm winery).

⁴ We note, however, that the question of whether such a dwelling is used for agricultural purposes pursuant to K.S.A. 19-2921 depends on the facts. See, e.g., *Blauvelt v. Bd. of Cty Comm’rs of Leavenworth Co.*, 227 Kan. 110 (1980) (based upon the facts of the case, the use of a residence on agricultural land, which was occupied by the landowners who farm the land, is an “agricultural purpose” contemplated by K.S.A. 19-2921).

In your question, you ask specifically about a tract of land less than 10 acres in size. We believe the acreage of the land used for agricultural purposes is a factor to be considered in the analysis, since qualification for either exemption under K.S.A. 19-2921 is determined by all of the facts. The crucial inquiry is whether the land or buildings are used for agricultural purposes. There is no language in the statute that references an acreage limitation or other test to determine whether land or buildings may qualify for the exemption from county zoning regulation. Thus, qualifying for, or being disqualified from, either exemption cannot be established by an objective test, such as a required minimum acreage, but rather must be based on a factual analysis of the use of the land or building. The determination of whether land use constitutes an agricultural purpose is a question of law for the courts.⁵

Under the first exemption in K.S.A. 19-2921, land used for agricultural purposes is exempt from county zoning regulations. The first exemption only applies to the land and does not have the exclusivity provision that the building exemption does. As to the exemption for land that is used for agricultural purposes, the statute is clear and unambiguous. Once it is determined that the land is used for agricultural purposes, the county is prohibited from applying zoning restrictions on such land.

The second exemption from zoning regulation in K.S.A. 19-2921 applies to “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.” You ask us to assume a building does not qualify for exemption from zoning because the building is not used for agricultural purpose. You are essentially asking us if there is any legal significance of the status of the building which is situated on land used for agricultural purposes. From the plain reading of the statute, the status of the building only affects the county’s ability to zone uses of the building under this exemption. The status of the building does not transform the use of the land from an agricultural purpose to something other than that.⁶

The purpose of the statutory language used in this exemption is to make clear that a building used for agricultural purposes must be built and maintained on land used for agricultural purposes order to qualify or remain exempt from county zoning regulation. If, for instance, after initially qualifying for the exemption, circumstances change so that the building continues to be used for agricultural purposes but the land is *not* used for agricultural purposes, the building would become subject to county zoning regulation because both elements of the exemption are not met.

The factual scenario presented only requires an analysis under the first exemption, since we were asked to assume there is no building used for agricultural purposes but there is land used for agricultural purposes. Therefore, assuming that no flood plain regulations apply to the land, it is our opinion that the plain language of K.S.A. 19-2921 prohibits a

⁵ *Seward Cty. Bd. of Comm'rs v. Navarro*, 35 Kan. App. 2d 744, 749 (2006).

⁶ We note, however, that a court would consider the use of a building on the land when determining whether the land is used for an agricultural purpose. *Blauvelt*, 227 Kan. at 111-14.

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county from imposing zoning regulations upon *land* used for agricultural purposes even if there is a building on such land that is not used for agricultural purposes.⁷

Sincerely,

Derek Schmidt
Kansas Attorney General

Athena E. Andaya
Deputy Attorney General

DS:AA:sb

⁷ We note that K.S.A. 12-758 (Cities and Municipalities Planning and Zoning) and K.S.A. 19-2960(d) (Planning and Zoning in Counties Designated as Urban Areas) contain the same exemptions provided for in K.S.A. 19-2921.