

MINUTES OF THE SENATE COMMITTEE ON AGRICULTURE & SMALL BUSINESS

Held in Room 423-S, at the Statehouse at 10:00 a.m. a. m./p. m.,

on Monday, February 23, 1981, 19    .

All members were present except:    Sen. Joe Norvell    (Excused)  
  Sen. Ed Reilly     (Excused)

The next meeting of the Committee will be held at 10:00 a.m. a. m./p. m.,

on Tuesday, February 24, 1981, 19    .

These minutes of the meeting held on Monday, February 23, 1981, 19     were considered, corrected and approved.

  
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Chairman

The conferees appearing before the Committee were:

Jon Jossierand, Secretary of State's Office  
George C. Lemon, Pres. Lemon & Son, Inc. (farm corporation)  
Pratt, Kansas  
Ron Gaches, KACI  
Father John Stitz, Director-Catholic Rural Life  
Archdiocese of KC, Ks.  
Leavenworth, Kansas

Senator Kerr called the meeting to order. Senator Arasmith moved, Senator Allen seconded, that the minutes of the February 19, 1981, meeting be approved. Motion carried.

Senator Kerr said the committee should submit a request for the drafting of a reporting bill to accommodate the Farm Corporate Bill No. 298. Senator Karr moved, seconded by Senator Montgomery that such a bill be drafted. Motion carried.

Senator Kerr briefly reviewed the "Du Pont decision" which was rendered by Judge Jackson, February 19. The decision was in favor of Du Pont but it appears to have little effect on Senate Bill 298.

Senator Kerr called on Jon Jossierand who stated he had no formal answer regarding Senate Bill 298 but felt there could be a problem with Section 1 (c) and (d). He also noted that the bill may not adequately address seed company situations.

Upon introduction, Father Stitz stated he basically supports Senate Bills 41 and 298. He did question the definition of a feedlot and questioned the exemption thereof.

After introduction by Senator Kerr, George Lemon presented his testimony (Attachment "A" to original minutes) which sets out a number of possible solutions or clarifications in the proposed statute. Listed are some of his suggested changes:

Under Section 1 (j) sub paragraph (1): change "five" to "ten".  
Under Section 1 (j) sub paragraph (2): change "persons acting in a fiduciary capacity" to "trustees acting in a fiduciary capacity".

Under Section 1 (j) sub paragraph (3) change "majority of stockholders" to "majority of the board of directors".

Under Section 1 (l) sub paragraph (2) on line "90" after "trusts": insert "(excepting family, authorized, and testamentary trusts)".

Under Section 1 (m) sub paragraph (2) on line 96 after "trust": insert "(excepting family, authorized, and testamentary trusts)".

CONTINUATION SHEET

Minutes of the Senate Ag Committee on Monday, Feb. 23, 1981, 19    

Quoting from his summary, "It is my opinion that the changes I have recommended in this bill would not weaken it to allow large corporate farming interests to take over, but it would liberalize it enough to let present individual Kansas land-owners have access to the many advantages of incorporation, if they so desired whether they are actually farming or not. A vast majority of the non-farmer owners are Kansans or people who have inherited or been given land by their farming ancestors. We should not prohibit these people from being able to at least incorporate their own landholdings. Actually as the bill now stands, many farmers and ranchers would still hesitate to incorporate into a qualifying family farm for fear that he or his descendants, many years hence, would be unable to maintain the qualifications."

Ron Gaches distributed KACI's suggested changes to Senate Bill 298 (Attachment "B" to the original minutes).

There were comments on the recently decided Du Pont case. The open grandfather clause which is currently in Senate Bill 298 (beginning on line 125) would make legal some corporations which are now grossly out of compliance with the current law. The propriety of this was questioned.

Meeting adjourned.

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TESTIMONY OF GEORGE C. LEMON before the Agriculture and Small Business Committee of the Kansas State Senate in reference to SB298. 2/23/81

Senator Kerr and members of Senate Agriculture and Small Business Committee:

My name is George Lemon from Pratt, Kansas. I am actively engaged in a number of family farm and ranch operations. I am the major stockholder and President of Lemon and Son, Inc., a corporation qualified under existing Kansas law to farm in Kansas.

I am definitely in favor of a more liberal law on corporation farming than now exists.

I would presume that testimony on this bill, SB298, would be from the following proponents and opponents.

- A. Proponents for a fairly restrictive corporation farming law all of whom basically fear the acquisition by large corporations of significant amounts of Kansas farmland:
  - 1. Farmers and ranchers who actually farm and raise livestock who do not contemplate incorporating themselves.
  - 2. Farmers and ranchers who actually farm and raise livestock who would like to incorporate their family holdings in order to lower taxes and preserve estates, but fear that non-resident landowners could incorporate and be protected against forced liquidation, for estate tax payments, of neighboring land they might like to acquire.
- B. Proponents for a more liberal corporation farming law who recognize the same basic fear of large corporations but feel that non-resident individuals, should also have the same right to farm family farm corporations, to protect income from high individual income taxes and to save their heirs from partition suits and estate tax liquidations, as those who live on and farm the land.
- C. Opponents: those individuals who are against any restrictive corporation farming law, which would of course be large corporations themselves, real estate speculators, and many individuals who would feel there is no need to worry about big corporative farming in Kansas.

I would have to identify myself as a class B proponent. Although I actively farm, raise livestock and manage our family farms, I do not actually live on one.

Much of our farm land is leased to resident tenants who either live on the land or live nearby. We share crops and furnish a share of fertilizers, herbicides, conservation practices, and irrigation equipment.

Most of the land was originally acquired by my grandfather and father. It has since been passed to their descendants. Until five years ago, estate taxes were not too much of a problem since the gift taxes and estate taxes were calculated separately and inflation had not taken such a hold.

As in most families, descendants of my grandfather have expanded greatly, and it has become impractical to divide land into individual parcels for each heir and maintain an economical operating unit. We therefore now own undivided interests which in some cases is as small as one-sixteenth per individual. The only way we can efficiently operate is through family partnerships of which we now have ten. Included among the ownerships are nine family trusts and a non-related family whose grandfather was a partner in farm operations with my grandfather.

So far, no family individual or trust has expressed any desire to sell their interest nor have they expressed any displeasure with my management. — But what does the future hold?

I have known several cases where relatives, who live far away, wish to sell out their interest in undivided real estate and their only recourse is to file an ugly partition suit. The defending interests often cannot afford the repurchase cost and the land is lost forever for those remaining who wish to continue the farm.

For some time I have felt that incorporating some of our farm and ranch land would be the answer. However the laws were so restrictive I could not recommend it, especially under the present law which restricts incorporators to individual Kansas residents who may only own stock in one farm corporation.

The new proposal SB298 is helpful but still poses some serious questions as to whether I could recommend it for my situation which might be more common than you think. In fact such a situation might eventually be common to the descendants of all farm families who wish to incorporate as a way of preserving family ownership in a farm they are now actually farming.

My questions are:

1. Suppose I can qualify a farm, which is now owned jointly by my family and the family of my grandfather's old partner as a "family farm corporation".
  - a. Present undivided ownership:
    - 50% - 3 descendants of A who live outside of Kansas
    - 50% - 3 descendants of B plus one trust for 3 descendants of B.
  - b. To qualify, one extra share of voting stock would have to be issued to a descendant of B who would be actively engaged in the management.
  - c. This descendant of B is the only stockholder in the family of B who is able and capable of such management but he is 67 years old.

What would be the status of the corporation if this manager should become incapacitated or die? Could his son continue as a qualified manager if he purchased only one share of stock? What would be the status of the corporation if, sometime in the future, no stockholder could qualify for active management? Would the corporation then be in violation of the statute and subject to the fine and divestiture?

2. Can I qualify a farm and ranch which is now owned by six family trusts for the benefit of my family and their

descendants? These trusts will eventually have to distribute their assets to the descendants. A bank and I are now co-trustees of all six trusts but on my death the bank becomes the sole trustee. The trustees now farm and operate the property by continuing the partnership originated by the donors, my parents, which employs a resident foreman.

If the trustees themselves could not qualify as stockholders and active management for a family farm corporation, the trustees would hesitate to distribute the farm and ranch lands to the beneficiaries who could form a family farm corporation, because it would defeat a provision of the trust instruments which provides for skipping a generation. Yet, incorporation would be very desirable for the trustees if they could eventually distribute stock rather than undivided interests in land.

3. Suppose a given farm was owned by a qualified family farm corporation and the directors of the corporation legally leased the agricultural use of the land to a partnership composed of the stockholders of the corporation. Or suppose family owners of undivided interests in farmland would contribute the title in the land to a corporation formed by the same owners then lease the agricultural use of the land to a partnership composed of the same stockholders. The partnership would actually operate the farm, supplying all capital and labor. However only one partner, the managing partner, would be actively engaged in the management. Would such a corporation be qualified?

Possible solutions or clarifications in the proposed statute are:

Under Section 1 sub paragraph (3) change to read: "(3) at least one of the stockholders is a person residing on a Kansas farm or actively engaged in the day to day labor, or management of a Kansas farming operation."

Or better still, just strike out this entire sub paragraph (3):

"Day to day labor and management" is hard to liberally define—it could mean that the stockholder would be required to be actually on the farm or performing some management task each day.

It would preclude a farmer and his family from ever being able to retire and lease the farm to a tenant. Actually, it seems to me, that any individual or family should be able to enjoy the advantages of incorporation for ownership of his or their farm or ranch land, whether they actually operate it themselves or lease it to another. The main thing is that the land owners who wish to incorporate do not in any way represent large foreign, corporate, or conglomerate interests nor should they be able to sell their interests in a family farm corporation to such undesirable entities. I think there are adequate safeguards in SB298 without including this sub paragraph.

Under Section 1 (i) add:  
sub paragraph (4): Once qualified as a  
"family farm corporation" the corporation  
cannot be disqualified unless:

- (a) Ownership in any of the stock of the corporation is sold or divested to any corporation, nominee, or representative of a corporation or entity not qualified under this act.
- (b) More than ten percent of the capital assets of the family farm corporation is in non-farming corporation or unincorporated non-farming businesses other than interest earning investments.

Under Section 1 (j) sub paragraph (1): change "five" to "ten".  
Under Section 1 (j) sub paragraph (2): change "persons acting in a fiduciary capacity" to "trustees acting in a fiduciary capacity".

Under Section 1 (j) sub paragraph (3) change "majority of stockholders" to "majority of the board of directors".

Under Section 1 (1) sub paragraph (2) on line "90" after "trusts": insert "(excepting family, authorized, and testamentary trusts)".

Under Section 1 (m) sub paragraph (2) on line 96 after "trust": insert "(excepting family, authorized, and testamentary trusts)".

I know you have put much thought and work into formulating SB 298; I only wish I had had an earlier opportunity to offer you my recommendations.

To summarize, it is my opinion that the changes I have recommended in this bill would not weaken it to allow large corporate farming interests to take over, but it would liberalize it enough to let present individual Kansas landowners have access to the many advantages of incorporation, if they so desired whether they are actually farming or not. A vast majority of the non-farmer owners are Kansans or people who have inherited or been given land by their farming ancestors. We should not prohibit these people from being able to at least incorporate their own landholdings. Actually as the bill now stands, many farmers and ranchers would still hesitate to incorporate into a qualifying family farm for fear that he or his descendants, many years hence, would be unable to maintain the qualifications.

I would like to hear your comments and answer any of your questions. Thank you.

0083 (1) A majority interest in the trust is held by and the majority  
0084 of the beneficiaries are persons related to each other as spouse,  
0085 parent, grandparent, lineal descendants of grandparents or their  
0086 spouses and other lineal descendants of the grandparents or their  
0087 spouses, or persons acting in a fiduciary capacity for persons so  
0088 related; and

0089 (2) all the beneficiaries are natural persons, who are not acting  
0090 as a trustee or in a similar capacity for a trust, or persons acting in  
0091 a fiduciary capacity, or nonprofit corporations.

0092 (m) "Authorized trust" means a trust other than a family trust  
0093 in which:

0094 (1) The beneficiaries do not exceed five in number;

0095 (2) the beneficiaries are all natural persons, who are not acting  
0096 as a trustee or in a similar capacity for a trust, or persons acting in  
0097 a fiduciary capacity, or nonprofit corporations; and

0098 (3) income thereof is not exempt from taxation under the laws  
0099 of either the United States, or the state of Kansas.

0100 (n) "Testamentary trust" means a trust created by devising or  
0101 bequeathing property in trust in a will as such terms are used in  
0102 the Kansas probate code.

0103 Sec. 2. (a) No corporation, trust, limited corporate partner-  
0104 ship or corporate partnership, other than a family farm corpora-  
0105 tion, authorized farm corporation, family trust, authorized trust or  
0106 testamentary trust shall, either directly or indirectly, acquire or  
0107 otherwise obtain or lease any agricultural land in this state. The  
0108 restrictions provided in this section do not apply to the following:

0109 (1) A bona fide encumbrance taken for purposes of security.

0110 (2) Agricultural land when acquired as a gift, either by grant  
0111 or devise, by an educational, religious or charitable nonprofit  
0112 corporation.

0113 (3) Agricultural land acquired by a corporation ~~for immediate~~  
0114 ~~or planned use in nonfarming purposes.~~

0115 (4) Agricultural land acquired by a corporation by process of  
0116 law in the collection of debts, or pursuant to a contract for deed  
0117 executed prior to February 17, 1981, or by any procedure for the  
0118 enforcement of a lien or claim thereon, whether created by  
0119 mortgage or otherwise.

*that is reasonably necessary in the conduct of a nonfarming business.*

0120 (5) A municipal corporation.

0121 (6) Agricultural land which is acquired by a trust company or  
0122 bank in a fiduciary capacity or as a trustee for a family trust,  
0123 authorized trust or testamentary trust or for a nonprofit corpora-  
0124 tion.

0125 (7) Agricultural land held or leased by a corporation on Feb-  
0126 ruary 17, 1981/~~as long as the corporation holding or leasing the~~  
0127 ~~land on such date continues to hold or lease such agricultural~~  
0128 ~~land.~~

0129 (8) Agricultural land held or leased by a trust on February 17,  
0130 1981, as long as the trust holding or leasing such land on such  
0131 date continues to hold or lease such agricultural land.

0132 (9) Agricultural land held or leased by a corporation for use as  
0133 a feedlot.

0134 (10) Agricultural land held or leased by a corporation for the  
0135 purpose of the production of timber, forest products, nursery  
0136 products, or sod.

0137 (b) Any corporation, trust, limited corporate partnership or  
0138 corporate partnership, other than a family farm corporation, au-  
0139 thorized farm corporation, family trust, authorized trust or tes-  
0140 tamentary trust, violating the provisions of this section shall upon  
0141 conviction, be punished by a fine of not more than \$50,000 and  
0142 shall divest itself of any land acquired in violation of this section  
0143 within one year after conviction. The district courts of this state  
0144 may prevent and restrain violations of this section through the  
0145 issuance of an injunction. The attorney general or district or  
0146 county attorney shall institute suits on behalf of the state to  
0147 prevent and restrain violations of this section.

0148 Sec. 3. K.S.A. 17-5901 is hereby repealed.

0149 Sec. 4. This act shall take effect and be in force from and after  
0150 its publication in the statute book.

*(11) The lease of agricultural land by a corporation for farming purposes pending the use of the land for the purpose for which acquired, where the corporation obtains no pecuniary interest whatsoever in growing or harvested crops.*



SENATE

AGRICULTURE AND SMALL BUSINESS COMMITTEE

DATE Mon., Feb. 23, 1981 PLACE Room 423-S TIME 10:00 a.m.

GUEST LIST

NAME

ADDRESS

ORGANIZATION

NAME	ADDRESS	ORGANIZATION
Synda Ryan	Topeka	aam
Tom Gaches	Topeka	KACI
George C. Lemon	Pratt Ks	self
John Stiles	K. C.	Catholic Rural life
D Lytkoe	Top	Dubov
BUD GRANT	TOPEKA	KACI
DON HORT TOR	Topeka	TRUST Division - Kansas Bank
John D. Miller	Topeka	Committee of Ks Farm Organizations
Shelley Kuntz	Manhattan	Kans. Organizers
Chris Walker	Mayetta	NFO
Joan Wyatt	M'Pherson	Ks Farmers Union
Dan J. Carr	Topeka	Self -
John Blythe	Manhattan	Ks. Farm Bureau
D. WAYNE ZIMMERMAN	TOPEKA	THE ELECTRIC CO. ASSOC. OF KS.
John Craft	Topeka	K W G A
Gene Baker	Topeka	E. J. P & H - Du Pont
Charles D. Holter	Topeka	E. J. P & H - Du Pont
Bill Tolks	Topeka	KLA
Tom JOSEPH AND	Topeka	Kansas Sec. of State office