

MINUTES OF THE SENATE COMMITTEE ON AGRICULTURE & SMALL BUSINESS

Held in Room 423-S, at the Statehouse at 10:00 a. m. ~~p. m.~~
on Thursday, January 22, 1981, 1981.

All members were present except:

The next meeting of the Committee will be held at 10:00 a. m. ~~p. m.~~,
on Tuesday, January 27, 1981, 1981.

These minutes of the meeting held on Thursday, January 22, 1981 were
considered, corrected and approved.


Chairman

The conferees appearing before the Committee were:

John Blythe, Kansas Farm Bureau
Dee Likes, Kansas Livestock Association
Bob Kelly, Kansas Independent Colleges

Senator Kerr called the meeting to order. He said that the meeting today would continue with suggestions from persons regarding suggested changes in the farm corporation law.

John Blythe, representing the Kansas Farm Bureau, was introduced. He distributed copies of the Bureau's 1981 resolutions and read the paragraphs on page 4 thereof relative to corporation farming. (See Attachment A). Mr. Blythe said the Farm Bureau supports the concept of the law but feels it is too restrictive as written.

In response to a question, Mr. Blythe said that he felt the committee should make efforts to amend the current law. He said this would at least preserve case history. However, he said that the Farm Bureau would support making a more clear definition of family farm corporations. In answer to another question, Mr. Blythe stated that the Resolutions Committee of the Farm Bureau tried to come up with a definition of a family farm corporation but that agreement on a specific definition was not reached.

Dee Likes, representing the Kansas Livestock Association, appeared before the committee. He said he felt that the original intent of the farm corporation law was to stop large scale corporate invasion of agricultural lands. Unfortunately, he said, the law now may unnecessarily restrict legitimate family farms and some other legitimate corporation activities. Mr. Likes suggested that the committee might want to discuss this law with Philip Ridenour, of Cimarron, Kansas, who is a member of the American Bar Association Agriculture Committee, and who is well-versed in this area.

Mr. Likes enumerated a number of points the committee could consider:

1. The committee could let the court case progress and get a decision. This would give the legislature some guidelines as to what is valid and what is not pertaining to the current law. He said this is the first time for the law to be tested.

CONTINUATION SHEET

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2. He said that if the law is found to be unconstitutional, then the legislature would know why before beginning with a new law. He said that he felt the case was filed in order to answer some questions and that the committee should have the answers before making any changes.
3. He said the legislature could amend the current law to allow family farm corporations to do anything.

Bob Kelly, representing the Kansas Independent Colleges, appeared before the committee. He said that he understood that many independent colleges may be in violation of the current law since some have more than 10 stockholders and some have more than 5,000 acres. He said many colleges are very dependent on revenues from the farmlands they inherit and that many wills stipulate that the land is to remain endowed to the colleges and cannot be sold. He said that making restrictions on the amount of farmland these colleges can own could be quite detrimental to their efforts to raise funds. He indicated that the colleges want to remain free to accept this land without restrictions. In answer to a question, Mr. Kelly stated a vast majority of this land is rented to farmers and that some land is used for educational purposes. He said that he did not know the total number of acres in Kansas which is held by colleges.

A memo prepared by Raney Gilliland, Research Department staff person on the committee, was distributed. The memo outlined the various suggestions and points of consideration which have been brought before the committee during the discussions on the farm corporation law. A committee discussion followed regarding the course the committee should take in the next few weeks regarding the farm corporation issue. Several members stated they felt that the information, input and consideration necessary to write a good farm corporation law should all be considered before a decision is made. The members said that there have been numerous problems with the current law over the years and that the committee should make every effort to write a law which would avoid such future problems.

Senator Kerr said he would take under advisement the various suggestions presented by the committee and that his recommendations for future committee procedures would be announced at the next meeting. He said the next committee meeting will be Tuesday, January 27. He also announced that on Wednesday, January 28, Senate Bill 29 would be heard with possible action thereon, and that there would be a briefing on Senate Bill 31 which related to the formation of a Missouri River Compact.

The minutes of the January 21 meeting were considered. It was moved and seconded that the words "such as Du Pont" be deleted from the January 21 minutes as written. The motion carried and it was then moved and seconded that the committee minutes be accepted as corrected and the motion passed.

The meeting was adjourned.

Corporation Farming

We support the concept of the Kansas law regulating farm corporations. We believe, however, there are sections of the law which could appropriately be modified to recognize the size, scope, farming practices and technological advances which are a part of today's agriculture.

We believe an amendment to the existing corporation farming statute should draw a distinction between cultivated acres, fallow land and pasture land. We believe a "family farm corporation" should be defined by law. We further believe that when a "family farm corporation" has been defined the acreage limitations now set forth in the law should not apply. We will support legislation to allow ownership of land by individuals and "family farm corporations" and to restrict ownership of agricultural land by nonfamily, investor-owned corporations.

We cannot support legislation which would restrict or hinder the effectiveness and efficiency of the feedlot industry as it is presently operating in Kansas. Capital requirements in the feedlot industry can seldom be met by an individual. The corporate structure has helped make possible the livestock feeding industry we know today.

We will support legislation which would prohibit the entry of non-agricultural corporations into the business of agricultural crop production and ranching. In the event agricultural land is now owned by a non-agricultural corporation, a church, an educational institution or a non-profit charitable organization, such owner, now prohibited by law from operating or managing agricultural land, should be permitted to lease or rent its agricultural land to an individual or family-farm corporation legally authorized to engage in farming.

MEMORANDUM

January 22, 1981

TO: Senate Agriculture and Small Business
Committee

FROM: Kansas Legislative Research Department

RE: Possible Alternatives for Corporate Farming
Statute

I. Initial Alternatives

- A. Make no change in corporate farming statute.
- B. Amend present corporate farming statute.
- C. Repeal current statute and formulate new corporate farming statute.
- D. Repeal current statute and have no corporate farming statute.

II. Considerations if Alternative B is Chosen

- A. Apply statute to corporations only - considering other legal entities such as trusts, partnerships, cooperatives, etc.
- B. If considering corporations only - note two types (foreign and domestic).
- C. Consider the inclusion of nonprofit corporations and university foundations (e.g. churches and state universities).
- D. Consider whether corporation would be permitted to own or lease agricultural land.
- E. Current statute prevents corporation from directly or indirectly engaging in agricultural or horticultural business.
- F. Consider defining what would be considered to be an agricultural or horticultural business. (Refer to 1980 S.B. 41, where farming is defined.)

- G. Consider restrictions currently required of domestic corporations for compliance to corporate farming statute.
 - 1. 5,000 acre restriction.
 - 2. Ten (10) stockholder restriction.
 - 3. Prohibition of ownership of stock in more than one agricultural corporation.
 - 4. Consider other restrictions as they may apply.
 - H. Consider making provision for entities which may need to acquire or control agricultural land as a buffer zone or expansion. (DuPont situation)
 - I. Consideration of enforcement problem.
 - 1. Procedure for handing entities out of compliance with law.
 - 2. Procedure for handling entities which may in the future be out of compliance.
 - J. Penalty provision
 - K. Procedure for carrying out penalty (divestiture).
 - L. Consider changes or additions, or need for reporting requirements.
- III. Consideration if Alternative C is Chosen
(Use basic decisions used by 1978 Interim Committee on Agriculture and Livestock - Mainly from Iowa)
- A. Define family farm corporation as meaning one in which at least the majority of the voting stock is held by and at least the majority of the stockholders are members of a family related within the third degree of kinship including the spouse, sons-in-law, and daughters-in-law.

- B. Consider whether all stockholders be natural persons.
- C. Consider the requirement that 60 percent of the gross revenues of the corporation over the last consecutive three-year period come from farming.
- D. Consider the decision to exclude feedlots from the corporation farming law.
- E. Consider defining "actively engaged in farming" as meaning that a natural person who is a shareholder and an officer, director or employee of the corporation either:
 - 1. Inspects the production activities periodically and furnishes at least half of the value of the tools and pays at least half the direct cost of production; or
 - 2. Regularly and frequently makes or takes an important part in making management decisions substantially contributing to or affecting the success of the farm operation; or
 - 3. Performs physical work which significantly contributes to crop or livestock production.
- F. Consider whether to "grandfather" religious and nonprofit organizations.
- G. Consider the following an exemption to entities desired to be involved in farming.
 - 1. Exclude a bona fide encumbrance taken for purposes of security.
 - 2. Exclude agriculture land acquired by a corporation for research or experimental purposes, if the commercial sales from such agricultural land are incidental to the research or experimental objectives of the corporation, and agricultural land acquired for the purpose of testing, developing or producing seeds, animals, or plants for sale or resale to farmers or for purposes incidental to those purposes.

3. Exclude agricultural land, including leasehold interests, acquired by a nonprofit organization, including land acquired and operated by or for a state university for research, experimental, demonstration, foundation seed increases or test purposes and land acquired and operated by or for nonprofit corporations organized specifically for research, experimental, demonstration, foundation seed increase or test purposes in support of or in conjunction with a state university.
 4. Exclude agricultural land acquired by a corporation for immediate use in nonfarming purposes.
 5. Exclude agricultural land acquired by a corporation by process of law in the collection of debts, or pursuant to a contract for deed executed prior to July 1, 1979, by any procedure for the enforcement of a lien or claim thereon, whether created by mortgage or otherwise.
 6. Exclude a municipal corporation.
 7. Exclude agricultural land which is acquired by a trust company or bank in a fiduciary capacity or as a trustee for a family trust, authorized trust, or testamentary trust for nonprofit organizations.
 8. Exclude agricultural land acquired by a trust for immediate use in nonfarming purposes.
- H. Consider that no divestiture procedures be adopted or that entities be grandfathered by law.
- I. Consider that land acquired in mortgages or lien forfeiture be placed under a five-year divestiture clause.
- J. Consider giving corporations not in compliance on or before the effective date at the time of the act a period of seven years to come into compliance or divest their holdings.

- K. Consider the efforts on entities organized after the effective date of the act and in violation of the act should have three years to divest their holdings.
 - L. Consider having county officials annually report entities to specified state officials.
- IV. Consider drafting two bills.
- A. Amending current statute.
 - B. Creating new legislation.

SENATE

AGRICULTURE AND SMALL BUSINESS COMMITTEE

DATE January 22, 1981 PLACE Room 423-S TIME 10:00 a.m.

GUEST LIST

<u>NAME</u>	<u>ADDRESS</u>	<u>ORGANIZATION</u>
Jody McOfee	Dodge City	Intern
Janet Little	Dodge City	Intern
Jim Wilson	Topeka	Du Pont
Kim LyTHOE	"	"
Anne Baker	"	Edom, Lewis, Porter-Haynes
Stuart Wheeler	Hastings, Mo	Kan Nebr. Nat Gas Co.
John O. Miller	Topeka	CKFO
Doc Likes	Topeka	KLA
Ann Gaches	Topeka	KACT
D. WAYNE ZIMMERMAN	TOPEKA	THE ELECTRIC CO. ASSN.
DAVE DENNETT	TOPEKA	KLA
Wayne Hundley	Topeka	AG
John Blythe	Manhattan	KFB
Elmer Davis	Haviland	
Bob Kelly	Topeka	KS Independent Colleges
Bull D Reinhardt	Chanute, K ₄	KFB - Self -