

MINUTES OF THE SENATE COMMITTEE ON AGRICULTURE & SMALL BUSINESS

Held in Room 423-S, at the Statehouse at 10:00 a. m. ~~XXXX~~  
on Tuesday, January 20, 1981, 19    .

All members were present except: Senator Ross Doyen (Excused)  
Senator Ed Reilly (Excused)

The next meeting of the Committee will be held at 10:00 a. m. ~~XXX~~,  
on Wednesday, January 21, 1981, 19    .

These minutes of the meeting held on January 20, 1981, 19     were  
considered, corrected and approved.

  
Chairman

The conferees appearing before the Committee were:

Wayne Hundley, Deputy Attorney General  
Jon Josserand, Secretary of State's office

Senator Kerr called the meeting to order. The minutes of the January 15, 1981 meeting were approved. Senator Kerr announced the intent of today's meeting is to hear a briefing from Wayne Hundley, Deputy Attorney General, who is bringing a suit against the Du Pont Company for violations of the corporate farm law, K.S.A. 17-5901. Jon Josserand, of the Secretary of State's office, is also on the agenda for a presentation regarding the reporting aspects of the farm corporation law.

After being introduced, Mr. Hundley presented the petition filed by the Attorney General naming the Du Pont Company as defendant. He indicated that the Attorney General is contending that Du Pont is a foreign corporation (under the laws of Kansas a foreign corporation is one organized under the laws of another state), has thousands of stockholders (under Kansas corporate farm law only 10 stockholders are allowed), and is directly or indirectly engaged in agricultural business. The land in question includes tracts in Shawnee and Jefferson counties. Mr. Hundley indicated that Du Pont is contending that they are not directly or indirectly engaged in agriculture because they are cash renting the farm land and that they have no control over what crops are actually grown on the land. Further, he said that Du Pont contends that the statute is unconstitutional under the 14th Amendment because it denies due process to some corporations.

Mr. Hundley said that there are perhaps as many as 25 apparent violations similar to Du Pont's in Kansas. He said the Du Pont case was selected because it raised several questions regarding the corporate farm law. In addition, he indicated that there may be as many as 300 reports from corporations which show apparent violations of some part of the corporate farm law.

In answer to a question, Mr. Hundley said that there has been no prior suit in Kansas regarding this law, but that there was a case in North Dakota concerning the constitutionality of a similar law and the law was upheld.

In answering another question, Mr. Hundley said that the committee might want to consider the listing of crops in the law. (Wheat, corn, grain sorghums, barley, oats, rye, potatoes, and the milking of cows for dairy purposes are mentioned in the law as acceptable agricultural practices. However, soybeans, alfalfa and the grazing of cattle are practices which are not addressed.) In addition, Mr. Hundley said there are possible violations of the 5,000 acre limit, the 10 stockholder limit, and the restriction of not

CONTINUATION SHEET

Minutes of the Senate Committee on Tuesday, January 20, 1981

being a stockholder in more than one farm corporation.

Senator Kerr said that there were at least two avenues the committee could take in addressing changes in the corporate farm law. First, the committee could keep the current framework law but make the appropriate changes. Secondly, the committee could scrap the current corporate farm law and start over by defining family farm corporations and permitting such corporations but exclude other corporations from farming practices. Mr. Hundley agreed that those were two possibilities. He said there would be pitfalls whichever avenue the committee pursued and that he did not want to give preference to one method over the other.

Jon Jossierand, of the Secretary of State's office, was introduced. He said that their office would be willing to cooperate with the committee in any way possible. He felt that the current reporting law is meaningless and a waste of money. He is hopeful that something can be worked out so that their office could administer whatever is created and that the guidelines would be easily enough understood so that there would be broad participation. He said that he felt there were many corporate stockholders who are unaware of the current corporation restrictions and, therefore, do not report at all. He thinks there are others who know about the law but choose to ignore it because no efforts have been made to enforce it. He said the Secretary of State's office will continue to forward to the Attorney General's office reports which appear to be in possible violation of the law.

Mr. Jossierand also said that foreign corporations or domestic corporations with more than 10 stockholders who wished to circumvent the farm corporation law could use one of several obvious loopholes. Those loopholes, he said, involve doing business as a general or unlimited partnership, among other things.

It was brought to the committee's attention that the Du Pont case would be heard by Judge Fred Jackson, on Friday, February 6, 1981, at 3:00 p.m., in the 2nd Division District Court, Shawnee County, Kansas.

Senator Kerr said that the next meeting would be Wednesday, January 21, and that several individuals and organizations would be presenting suggested changes in the farm corporation law.

The meeting was adjourned.

FILED  
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*Marlene Wells*  
CHIEF CLERK

Wayne E. Hundley  
Deputy Attorney General  
Kansas Judicial Center - 2nd floor  
Topeka, Kansas 66612  
(913) 296-3751

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS  
Division 2

STATE OF KANSAS, ex rel., )  
ROBERT T. STEPHAN, Attorney General, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
E. I. du PONT de NEMOURS AND COMPANY, )  
 )  
Defendant. )

Case No. 80-CV-893

Petition Pursuant to K.S.A. Chapter 60

PETITION FOR INJUNCTION AND OTHER RELIEF

COMES NOW the plaintiff, the State of Kansas, by Robert T. Stephan, and for its cause of action against the defendant, alleges and states:

1. That Robert T. Stephan is the duly elected, qualified and acting Attorney General for the State of Kansas.

2. Plaintiff's authority to bring this action is derived from the common law and statutory law of the State of Kansas, more specifically, K.S.A. 17-7308.

3. E. I. du Pont de Nemours and Company (hereinafter referred to as defendant), is a corporation organized under the laws of Delaware. Process may be served on the resident agent, The Corporation Company, Inc., First National Bank Building, Topeka, Kansas, 66603.

4. Defendant owns and uses land located in Jefferson County and Shawnee County, Kansas.

5. Defendant has used, and does use, said land for agricultural or horticultural purposes and defendant engages in the agricultural or horticultural business of producing, planting,

raising, harvesting, or gathering of wheat, corn, grain sorghums, barley, oats, rye or potatoes or the milking of cows for dairy purposes.

6. Corporate farming is permitted in Kansas only under rigorous restrictions prescribed by law as set out in K.S.A. 17-5901(a).

7. K.S.A. 17-5901 provides only a domestic corporation may engage in the agricultural or horticultural business if and if only (1) the corporation does not have more than ten stockholders; (2) all the stockholders are individuals or trustees or guardians for individuals; (3) all the incorporators are natural persons residing in Kansas; (4) the corporation does not own, control, manage or supervise a total of more than 5,000 acres of land; and (5) none of the stockholders own stock in another corporation which is authorized to engage in the specified agricultural or horticultural business.

8. Defendant is not a domestic corporation and thus defendant may not engage in certain agricultural or horticultural business as specified by K.S.A. 17-5901(a).

9. Defendant does not meet the five conditions imposed by statute set forth in the proviso of K.S.A. 17-5901(a), the satisfaction of which permits a domestic corporation to engage in certain agricultural or horticultural business.

10. The activity of defendant described in paragraph 5, constitutes prohibited corporate agricultural operations and a violation of K.S.A. 17-5901.

WHEREFORE, plaintiff prays the Court for judgment as follows:

1. That the Court permanently enjoin the defendant and its agents and any and all persons acting in concert with defendant from directly or indirectly engaging in the agricultural or horticultural business of producing, planting, raising, harvesting,

or gathering of wheat, corn, grain sorghums, barley, oats, rye or potatoes or the milking of cows for the dairy purposes in violation of K.S.A. 17-5901.

2. That the costs of this action be assessed to defendant and for such other relief as the Court deems just and equitable.

Respectfully submitted,

ROBERT T. STEPHAN  
ATTORNEY GENERAL

By: Wayne E. Hundley  
Wayne E. Hundley  
Deputy Attorney General  
ATTORNEY FOR PLAINTIFF

Hurdley

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS  
DIVISION TWO

State of Kansas, ex rel., )  
Robert D. Stephan, Attorney General, )  
 )  
 ) Plaintiff, )  
 )  
 )  
 ) vs. )  
 )  
 ) E. I. du Pont de Nemours & Company, )  
 )  
 ) Defendant. )  
 )

Case No. 80-CV-893

ANSWER

Comes now the Defendant, E. I. de Pont de Nemours & Company,  
and for its answer alleges and states:

1. Defendant admits the allegations contained in Paragraph 1 of the Complaint.
2. Defendant admits the authority of Plaintiff to bring this action pursuant to K.S.A. 17-7308; Defendant is without knowledge or information sufficient to form a belief as to the truth of the other allegations contained in Paragraph 2.
3. Defendant admits the allegations of Paragraph 3.
4. Defendant admits ownership of land located in Jefferson County and Shawnee County, Kansas; Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation that Defendant uses land located in Jefferson County and Shawnee County, Kansas.
5. Defendant admits a portion of land owned by Defendant located in Jefferson County and Shawnee County, Kansas is leased by Defendant to persons who use the leased premises for agricultural purposes including the producing, planting, raising, harvesting, or gathering of wheat, corn, grain sorghums, barley,

oats, rye or potatoes or the milking of cows for dairy purposes. Defendant denies all other allegations of Paragraph 5.

6. Defendant admits corporate farming is subject to K.S.A. 17-5901(a) but is without knowledge or information sufficient to form a belief as to the truth of other allegations contained in Paragraph 6.

7. Defendant admits corporate farming in Kansas is subject to K.S.A. 17-5901; Defendant is without knowledge or information sufficient to form a belief as to the truth of the other allegations contained in Paragraph 7.

8. Defendant admits it is not a domestic corporation; Defendant is without knowledge or information sufficient to form a belief as to the other allegations contained in Paragraph 8.

9. Defendant admits that Defendant corporation has more than ten (10) stockholders; Defendant is without knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 9.

10. Defendant denies the allegations contained in Paragraph 10.

The Defendant, further answering, and without waiving defenses of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process, alleges the following:

1. That the Kansas Legislature in enacting K.S.A. 17-5901 did not intend to proscribe Defendant's ownership and lease of the property in Shawnee County and Jefferson County.

2. That Defendant is not pursuant to K.S.A. 17-5901 directly or indirectly engaged in the agricultural or horticultural business of producing, planting, raising,

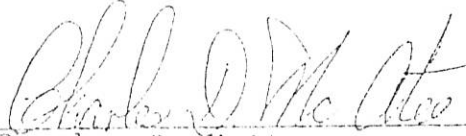
harvesting or gathering of wheat, corn, grain sorghums, barley, oats, rye or potatoes or the milking of cows for dairy purposes.

3. That K.S.A. 17-5901 violates the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States.

4. Wherefore, Defendant prays the Court for judgment as follows:

- a. That the Court deny Plaintiff's injunction.
- b. That the cost of this action be assessed to Plaintiff and for such other relief as the Court deems just and equitable.


Respectfully submitted,

  
\_\_\_\_\_  
Charles D. McAtee  
of Eidson, Lewis, Porter & Haynes  
1300 Merchants National Bank Bldg.  
Topeka, Kansas 66612  
(913) 233-2332  
Attorney for Defendant

CERTIFICATE OF SERVICE

I, Charles D. McAtee, do hereby certify that a copy of the above and foregoing Answer was served on counsel of record by placing same in the United States mail, first-class postage pre-paid, on this 17<sup>th</sup> day of November, 1980, addressed to:

Wayne E. Hundley  
Deputy Attorney General  
2nd Floor, Kansas Judicial Center  
Topeka, Kansas 66612

  
\_\_\_\_\_  
for Charles D. McAtee



IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS  
DIVISION TWO

State of Kansas, ex rel., )  
Robert D. Stephan, Attorney General, )  
 )  
 ) Plaintiff, )  
 )  
 ) vs. ) Case No. 80-CV-893  
 )  
 )  
E. I. du Pont de Nemours & Company, )  
 )  
 ) Defendant. )  
 )

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STIPULATION OF FACTS

COMES NOW the Defendant, E. I. du Pont de Nemours & Company, through counsel Charles D. McAtee and Anne L. Baker, and Plaintiff, the State of Kansas, through Wayne E. Hundley, Deputy Attorney General, and stipulate as to the following facts:

1. The Defendant is a Delaware corporation which first registered as a foreign corporation doing business in Kansas on November 12, 1915. It has been registered as a foreign corporation in Kansas continuously since that date.

2. The Defendant corporation has more than ten stockholders and has stockholders which are not individuals or trustees or guardians for individuals.

3. Defendant owns and operates a manufacturing facility located near Tecumseh, Shawnee County, Kansas. The plant site is 718 acres located approximately four miles east of Topeka, Kansas. This site is divided into two sections by the Kansas River. 481 acres are south of the river in Shawnee County. This acreage is bound on the north by the Kansas River, on the south by S.E. 2nd Street, and various private owners, on the east by privately owned property, and on the west by land of the Kansas Power and Light Company. A 100 foot wide railroad right-of-way owned in fee by the Atchison, Topeka & Santa Fe Railway Company traverses the acreage from east to west along the river. The parcel north of the Kansas River is in Jefferson County and is

comprised of 237 acres of unimproved farm land. This tract is bound on the north, east, and west by various private owners and on the south by the river.

4. The operating site used exclusively by Defendant for manufacturing operations comprises 314 acres of the 481 acre parcel in Shawnee County. The remaining Shawnee County property, approximately 166.6 acres, is held as a plant buffer zone and for potential plant expansion. It is divided into two units for leasing purposes, one of 77 acres and one of 89.6 acres, both of which have been and are leased to individuals who farm the land.

5. The 237.14 acre parcel in Jefferson County is held as a plant buffer zone. It has been and is presently leased to an individual who farms the land.

6. The 237.14 acre parcel in Jefferson County has been rented to an individual for the rental of \$1,700.00 per year from 1958 to 1980. This rental is \$7.16 per acre. From March 2, 1980 to March 2, 1981, the rental is \$4,748.34. This rental is \$20.02 per acre. The lease provides:

"[lessee] will till and farm the said premises in a good and careful manner; she will at her own cost and expense keep cut down at all times all brush, weeds, briars and thistles on said demised premises; and ...[lessee] will not commit or suffer any waste or misuse of said demised premises and at the termination hereof will deliver up possession of said premises to DU PONT in as good condition as the same now are."

Seed corn is raised on the premises; occasionally soybeans have been raised in place of seed corn. There is no lease provision through which Defendant could exercise control over the selection of crops to be grown. Defendant through the lease is granted no pecuniary interest whatsoever in growing or harvested crops; rental payments are solely based on an annual rental fee. A true copy of the lease in effect on July 30, 1980 is attached as Exhibit 9.

7. The 77 acre unit in Shawnee County has been rented since 1960 for the annual remuneration of \$400.00. The rent is \$5.19 per acre. The lease provides:

"[lessee] will till and farm the said premises in a good and careful manner; he will at his own cost and expense keep cut down at all times all brush, weeds, briars and thistles on said demised premises; and... [lessee] will not commit or suffer any waste or misuse of said demised premises and at the termination hereof will deliver up possession of said premises to DU PONT in as good condition as the same now are."

Wheat, corn, soybeans, and milo are raised on the demised premises. There is no lease provision through which Defendant could exercise control over the selection of crops to be grown. Defendant through the lease is granted no pecuniary interest whatsoever in growing or harvested crops; rental payments are solely based on an annual rental fee. A true copy of the lease in effect on July 30, 1980 is attached as Exhibit 10.

8. Three parcels comprising a total of 89.6 acres in Shawnee County were rented in 1979 to an individual for \$450.00 per year. Most of the 89.6 acres has been leased since 1960. The rental is thus \$5.02 per acre. The lease provides:

"The herein demised premises shall be used and occupied by lessee for farming purposes only. LESSEE shall not, during the term hereof, register the herein demised premises or any part thereof in the soil bank or any other farm program of like nature."

The crops grown include wheat, corn, soybeans, and milo. There is no lease provision through which Defendant could exercise control over the selection of crops to be grown. Defendant through the lease is granted no pecuniary interest whatsoever in growing or harvested crops; rental payments are solely based on an annual rental fee. A true copy of the lease in effect on July 30, 1980 is attached as Exhibit 11.

9. The rental is below market rental values for similar farm property for the years 1967 to 1975. (See Exhibit 8). The annual property taxes paid on the Jefferson County property for the last five years averages \$1,499.00. Property taxes on the 77 acre Shawnee County unit are \$383.00 annually and on the 89.6 acre Shawnee County unit are \$455.00 annually.

10. Defendant's 1979 Foreign Corporation Annual Report states the value of property owned and used in Kansas is 4/10 of

one percent of the corporate total gross book value outside of Kansas. The report states the shareholders' equity attributable to Kansas is 1.44 percent.

11. The following documents are appended to this Stipulation and are marked as exhibits as part of the record of this case.

Exhibit (1): Report and Recommendations of the Kansas Legislative Council, Submitted to the 1961 Legislature, Proposal No. 21, A Proposal relating to a study, report and recommendations of the effects of corporate farming in other states and the advisability of enacting legislation to permit corporate farming in Kansas;

Exhibit (2): Report on Kansas Legislative Interim Studies to the 1973 Legislature, Corporate Farming (Proposal No. 15) by the Special Committee on Agriculture;

Exhibit (3): Minutes of the Special Committee on Agriculture and Livestock, May 12, 1972, July 10-11, 1972, and August 7-8, 1972;

Exhibit (4): Minutes of the Special Committee on Agriculture and Livestock, August 18-19, 1975; September 15, 1975; October 20, 1975; and November 10, 1975;

Exhibit (5): Donald L. Jacka and Walter L. Smiley, Corporate Involvement in Agriculture, Legislative Research Department, November, 1975;

Exhibit (6): Minutes of the House Committee on Agriculture and Livestock, January 22, 1976;

Exhibit (7): Minutes of the Senate Committee on Agriculture and Livestock dated January 31, 1975,

February 4, 1975, February 13, 1975, February 20, 1975,  
February 25, 1975, and March 10, 1975.

Exhibit (8): Kansas Agricultural Experiment  
Station, Bulletin 594, January 1976;


Exhibit (9): Lease of 237.14 acre parcel in  
Jefferson County;

Exhibit (10): Lease of 77 acre tract in Shawnee  
County;

Exhibit (11): Lease of three parcels comprising  
89.6 acres in Shawnee County;

Exhibit (12): Aerial photo of Du Pont and  
adjacent property in Shawnee and Jefferson counties.  
Du Pont-owned land is outlined in red. The Jefferson  
County unit (237.14 acres) is on the right, north of  
the Kansas River. The 77 acre Shawnee County unit is  
dark green. The 89.6 acre Shawnee County unit is red.  
(The acreage values on the photo are approximations.)

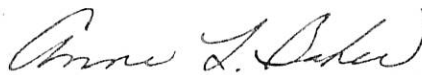
Exhibit (13): Corporate Farming in Kansas - 1979,  
Legislative Research Department Room 545N, Statehouse,  
Topeka, Kansas 66612.



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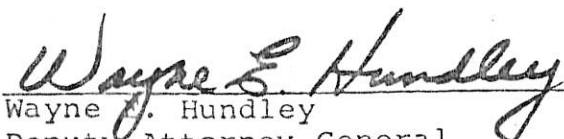
Charles D. McAtee

and



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Anne L. Baker  
of Eidson, Lewis, Porter & Haynes  
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(913) 233-2332  
Attorneys for Defendant



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Deputy Attorney General  
2nd Floor, Kansas Judicial Center  
Topeka, Kansas 66612  
Attorney for Plaintiff

SENATE

AGRICULTURE AND SMALL BUSINESS COMMITTEE

DATE January 20, 1981

PLACE ROOM 423-S

TIME 10:00 am

GUEST LIST

NAME	ADDRESS	ORGANIZATION
Keith Meyer	Lawrence, MO of KAN	none
SUZANNE WEHRMAN	SYLVAN GROVE, KANS	
HOWARD WEHRMAN	SYLVAN GROVE, KANS	
John D. Miller	Topeka	CKFO
Janet Smith	Dodge City	Antin
Dody M. Oyer	Dodge City	intern
Jim Lythgoe	Topeka	DuPont
DAVE BENNETT	Topeka	KIA
Kenneth M. Wilke	Topeka	Board of Agriculture
Robert Woods	1007 Market Street	sleepant
Ron Gaches	Topeka	KACI
John Blythe	Manhattan	K.F.B.
Lynnda Ryan	Topeka	AAM
L. Linsenberger	Topeka	API
Becca Gould	Lawrence	A.S.
Brett Reber	Lawrence	Gov.
Nal Zellibust	Topeka	Ks Coop Council
Jock Swartz	"	KACI
Cindy Schwartz	"	press
Lance Ross	"	"
Mark Hawer	"	"
Bruce Arhults		Leg
S. Effra	"	Press
Barry Massey		AP
Jon JOSSEPH		sec of state
ERIC K. PUCKER	"	"

W.D. Shankel

D. WAYNE ZIMMERMAN

JERRY C. Leonard

Phen A. Pak, Jr.

Shawnee

TOPEKA

TOPEKA

Topeka,

KCPG

THE ELECTRIC CO. ASSOC.

KGE

Ks Sec of State