

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 Wednesday, February 25, 1981, 19 .

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

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

on Thursday, February 26, 1981, 19 .

These minutes of the meeting held on Wednesday, February 25, 1981, 19 were considered, corrected and approved.



Chairman

The conferees appearing before the Committee were:

Pat Hubbell, Kansas Railroad Association
Ed Schaub, Southwestern Bell Telephone Company
John Blythe, Kansas Farm Bureau
John Crofoot, Kansas Association of Wheatgrowers
Chris Walker, N.F.O.
Don Horttor, Trust Division, Kansas Bankers Assn.

Senator Kerr called the meeting to order.

Senator Thiessen moved, seconded by Senator Karr, that the minutes of the February 24, 1981, meeting be approved. Motion carried.

Senator Kerr distributed and brought to the attention of the committee the draft (R.S. 1140, which was introduced in the Senate as Senate Bill 396), a reporting law relative to the farm corporation bill (S.B. 298). Senator Karr moved it be introduced, seconded by Senator Thiessen. Motion carried.

Pat Hubbell was introduced and stated the Kansas Railroad Association supports the amendment offered by KACI. He opposed time restraints on the disposal of land acquired for future industrial development.

Ed Schaub stated the Southwestern Bell Telephone Company did have interest in Senate Bill 298 as a result of their micro wave tower operations in Kansas which are important to their telephone network both interstate and intrastate. One tower takes two or three acres for accessibility, for safety reasons in case the tower fell; however, the farmer is permitted to farm that ground and no compensation is involved. He stated they support KACI's amendment to Section 2, sub-section 3.

John Blythe, of the Kansas Farm Bureau, again pointed out the Bureau's stand relative to the corporate farm law (Page 4 of the Bureau's 1981 Resolutions--See Attachment "A"). Answering Senator Gannon's question, Mr. Blythe stated they support some of the changes, but he felt family farms should be more clearly identified and that acreage for family farms should not be restricted. Also, they support industries' rights to have some land which is necessary for future expansion. Answering Senator Montgomery's question, Mr. Blythe stated it seemed unreasonable to be too restrictive relative to feedlots.

(MORE)

Minutes of the Senate Ag Committee on Wednesday, February 25, 1981

Senator Reilly stated he does not feel we have nailed down anything tangible in answering many of the problems which had been raised by conferees. He would like to see an interim committee or subcommittee do further study before moving on the bill.

In answer, Senator Kerr stated there had been numerous interim committee studies made over a period of ten years or so with nothing being done heretofore.

John Crofoot, representing the Kansas Wheatgrowers Association, felt the number of five stockholders (line 67) should be increased; also, he feels the law should make it easier for families to incorporate legally, stating they would have trouble with item 3 beginning on line 0071.

Chris Walker, representing NFO, was hopeful whatever bill emerges that it will be helpful to future farmers "down the road".

Don Horttor, an attorney, representing the Trust Division for Kansas Bankers, set out numerous suggestions he had on Senate Bill 298 (Note Attachment "B" to original minutes).

Meeting adjourned.

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and operation of the International Grains Program, the purpose of which is to promote utilization and market development for our grains. We support the efforts of KSU and the Commodity Commissions in establishing the International Grains Program. We would urge the Kansas Legislature to continue adequate appropriation of funds for operation of the International Grains Program.

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.

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CHRISTEL E. MARQUARDT
ELDON L. FORD

M. F. COSGROVE (1961)
PHILIP E. BUZICK (1970)
ROBERT L. WEBB (1975)
WILLIAM B. MSELHENNY (1976)

GRANT M. GLENN
ROBERT L. BAER
DAVID L. BLAKEMORE

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OUTLINE OF POINTS FOR CONSIDERATION ON S.B. 298 SUGGESTED
BY DON HORTTOR ON BEHALF OF THE TRUST DIVISION, KANSAS
BANKERS ASSOCIATION, AS PRESENTED ORALLY TO THE COMMITTEE
ON FEBRUARY 25, 1981.

1. Line 34 -- "feedlot". . . the term includes within its meaning land which is used for the raising of crops or other vegetation. Comment: There is no restriction requiring that the land which is used for the raising of crops or other vegetation be in any way in conjunction with or related to the feeding of livestock for slaughter. Line 132 permits a corporation to hold land for use as a feedlot and land which is used for the raising of crops or other vegetation is included within the definition of feedlot.
2. Line 48 -- "fiduciary capacity" means an undertaking to act as executor, administrator, personal representative Comment: 175 Kan. at 245 says that personal representative, of course, means an executor or administrator. If, as it is used here, personal representative means the same thing as an executor or administrator, we suggest that the words "personal representative" be omitted, so as not to imply some other meaning. If, on the other hand, it is intended that personal representative means some other undertaking then it should be defined as to what that meaning is.
3. Line 48 -- "fiduciary capacity" means . . . receiver. Comment: We suggest that there be added to those undertakings included in "fiduciary capacity" the undertaking of "trustee in bankruptcy", so that one beneficiary or one stockholder forced into bankruptcy would not disqualify an otherwise permitted corporation or trust.
4. Lines 54 and 55 -- are persons related to each other as spouse, parent, grandparent. Comment: The phrase is ambiguous because persons cannot be related to each other as spouse-parent or spouse-grandparent, etc. One solution to this ambiguity might be to eliminate the word "spouse" in Line 55 and depend upon the reference in Line 56 and Line 57 to spouses. We believe, however, that a clearer de-

definition might be as follows: "and the majority of the stockholders are persons all of whom have a common ancestor within the fourth degree of relationship or is the spouse of such a person". (Note that this comment and suggested language is also relevant to Lines 83 - 87, inclusive.)

5. Line 61 -- at least one of the stockholders is a person residing on the farm or actively engaged in the day-to-day labor or management of the farming operation. Comment: Assume, for example, a farmer has incorporated his farm operation intending at the time of his death that all of his stock in the corporation will pass to his son. The farmer has named his local bank as executor. We believe under the quoted language the executor will be forced to sell the farmer's stock rather than being able to pass it through administration proceedings to the son. The reason for such consequence is that the administrator or executor as the stockholder during the period of administration will neither be a person residing on the farm or actively engaged in the day-to-day labor or management of the farming operation. Several solutions are possible, such as creating an exemption for stock in administration, but the simplest solution, although it may have other ramifications not desired, is to eliminate the phrase "day-to-day". We believe that any executor or administrator could be actively engaged in the labor or management of the farming operation during administration (and is probably required by law to do so), but not on a day-to-day basis.

6. Line 78 -- trust does not include a person acting in a fiduciary capacity. Comment: Because it is so common to think of a trust or trustee as being a fiduciary and this definition flies completely contrary to that common understanding, we recommend that the sentence instead read: "as the words 'fiduciary capacity' are herein used, they do not include a trust or trustee".

7. Line 83 -- a majority interest in the trust is held by. Comment: Whether such majority interest refers to the legal interest (title) or equitable interest (title) is not clear. If, however, majority interest referred to means the legal interest, then the trust could not be managed by a sole corporate trustee or a corporate trustee as co-trustee with one individual trustee because such majority interest would not be held by a "person related to each other" If, on the other hand, the interest referred to is the equitable interest, then such things as charitable remainder trusts and charitable annuity trusts would be eliminated because in most instances the

life beneficiary of that type trust would not have the majority equitable interest. We believe that both of these results are undesirable, but certainly believe that the least undesirable would be not to prohibit the sole corporate trustee. The family farmer should have the right to access to the expertise of the professional corporate trustee. To preserve such right, the phrase should be "a majority equitable interest in the trust".

8. Line 94 -- the beneficiaries do not exceed five in number. Comment: If there are five beneficiaries and one of them dies intending that his interest pass to two heirs, for example, his wife and son or two sons, such death would immediately disqualify the trust as an authorized trust. As a minimum, we believe that the limitation to five is too restrictive. Just raising the number (although we support that) will not provide a complete solution, however. We suggest that whatever number is chosen be subject to automatic enlargement to whatever number is caused by the death of any of the original number, i.e., five. Said differently, we suggest that the maximum number of original beneficiaries be stated but a provision be inserted that permits that original number to be exceeded if such enlargement comes as the result of the death of one or more of the original number and the passing of his interest to his spouse or lineal descendants.

9. Line 98 -- income thereof is not exempt from taxation. Comment: It should be clarified whether this phraseology is intended to mean that the entity itself is not a tax exempt organization or whether, instead, the entity cannot receive any tax exempt income. We believe the phrase is subject to the interpretation that, for example, a family trust cannot own any security which produces tax exempt income such as a municipal bond or Kansas Turnpike bond. Alternatively, if an "authorized trust" cannot be a tax exempt organization for Federal income tax purposes, we believe that would prohibit any qualified pension or profit sharing plan from holding as a part of its assets any agricultural land. This imposes severe restrictions on the family farmer who might wish to institute such a plan.

10. Line 113 -- agricultural land acquired by a corporation for immediate or planned use in non-farming purposes. Comment: "Non-farming purposes" seems to be a phrase broad enough to include a use such as just for investment or speculation. Perhaps this problem could be resolved by the following: "non-farming purposes, which purposes are directly related to the principal business activity or activities of the corporation".

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I hope that the reducing of these comments to writing in summary form will be of benefit. I will be happy to meet in person with you for a fuller explanation if you would consider that in any way to be beneficial.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Don Horttor", written in dark ink.

DON HORTTOR

DH/mh

SENATE

AGRICULTURE AND SMALL BUSINESS COMMITTEE

DATE Wed., Feb. 25, 1981 PLACE Room 423-S TIME 10:00 am

GUEST LIST

<u>NAME</u>	<u>ADDRESS</u>	<u>ORGANIZATION</u>
Lynnda Ryan	Topeka	AAM
Janet Stubbs	"	NBAK
D. WAYNE ZIMMERMAN	TOPEKA	THE ELECTRIC CO. ASSOC. OF KS.
Mrs May Inghram	Newton	Harvey Co. Farm Bureau
Corene Chy	Newton	Harvey Co. Farm Bureau
Wilbur Leonard	Topeka	KLA
J. H. T. AGGE	"	Dubois
John D. Miller	Topeka	Committee of Ks Farm Organizations
John D. Miller	Topeka	Ks Seed Plus, Inc
Phil H. Lewis	Topeka	K.S. Du Pont & U.P.R.R.
Chris Walker	Mayetta	National Farmers Org
Don Gaches	Topeka	KACT
Della Way Blythe	Manhattan	
John Blythe	Manhattan	K.F.B.
John Blythe	Topeka	KAG
Joseph Schmitt	Newton	KFB
May Inghram	Newton	RFB
Barry Massey	Topeka	Associated Press

SENATE AGRICULTURE AND SMALL BUSINESS COMMITTEESENATE BILL 298AMENDMENTS SUGGESTED BY CONFEREES

1. Line 0025. May want to exclude limited partnerships as well as limited corporate partnerships.--Keith Meyer (possible loophole for outside trusts).
2. Line 0032. Definition of feedlot--see exemption list.
3. Line 0052. Change "and" to "or" --Mr. Lemon & KLA suggested this.
4. Line 0057. Add "or banks" after "or persons". -- Mr. Lemon.
5. Line 0059. Put "trustees" acting instead of "persons" acting. -- Mr. Lemon.
6. Line 0061. Strike paragraph (3) in family farm corporation and paragraph (3) in authorized farm corporations --Mr. Lemon and KLA. If decision is to leave these paragraphs, Mr. Lemon suggests changing to "residing on a Kansas farm"..... "management of a Kansas farming operation".
7. Line 0062 and 0072. "Management" difficult to define.
8. Line 0067. Increase stockholders limitation above five.
9. Line 0071. Change "majority of stockholders" to "majority of the board of directors".
10. Line 0090 and 0096. Insert "except family, authorized and testamentary trusts" after "trust".--Mr. Lemon.
11. Line 0112. Might want period of time (perhaps 10 years) for divesting.
12. Line 0113. Replace subparagraph (3) as follows: "Agricultural land owned or held by a corporation reasonably necessary to the conduct of its nonfarming business, provided that any such lands remaining in farming shall be leased to persons or entities otherwise not prohibited from engaging in such activity, and also, that the corporation shall not participate in the agricultural operation or receive any direct financial benefit, other than rent."--KACI & others.
13. Line 0125. KACI suggested striking all after "1981". Another suggestion was to clarify that agriculture land held in accordance with K.S.A. 17-5901 on February 17, 1981, would be grandfathered in. This would avoid rewarding those who were in open violation of K.S.A. 17-5901.
14. Line 0129. Same issue as in 0125.
15. Line 0134. Clarify seed company problem.
16. Line 0141. Penalty section seems to mix criminal and civil violations. May want to keep penalty the same but call fine "damages". (Keith Meyer (Might note 16a-5-201 UCCC).
17. Line 0032 and 0132. Address question of whether feedlot exemption is too broad.

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2/25/81