

Approved February 2, 1989
Date

MINUTES OF THE HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT

The meeting was called to order by Frank Weimer, Vice Chairman at
Chairperson

3:35 ~~am~~ p.m. on Tuesday, January 24, 1989 in room 423-S of the Capitol.

All members were present except: Representative Foster. Excused.

Committee staff present:
Jim Wilson, Revisor
Lynne Holt, Research
Elaine Johnson, Secretary

Conferees appearing before the committee:
Charles Warren, President, Kansas Inc.
Mr. Ray Poage, President, DeKalb Swine Breeders, Inc.
Mr. Jerry Lindberg, Executive Director, Liberal Chamber of Commerce
Representative Lee Hamm

Vice Chairman Weimer called the meeting to order at 3:35 p.m.. Lynne Holt, Research Department was recognized.

Ms. Holt gave the committee the background on the Kansas Corporate Farming Law. (Attachment 1).

Vice Chairman Weimer recognized Charles Warren, President, Kansas Inc. next.

Charles Warren briefed the committee on the issue of allowing corporate hog farming in Kansas. (Attachment 2). Mr. Warren discussed the availability of "A Study of the Impacts on Kansas of Corporate Swine Farm Laws" (December 1987), copy on file in the Legislative Research Department. Mr. Warren introduced Mr. Ray Poage, President of DeKalb Swine Breeders, Inc.

Mr. Poage informed the committee that DeKalb felt that Kansas was the best place to build a hog farm and started their business in 1974 in southwest Kansas. They had hoped to expand in the State of Kansas but were unable to do so because of the corporate farming law. Oklahoma extended an invitation to DeKalb to extend their corporate hog farming in their state and DeKalb took advantage of their offer. Mr. Poage stated that Kansas exempts everyone but hog corporations and that Kansas has the best potential for hog production. (Attachment 3).

Mr. Poage responded to questions from the committee including Representative Chronister's request for a copy of his testimony for the committee. Mr. Poage informed the committee that he would have his secretary retype it and forward it to them.

Mr. Jerry Lindberg, Executive Vice President of the Liberal Area Chamber of Commerce was recognized and informed the committee of his support for a change in the corporate hog farming in Kansas. (Attachment 4).

Representative Lee Hamm made a request to address the committee.

Representative Hamm said we need to ask ourselves what do we want to do with agriculture, which way are we going to go? We are in a state of transition and if we allow it to continue we are not going to have any farmers in the State of Kansas. We will have 5 or 6 corporations and we won't have a farmer left and they will be running everything, you won't have a small town in rural Kansas. Is that what we want for the State of Kansas. I don't think it is. It is the individual farmers out across the state that keep those communities going. We have already lost the chicken industry. There are only about 20 chicken houses left in the State of Kansas. The same thing is going to happen with hogs if we allow it to happen. Is there a shortage of hogs, I don't think there is. All we need to do is displace production here and move it here to a central location. The farmers keep the communities going. The farmer is presently getting 30¢ out of every food dollar. It is no wonder the farmer is failing. Now they are talking about a corporate few taking over and the displaced farmers will end up working for others. I don't think we want that in the State of Kansas.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT,
room 423-S, Statehouse, at 3:35 ~~xxx~~/p.m. on Tuesday, January 24, 1989.

There are things we can do. If there is a shortage of hogs, encourage the farmers to get involved. Let's give some incentives to the farmer by providing the individual farmer with capital to produce hogs. If we need breeding stock then let's promote that. I hope we can come up with better ideas than what has been suggested here to help the farmer.

The committee was informed that the January 17, 18 and 19 minutes were in their folders and approval of these minutes will be asked for at tomorrow's meeting.

The meeting was adjourned at 4:36 p.m.

*Elizabeth
Baker*

Date: 1/24/89

GUEST REGISTER

HOUSE

Committee on Economic Development

<u>NAME</u>	<u>ORGANIZATION</u>	<u>ADDRESS</u>
McJannet	Ks Pork Producers	Manhattan
Alan Steppat	Pete McGill + Associates	Topeka
Charles Warner	Ks Inc.	Topeka
DOUG FISHER	DEKALB GENETICS Corp	DEKALB, IL
Roy Page	DeKalb	DeKalb, Ill
Willynda Holmes	leg. wife - Rep Carl Holmes	
Rep Lee Hamm	Leg	
Judy Post	Ks. Rural Center	Whiting, KS
Anne Patterson	Commerce	Topeka
Holly Schisby	"	"
MIKE BEAM	Ks. LIVSTK. ASSN.	TOPEKA
Jerry Leightley	Chamber of Commerce	Liberal
John Vetter	K. C. Times	Topeka
ARMIN SAMUELSON	PRAIRIE VIEW HOSP.	NEWTON,
Jerry Lonergan	Ks Inc	Topeka
Mike Honak	AP	Topeka

MEMORANDUM

January 24, 1989

TO: House Committee on Economic Development

FROM: Kansas Legislative Research Department

RE: Kansas Corporate Farming Law

Background

The Kansas Corporate Farming Law (K.S.A. 17-5901 et seq.), now in effect, reflects two sets of major amendments in 1973 and 1981. The original law prohibiting certain types of corporate farming in Kansas was passed in 1931. It prohibited corporate farming for the purpose of growing wheat, corn, barley, oats, rye, or potatoes and the milking of cows. Following the enactment of this law, several amendments were made, among which was an amendment to allow a domestic or foreign corporation, organized for coal mining purposes, to engage in agricultural production on any tract of land owned by the corporation which had been strip mined for coal.

In 1965, several major amendments were made to the law. Grain sorghums were added to the list of crops that were restricted. In addition, certain types of corporations, which met certain specifications, were authorized to engage in agricultural production of those restricted crops and also the milking of cows. However, problems with the statute continued to exist. Consequently, the Legislature had special interim committees study the problems with the Kansas Corporate Farming Law in 1972, 1975, and 1978. As a result of the 1972 interim study, the 1973 Kansas Legislature passed additional reporting requirements of corporations which held agricultural land in the state. The purpose of this legislation was to determine the extent of corporate ownership of agricultural land. Neither the 1975 nor the 1978 study resulted in enacted legislation.

The following problems with the former corporate farming statute were addressed in discussions held between 1972 and 1981:

1. Corporations were permitted to engage in certain types of crop endeavors, but there were no restrictions on crops such as alfalfa and soybeans. Also, it was unclear as to whether pasture land was to be included in the acreage restrictions contained in the statute (5,000 acres).
2. There was no enforcement provision, which made it difficult for the Attorney General or other officials to enforce.
3. The 5,000-acre limitation imposed on corporations permitted to engage in certain agricultural activities was too restrictive, especially given the various types of farming enterprises in the state, and particularly if pasture land was to be included in the 5,000-acre limitation. This acreage limitation was of particular concern to farming interests in western Kansas, where acreages are generally much larger.

House Eco Devo Comm.
Attachment 1 1/24/89

4. The restriction of ten stockholders was too limiting; the restriction of owning stock in more than one agricultural corporation is encountered often through marriage and inheritance.
5. Nonagricultural corporations often owned agricultural land as a buffer zone or for expansion purposes. Because restrictions were placed on the characteristics of corporations permitted to be engaged in certain farming activities, some of these corporations may have been in violation when they leased or rented the land back to farmers. This issue was addressed in the Attorney General's case against the DuPont Corporation in 1980 and 1981.
6. Some of the universities and colleges in the state acquired agricultural land and were somewhat dependent upon the land's revenue-producing capabilities.
7. Some legislators were concerned that significant amounts of agricultural land could be purchased and proceeds from that land could be credited to large pension and benefit funds operating as trust.

As a result of these concerns and others expressed to the Senate Agriculture and Small Business Committee early in the 1981 Legislative Session, the Committee introduced S.B. 298. Extensive hearings were held before the decision was made to introduce a bill. Additional hearings were heard after the bill had been introduced. This bill eventually became the basis for the state's current Corporate Farming Law, signed by the Governor on April 28, 1981.

Since 1981, this law has undergone slight modifications. However, these modifications have not impacted significantly on the intent or policy of the legislation.

The law prohibits corporations, trusts, limited partnerships, or corporate partnerships other than family farm corporations, authorized farm corporations, limited agricultural partnerships, family trusts, authorized trusts, or testamentary trusts from either directly or indirectly owning, acquiring, or otherwise obtaining or leasing any agricultural land in Kansas.

Legislators in 1981 recognized certain circumstances or entities which may at one time or another have a legitimate need or situation which requires the acquisition of agricultural land. Consequently, 13 exemptions from the restrictions on owning, acquiring, obtaining, or leasing, outlined above, were included in the 1981 legislation:

1. a bona fide encumbrance taken for purposes of security;
2. agricultural land when acquired as a gift, either by grant or devise, by a bona fide educational, religious, or charitable nonprofit corporation (this addresses the problems that some state colleges have when agricultural land is left to them by grant or devise, and is used as a source of revenue);
3. agricultural land acquired by a corporation as is necessary for the operation of a nonfarming business, provided the corporation does not engage or receive any financial benefit, other than rent, from the farming operation (this exemption was to solve problems with nonfarming

businesses, such as DuPont, which need land for buffer zones, industrial expansion, or other similar needs);

4. 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 the effective date of the act, or by any procedure for the enforcement of a lien or claim, if the corporation divests itself of any agricultural land within ten years;
5. a municipal corporation;
6. agricultural land which is acquired by a trust company or bank in a fiduciary capacity or as a trustee for a nonprofit corporation;
7. agricultural land owned or leased by a corporation, corporate partnership, limited corporate partnership, or trust either: (a) prior to July 1, 1965; or (b) which was not in compliance with K.S.A. 17-5901 prior to its repeal, provided that under both (a) and (b) these entities do not own or lease any greater acreage of agricultural land than they owned or leased prior to this act; or (c) which was not in compliance with K.S.A. 17-5901 prior to its repeal, but is in compliance by July 1, 1991 (this exemption is the "grandfather clause," which clarifies the status of corporations, corporate partnerships, limited corporate partnerships, or trusts currently engaged in agricultural activities in the state or which own or lease agricultural land presently);
8. agricultural land held or leased by a corporation for use as a feedlot;
9. agricultural land held or leased by a corporation for the purpose of the production of timber, forest products, nursery products, or sod;
10. agricultural land used for educational research or scientific or experimental farming;
11. agricultural land used for the growing of crops for seed purposes or alfalfa by an alfalfa processing plant within 30 miles of the plant site;
12. agricultural land owned or leased by a corporate partnership or limited corporate partnership in which either natural persons, family farm corporations, or authorized farm corporations are associated; and
13. any corporation, either domestic or foreign, organized for coal-mining purposes, which engages in farming on any tract of land owned by it which has been strip mined for coal.

A fourteenth exception was enacted in 1986: agricultural land owned or leased by a limited partnership prior to the effective date of the act would be exempted from the general prohibition.

Another amendment in 1986 made it clear that when a bank acquires ownership of real estate through the satisfaction of debt that the bank statute, K.S.A. 9-1102, is the statute that governs. This statute permits the ten-year ownership by banks, but also grants the State Banking Commissioner the authority to grant an extension for an additional four years, or any portion of four years.

The 1981 enactment made corporations, trusts, limited corporate partnerships, or corporate partnerships which violated the provisions of the bill subject to a civil penalty of not more than \$50,000 and to divestiture of any land acquired in violation within one year after judgment is entered. The bill permitted district courts to prevent and restrain violations through injunction, and authorized the Attorney General or county attorney to institute suits on behalf of the state to enforce the provisions of the bill. Civil penalties sued for and recovered by the Attorney General are paid into the State General Fund. Civil penalties sued for and recovered by the county attorney or district attorney are paid into the general fund of the county where the proceedings were instigated.

Background on the Issue of Permitting Corporate Hog Operations

The issue of permitting current corporate hog operations to expand their acreages was first brought to the Legislature by former State Senator Charlie Angell of Plains in 1984. He requested that legislation be introduced to permit the Dekalb Swine Breeders to expand its operation in the Plains area in a partnership with the Seaboard Corporation and Pauls & Whites International. The legislation was introduced and eventually approved by the Senate Agriculture and Small Business Committee. The bill added to the provisions of the Corporate Farming Law an exemption for "swine confinement facilities" owned or leased by a corporation. "Swine confinement facility" was defined to mean the structures and related equipment used for housing, breeding, farrowing, or feeding of swine in an enclosed environment. The term included within its meaning agricultural land in such acreage as is necessary for isolation of the facility to reasonably protect the confined animals from exposure to disease and minimize adverse environmental impact. Eventually, the bill received approval by the Senate Committee of the Whole. In the House, the bill was referred to the Judiciary Committee, which passed the bill without recommendation. The House Committee of the Whole rereferred the bill to the House Agriculture and Livestock Committee, where it eventually died. In its final form, S.B. 519 would have permitted corporations to own or lease agricultural land for use as a swine confinement facility, but only as much agricultural land as would be necessary for proper disposal of liquid and solid wastes and for isolation of the facility to reasonably protect the confined animals from exposure to disease.

In October, 1983, the Attorney General was asked by the former Secretary of Economic Development, Jamie Schwartz, to respond to specific questions regarding the types of activities that are permitted under the state's Corporate Farming Law. Specifically, Secretary Schwartz asked whether a corporation, wanting to operate a feedlot for hogs, is precluded from the ownership of agricultural land because of its desire to incorporate an incidental breeding operation on its feedlot premises. The Attorney General was responding to the premise that the hogs would be bred, fed, and slaughtered on the feedlot premises.

Recent Legislative Actions

Between 1984 and 1987, the issue of expanding the state's Corporate Farming Law was discussed in informal circles. However, this issue reemerged before the Legislature in 1987, as a result of a recommendation by the 1986 Economic Development Task Force on Agriculture and endorsed by the Legislative Commission on Kansas Economic Development. The Task Force heard from a spokesperson from the Dekalb Swine Breeders, Inc. He indicated that the firm had intentions of expanding its facilities and would like to do so in Kansas, but said that the current Corporate Farming Law

prevented expansion within the state. Based on this testimony, the Agriculture Task Force recommended that legislation be introduced to expand the Kansas Corporate Farming Law by permitting a corporation to own or lease agricultural land for the purpose of operating a swine confinement facility.

Prior to making this recommendation, the Task Force had learned that since 1980, hog numbers in Kansas had declined by 32 percent and the number of hog operations by 42 percent. Also, the Task Force heard testimony that Kansas is ideally located for pork production, the result of which should be the fostering of hog processing facilities. The Task Force also recommended that the expansion of the law should apply to the poultry industry as well.

The Task Force's recommendation resulted in 1987 H.B. 2076, which was first referred to the House Economic Development Committee. The House Economic Development Committee amended the bill to permit corporations to purchase agricultural land for the purpose of operating poultry confinement facilities. The bill at this point also prohibited any city or county from granting any exemption from ad valorem property taxation under Section 13 of Article 11 of the Kansas Constitution to a poultry confinement facility located on agricultural land and owned or operated by a corporation. The bill also prohibited any exemption from ad valorem property taxation for property purchased, equipped, constructed, repaired, or enlarged with all or part of the proceeds of revenue bonds used for any poultry confinement facility which is located on agricultural land and owned, acquired, or leased by a corporation. The Committee had eliminated the provision granting any exemption to swine confinement facilities. When it was referred to the Senate Agriculture Committee, amendments were made to add rabbit confinement facilities to the exemption list. In the Senate Committee of the Whole, an amendment was added to exempt swine confinement facilities. During Conference Committee, the swine confinement facility exemption was deleted. The Governor signed the version exempting poultry and rabbit confinement facilities, and prohibiting them from taking advantage of property tax exemptions.

During the interim of 1987, the Special Committee on Agriculture and Livestock was assigned to study the topic of corporate farming and its impact on Kansas swine producers. During the interim, a consultant was hired by Kansas, Inc., at a cost of approximately \$49,500, to do an analysis of the swine industry in Kansas. The Special Committee reviewed the consultant's report and concluded that a select committee should be formed during the 1988 Legislative Session to consider further the consultant's report, and to receive input from around the state. The consultant's report did suggest to the Legislature that amendments be made to the Corporate Farming Law that would have permitted corporations such as Dekalb Swine Breeders to acquire additional agricultural land.

The Select Committee again reviewed the consultant's report and received testimony from concerned citizens. The Select Committee recommended legislation, which the Senate Ways and Means Committee introduced, and on which the Senate Agriculture Committee held hearings. This bill, S.B. 727, was not approved by the Senate Agriculture Committee, but many of its provisions, including the establishment of to establish a swine technology center, were amended into H.B. 3018. This bill was approved by the 1988 legislature and amended the Kansas Corporate Farming Law by: (1) defining the terms "processor" and "swine confinement facility"; (2) making it unlawful for certain processors of pork to contract for the production of hogs of which the processor is the owner or own hogs except for 30 days before the hogs are processed; (3) making pork processors violating the ownership of hogs restriction subject to a \$50,000 fine; and (4) clarifying that, except for the pork processors' limitation, agricultural production contracts entered into by corporations, trusts, limited partnerships or corporate partnerships, and farmers are not to

be construed to mean the ownership, acquisition, obtainment, or lease of agricultural land. The bill also prohibited any "swine confinement facility" from being granted any exemption from ad valorem taxes by a city or county, the use of proceeds of revenue bonds, the benefits of being in an enterprise zone, or the benefits of the Job Expansion and Investment Credit Act of 1976. Further, the bill established a swine technology center at Kansas State University, but provided no appropriations for its establishment. No funds were appropriated for the swine technology center by the 1988 Legislature, and no funding is recommended by the Governor for FY 1989 and FY 1990. The final version of H.B. 3018 had eliminated the appropriation for the Swine Technology Center at Kansas State University and eliminated any authorization for "swine confinement facilities" to be exempt from the prohibition of corporations acquiring agricultural land.

17-6403	17-4501	17-6001, 17-6101, 17-6106, 17-6201
17-6407	17-4504	None
17-6408	17-4505	17-7404
17-6401		
17-6418		
17-6419		
None		
17-6603		
17-6604		
17-6503		
17-6504		
17-6505		
17-6506		
17-6507		
17-6508		
17-6509		
17-6510		
17-6511		
17-6501		
17-6512		
17-6412		
17-6413		
17-6414		
None		
17-6420		
17-6421		
17-6406		
17-6424		
17-6422		
17-6803		
17-6804		
17-6805		
17-6807		
17-6901		
17-6810		
17-6811		
17-6813		
17-6516		
17-6701		
17-6702		
17-6709		
17-6712		
17-6711		
17-6710		
17-6801		
None		
17-7103		
17-6912		
17-6908		
17-6812		
None		
17-6005		
17-7101		
17-7102		
17-7101		
17-6909		
17-6104		
17-7104		
17-7105		
17-6602		
17-7002		
None		
17-7003		
17-6202		
17-6203		
17-6204		
17-6205		
17-6206		

1972 GENERAL CORPORATION CODE

Articles 60 to 74

Revisor's Note:

The comments contained in the report and recommendations of the Kansas legislative council, Part II—Special, submitted to the 1971 Kansas Legislature (Dec. 10, 1970) containing the proposed revision of Kansas corporation laws, are published herein as Kansas comments, with editorial modifications made by the office of the revisor of statutes to reflect changes made in the proposed code by the legislature in 1972 and 1973. The research and practice aids included after each section of the code were prepared by West Publishing Company of St. Paul, Minnesota.

Article 60.—FORMATION OF CORPORATIONS

Law Review and Bar Journal References:

Provisions of code relating to articles of incorporation enumerated, Ronald K. Badger, 41 J.B.A.K. 125 (1972).

"State Control of Local Government in Kansas: Special Legislation and Home Rule," Barkley Clark, 20 K.L.R. 631, 632 (1972).

Corporation Code extensively discussed in "Survey of Kansas Law: Business Associations," William E. Treadway, 27 K.L.R. 171 (1979).

"Legal Framework Governing the Kansas Non-Profit Corporation," Fred Lovitch, 48 J.B.A.K. 217 (1979).

"Corporate Tug O' War: A Market Approach to Keeping Shareholders Out of the Mud," Brad Stanley, Don Whitney, 26 W.L.J. 98 (1986).

17-6001. Formation of corporations; incorporators; purposes; corporations subject to special statutory regulation. (a) Any person, partnership, association or corporation, singly or jointly with others, and without regard to his or their residence, domicile or state of incorporation, may incorporate or organize a corporation under this act by filing with the secretary of state articles of incorporation which shall be executed, acknowledged, filed and recorded in accordance with K.S.A. 17-6003, and any amendments thereto.

(b) A corporation may be incorporated or organized under this act to conduct or promote any lawful business or purposes, except as otherwise provided by the constitution or other law of this state.

(c) Corporations subject to special statutory regulation may be organized under this act if required by or otherwise consistent with such other statutory regulation, but such corporations shall be subject to the special provisions and requirements applicable to such corporations. Where the provisions and requirements

of this act are not inconsistent, they shall be construed as supplemental to such other statutes and not in derogation or limitation thereof, and such corporations shall be governed thereby. Subject to the foregoing provisions of this subsection, any corporation organized under the laws of this state or authorized to do business in this state shall be governed by the applicable provisions of this code.

History: L. 1972, ch. 52, § 1; L. 1973, ch. 99, § 7; July 1.

Source or prior law:

17-2701, 17-2801, 17-2804, 17-2805, 17-2901 and 17-4501.

KANSAS COMMENT

This section is patterned after § 101 of the Delaware code, but certain features of prior Kansas law (17-2701) have been retained. The principal difference between this section and 17-2701 is the granting of authority to form a corporation with a single incorporator, which may be an individual, partnership, association or another corporation. Prior Kansas law required at least three natural persons as incorporators.

Subsection (b) of 17-6001 authorizes incorporation to conduct or promote any lawful business or purposes. As enacted in 1972, it retained the prohibition contained in 17-2701 against the formation of certain agricultural or horticultural corporations, but these provisions were removed by amendment in 1973 (see L. 1973, ch. 99, § 7) and reenacted with additional provisions concerning agricultural and horticultural corporations (see 17-5901 and 17-5902). As was previously required by 17-2804 and 17-2805, corporate existence would commence upon the filing of the articles of incorporation with the secretary of state.

Subsection (c) is a modification of the corresponding subsection of the Delaware code, which relates to public utility corporations. It has been expanded to permit the organization of particular types or classes of corporations (such as banks, insurance companies, public utilities, etc.) but also permitting the regulation of these corporations under other statutory provisions. An amendment in 1973 attempted to clarify the application of the code to these corporations. This does not represent any change in Kansas law, since 17-4501 accomplished essentially the same result.

Cross References to Related Sections:

Application and recording fee, see 17-7502.

Organization of banking corporations, see 9-801.

Building and loan associations, see 17-10a01 et seq.

Home building and owning corporations, see ch. 17, art. 11.

Cemetery corporations, see ch. 17, art. 13.

Cooperative societies, see ch. 17, art. 15.

Cooperative marketing associations, see ch. 17, art. 16.

Religious and charitable corporations, see ch. 17, art. 17.

Trust companies, see ch. 17, art. 20.

Credit unions, see ch. 17, art. 22.

Development credit corporations, see ch. 17, art. 23.

being relieved. Upon the issuance of such a certificate, the association shall no longer be subject to the provisions of this section and shall be entitled to have returned to the association any securities which it may have deposited;

(j) in addition to the authority conferred by this section and all other applicable laws and regulations, if, in the opinion of the commissioner, an association is unlawfully or unsoundly exercising or has unlawfully or unsoundly exercised, or has failed for a period of five consecutive years to exercise, the powers granted by this section or otherwise fails or has failed to comply with the requirements of this section, the commissioner may issue and serve upon the association a notice of intent to revoke the authority of the association to exercise the powers granted by this section. The notice shall contain a statement of the facts constituting the alleged unlawful or unsound exercise of powers, or failure to exercise powers, or failure to comply, and shall fix a time and place at which a hearing will be held to determine whether an order revoking authority to exercise such powers should issue against the association. In the event the commissioner finds that the allegations specified in the notice of charges have been established, the commissioner may issue and serve upon the association an order prohibiting it from accepting any new or additional trust accounts and revoking authority to exercise any and all powers granted by this section, except that such order shall permit the association to continue to service all previously accepted trust accounts pending the expeditious divestiture or termination. The revocation order shall become effective not earlier than the expiration of 30 days after service of such order upon the association so served and shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the commissioner or a reviewing court.

History: L. 1981, ch. 105, § 6; July 1.

Revisor's Note:

This section was amended by L. 1988, ch. 356, § 64, effective July 1, 1989.

Article 59.—AGRICULTURAL CORPORATIONS

Law Review and Bar Journal References:

"Kansas Farm Corporations: Some Observations and Recommendations," Philip Ridenour, 44 J.B.A.K. 241 (1975).

"Farmers and the Law: A Survey of Agricultural Ex-

emptions and Exceptions in State and Federal Law," J.W. Looney, 50 J.K.B.A. 7, 23 (1981).

17-5901.

History: L. 1973, ch. 99, § 1; Repealed, L. 1981, ch. 106, § 3; July 1.

Source or prior law:

17-202a, 17-202b, 17-202c, 17-6001.

17-5902. Agricultural corporations; annual reports. (a) All corporations and limited partnerships, as defined in K.S.A. 17-5903 and amendments thereto, which hold agricultural land, as defined in K.S.A. 17-5903 and amendments thereto, within this state, and which are required to make annual reports to the secretary of state shall provide the information required of such corporations and limited partnerships in the annual reports made under K.S.A. 17-7503, 17-7504, 17-7505, 56-1a606 or 56-1a607, and amendments thereto. The information required by this section does not apply to the following: (1) A tract of land of less than 10 acres, (2) contiguous tracts of land which in the aggregate are of less than 10 acres or (3) state assessed railroad operating property.

(b) Any person who shall knowingly submit, or who through the proper and due exercise of care and diligence should have known that any submission of information and statements required of corporations and limited partnerships subject to the provisions of this section are false or materially misleading, or who fails or refuses to submit such information and statements is guilty of a class A misdemeanor.

(c) The secretary of state shall keep a separate index of all corporations and limited partnerships subject to the provisions of this section.

History: L. 1973, ch. 99, § 2; L. 1981, ch. 107, § 1; L. 1983, ch. 88, § 71; L. 1986, ch. 96, § 1; May 8.

Law Review and Bar Journal References:

1973 legislative session, Robert F. Bennett, 42 J.B.A.K. 153, 156 (1973).

"Alien Ownership of Kansas Farmland: Can it be Prohibited?" David A. Williams, 20 W.L.J. 514 (1981).

"No Mere Yeoman: Incorporating the Family Farm—Considerations and Consequences," Eric Melgren, 24 W.L.J. 546, 566 (1985).

Attorney General's Opinions:

Agricultural corporations; agricultural land ownership; prohibitions and exemptions. 88-47.

CASE ANNOTATIONS

1. Cited in holding commercial feedlots not farming or

a-1-5
1/24/89

ranching within exemption from taxation under 79-201j. T-Bone Feeders, Inc. v. Martin, 236 K. 641, 648, 693 P.2d 1187 (1985).

17-5903. Definitions. As used in this act:

(a) "Corporation" means a domestic or foreign corporation organized for profit or non-profit purposes.

(b) "Nonprofit corporation" means a corporation organized not for profit and which qualifies under section 501(c)(3) of the federal internal revenue code of 1954 as amended.

(c) "Limited partnership" has the meaning provided by K.S.A. 56-1a01, and amendments thereto.

(d) "Limited agricultural partnership" means a limited partnership founded for the purpose of farming and ownership of agricultural land in which:

(1) The partners do not exceed 10 in number;

(2) the partners are all natural persons, persons acting in a fiduciary capacity for the benefit of natural persons or nonprofit corporations, or general partnerships other than corporate partnerships formed under the laws of the state of Kansas; and

(3) at least one of the general partners is a person residing on the farm or actively engaged in the labor or management of the farming operation. If only one partner is meeting the requirement of this provision and such partner dies, the requirement of this provision does not apply for the period of time that the partner's estate is being administered in any district court in Kansas.

(e) "Corporate partnership" means a partnership, as defined in K.S.A. 56-306, and amendments thereto, which has within the association one or more corporations.

(f) "Feedlot" means a lot, yard, corral, or other area in which livestock fed for slaughter are confined. The term includes within its meaning agricultural land in such acreage as is necessary for the operation of the feedlot.

(g) "Agricultural land" means land suitable for use in farming.

(h) "Farming" means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing or the production of livestock. Farming does not include the production of timber, forest products, nursery products or sod, and farming does not in-

clude a contract to provide spraying, harvesting or other farm services.

(i) "Fiduciary capacity" means an undertaking to act as executor, administrator, guardian, conservator, trustee for a family trust, authorized trust or testamentary trust or receiver or trustee in bankruptcy.

(j) "Family farm corporation" means a corporation:

(1) Founded for the purpose of farming and the ownership of agricultural land in which the majority of the voting stock is held by and the majority of the stockholders are persons related to each other, all of whom have a common ancestor within the third degree of relationship, by blood or by adoption, or the spouses or the stepchildren of any such persons, or persons acting in a fiduciary capacity for persons so related;

(2) all of its stockholders are natural persons or persons acting in a fiduciary capacity for the benefit of natural persons; and

(3) at least one of the stockholders is a person residing on the farm or actively engaged in the labor or management of the farming operation. A stockholder who is an officer of any corporation referred to in this subsection and who is one of the related stockholders holding a majority of the voting stock shall be deemed to be actively engaged in the management of the farming corporation. If only one stockholder is meeting the requirement of this provision and such stockholder dies, the requirement of this provision does not apply for the period of time that the stockholder's estate is being administered in any district court in Kansas.

(k) "Authorized farm corporation" means a Kansas corporation, other than a family farm corporation, all of the incorporators of which are Kansas residents and which is founded for the purpose of farming and the ownership of agricultural land in which:

(1) The stockholders do not exceed 15 in number;

(2) the stockholders are all natural persons or persons acting in a fiduciary capacity for the benefit of natural persons or nonprofit corporations; and

(3) at least 30% of the stockholders are persons residing on the farm or actively engaged in the day-to-day labor or management of the farming operation. If only one of the stockholders is meeting the requirement of this pro-

vision and requirement for the period estate is being administered in any district court in Kansas.

For the purpose of this act, if more than one person is a beneficiary of a deceased person's estate, the beneficiaries, collectively, are deemed to be the stockholder.

(l) "Trust" means a trust with respect to which the trustee has duties to discharge on behalf of another person; a manifest trust including a trust created as trustee, agent, or executor, and in any other capacity.

(m) "Family farm corporation"

(1) A family farm corporation is a trust in which the trust is for the benefit of one or more persons, all of whom are related to each other by blood or by adoption, or the spouses or the stepchildren of any such persons, or persons acting in a fiduciary capacity for persons so related;

(2) all of its stockholders are natural persons or persons acting in a fiduciary capacity for the benefit of natural persons; and

(3) at least one of the stockholders is a person residing on the farm or actively engaged in the labor or management of the farming operation. A stockholder who is an officer of any corporation referred to in this subsection and who is one of the related stockholders holding a majority of the voting stock shall be deemed to be actively engaged in the management of the farming corporation. If only one stockholder is meeting the requirement of this provision and such stockholder dies, the requirement of this provision does not apply for the period of time that the stockholder's estate is being administered in any district court in Kansas.

(n) "Authorized farm corporation" means a Kansas corporation, other than a family farm corporation, all of the incorporators of which are Kansas residents and which is founded for the purpose of farming and the ownership of agricultural land in which:

(1) The stockholders do not exceed 15 in number;

(2) the stockholders are all natural persons or persons acting in a fiduciary capacity for the benefit of natural persons or nonprofit corporations; and

(3) at least 30% of the stockholders are persons residing on the farm or actively engaged in the day-to-day labor or management of the farming operation. If only one of the stockholders is meeting the requirement of this pro-

(o) "Trust" means a trust with respect to which the trustee has duties to discharge on behalf of another person; a manifest trust including a trust created as trustee, agent, or executor, and in any other capacity.

vision and such stockholder dies, the requirement of this provision does not apply for the period of time that the stockholder's estate is being administered in any district court in Kansas.

For the purposes of this definition, if more than one person receives stock by bequest from a deceased stockholder, all of such persons, collectively, shall be deemed to be one stockholder, and a husband and wife, and their estates, collectively, shall be deemed to be one stockholder.

(l) "Trust" means a fiduciary relationship with respect to property, subjecting the person by whom the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it. A trust includes a legal entity holding property as trustee, agent, escrow agent, attorney-in-fact and in any similar capacity.

(m) "Family trust" means a trust in which:

(1) A majority of the equitable interest in the trust is held by and the majority of the beneficiaries are persons related to each other, all of whom have a common ancestor within the third degree of relationship, by blood or by adoption, or the spouses or stepchildren of any such persons, or persons acting in a fiduciary capacity for persons so related; and

(2) all the beneficiaries are natural persons, are persons acting in a fiduciary capacity, other than as trustee for a trust, or are nonprofit corporations.

(n) "Authorized trust" means a trust other than a family trust in which:

(1) The beneficiaries do not exceed 15 in number;

(2) the beneficiaries are all natural persons, are persons acting in a fiduciary capacity, other than as trustee for a trust, or are nonprofit corporations; and

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

For the purposes of this definition, if one of the beneficiaries dies, and more than one person succeeds, by bequest, to the deceased beneficiary's interest in the trust, all of such persons, collectively, shall be deemed to be one beneficiary, and a husband and wife, and their estates, collectively, shall be deemed to be one beneficiary.

(o) "Testamentary trust" means a trust created by devising or bequeathing property in

trust in a will as such terms are used in the Kansas probate code.

(p) "Poultry confinement facility" means the structures and related equipment used for housing, breeding, laying of eggs or feeding of poultry in a restricted environment. The term includes within its meaning only such agricultural land as is necessary for proper disposal of liquid and solid wastes and for isolation of the facility to reasonably protect the confined poultry from exposure to disease. As used in this subsection, "poultry" means chickens, turkeys, ducks, geese or other fowl.

(q) "Rabbit confinement facility" means the structures and related equipment used for housing, breeding, raising, feeding or processing of rabbits in a restricted environment. The term includes within its meaning only such agricultural land as is necessary for proper disposal of liquid and solid wastes and for isolation of the facility to reasonably protect the confined rabbits from exposure to disease.

(r) "Processor" means a person, firm, corporation or limited partnership, which alone or in conjunction with others, directly or indirectly, controls the manufacturing, processing or preparation for sale of pork products having a total annual wholesale value of \$10,000,000 or more. Any person, firm, corporation or limited partner with a 10% or greater interest in another person, firm, corporation or limited partnership involved in the manufacturing, processing or preparation for sale of pork products having a total annual wholesale value of \$10,000,000 or more shall also be considered a processor. The term "processor" shall not include collective bargaining units or farmer-owned cooperatives.

(s) "Swine confinement facility" means the land, structures and related equipment owned or leased by a corporation and used for housing, breeding, farrowing or feeding of swine in an enclosed environment. The term includes within its meaning only such agricultural land as is necessary for proper disposal of liquid and solid wastes in environmentally sound amounts for crop production and to avoid nitrate buildup and for isolation of the facility to reasonably protect the confined animals from exposure to disease.

History: L. 1981, ch. 106, § 1; L. 1983, ch. 88, § 72; L. 1986, ch. 96, § 2; L. 1987, ch. 368, § 1; L. 1988, ch. 99, § 53; April 21.

Law Review and Bar Journal References:

"Taxation: Valuation of Farmland for Estate Tax Pur-

poses, Qualifying for I.R.C. § 2032A Special Use Valuation," Rita Noll, 23 W.L.J. 638, 639, 651 (1984).

Attorney General's Opinions:

Agricultural corporations; ownership of agricultural land; operation of feedlot. 83-160.

Agricultural corporations; limitations. 84-47.

Agricultural corporations; corporate ownership of agricultural land; prohibited practices. 84-65.

Agricultural corporations; definitions. 87-59.

Corporate farming law; hydroponic vegetable production on corporate land. 88-53.

CASE ANNOTATIONS

1. Property owned by non-tax-exempt entity leased or providing service for profit to tax-exempt entity taxable. *Farmers Co-op v. Kansas Bd. of Tax Appeals*, 236 K. 632, 640, 694 P.2d 462 (1985).

2. Cited in holding commercial feedlots not farming or ranching within exemption from taxation under 79-201j. *T-Bone Feeders, Inc. v. Martin*, 236 K. 641, 648, 693 P.2d 1187 (1985).

17-5904. Agricultural corporations; limitations; exceptions; penalties. (a) No corporation, trust, limited partnership or corporate partnership, other than a family farm corporation, authorized farm corporation, limited agricultural partnership, family trust, authorized trust or testamentary trust shall, either directly or indirectly, own, acquire or otherwise obtain or lease any agricultural land in this state. The restrictions provided in this section do not apply to the following:

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

(2) Agricultural land when acquired as a gift, either by grant or devise, by a bona fide educational, religious or charitable nonprofit corporation.

(3) Agricultural land acquired by a corporation in such acreage as is necessary for the operation of a nonfarming business. Such land may not be used for farming except under lease to one or more natural persons, a family farm corporation, authorized farm corporation, family trust, authorized trust or testamentary trust. The corporation shall not engage, either directly or indirectly, in the farming operation and shall not receive any financial benefit, other than rent, from the farming operation.

(4) 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 the effective date of this act, or by any procedure for the enforcement of a lien or claim thereon, whether created by mortgage or otherwise, if such corporation divests itself of any such agricultural land within 10 years after such process of law, contract or

procedure, except that provisions of K.S.A. 9-1102, and amendments thereto, shall apply to any bank which acquires agricultural land.

(5) A municipal corporation.

(6) Agricultural land which is acquired by a trust company or bank in a fiduciary capacity or as a trustee for a nonprofit corporation.

(7) Agricultural land owned or leased or held under a lease purchase agreement as described in K.S.A. 12-1741, and amendments thereto, by a corporation, corporate partnership, limited corporate partnership or trust on the effective date of this act if: (A) Any such entity owned or leased such agricultural land prior to July 1, 1965, provided such entity shall not own or lease any greater acreage of agricultural land than it owned or leased prior to the effective date of this act unless it is in compliance with the provisions of this act; (B) any such entity was in compliance with the provisions of K.S.A. 17-5901 prior to its repeal by this act, provided such entity shall not own or lease any greater acreage of agricultural land than it owned or leased prior to the effective date of this act unless it is in compliance with the provisions of this act, and absence of evidence in the records of the county where such land is located of a judicial determination that such entity violated the provisions of K.S.A. 17-5901 shall constitute proof that the provisions of this act do not apply to such agricultural land, and that such entity was in compliance with the provisions of K.S.A. 17-5901 prior to its repeal; or (C) any such entity was not in compliance with the provisions of K.S.A. 17-5901 prior to its repeal by this act, but is in compliance with the provisions of this act by July 1, 1991.

(8) Agricultural land held or leased by a corporation for use as a feedlot, a poultry confinement facility or rabbit confinement facility.

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

(10) Agricultural land used for bona fide educational research or scientific or experimental farming.

(11) Agricultural land used for the commercial production and conditioning of seed for sale or resale as seed or for the growing of alfalfa by an alfalfa processing entity if such land is located within 30 miles of such entity's plant site.

(12) Agricultural land owned or leased by a corporate partnership or limited corporate

partnership therein a corporate family trusts.

(13) foreign, which owned coal.

(14) a limited of this a

(b) E 5905, pr

corporat

porate

farming

ucts sha

ership, a

directly

in this s

(c) A

ship or

family f

poration

tamenta

section

not mor

of any l

within

the acti

prevent

through

torney

shall in

enforce

(d)

by the

state ge

recover

attorney

the co

instigat

Histo

ch. 96,

ch. 99,

Revisor's

Section

amendm

Cross R

Proper

ment fac

250.

partnership in which the partners associated therein are either natural persons, family farm corporations, authorized farm corporations, family trusts, authorized trusts or testamentary trusts.

(13) Any corporation, either domestic or foreign, organized for coal mining purposes which engages in farming on any tract of land owned by it which has been strip mined for coal.

(14) Agricultural land owned or leased by a limited partnership prior to the effective date of this act.

(b) Except as provided for in K.S.A. 17-5905, production contracts entered into by a corporation, trust, limited partnership or corporate partnership and a person engaged in farming for the production of agricultural products shall not be construed to mean the ownership, acquisition, obtainment or lease, either directly or indirectly, of any agricultural land in this state.

(c) Any corporation, trust, limited partnership or corporate partnership, other than a family farm corporation, authorized farm corporation, family trust, authorized trust or testamentary trust, violating the provisions of this section shall be subject to a civil penalty of not more than \$50,000 and shall divest itself of any land acquired in violation of this section within one year after judgment is entered in the action. The district courts of this state may prevent and restrain violations of this section through the issuance of an injunction. The attorney general or district or county attorney shall institute suits on behalf of the state to enforce the provisions of this section.

(d) Civil penalties sued for and recovered by the attorney general shall be paid into the state general fund. Civil penalties sued for and recovered by the county attorney or district attorney shall be paid into the general fund of the county where the proceedings were instigated.

History: L. 1981, ch. 106, § 2; L. 1986, ch. 96, § 3; L. 1987, ch. 368, § 2; L. 1988, ch. 99, § 56; April 21.

Revisor's Note:

Section was amended twice in 1986 session, for second amendment, see 17-5904a.

Cross References to Related Sections:

Property tax exemptions for poultry or rabbit confinement facilities by cities and counties prohibited, see 79-250.

Law Review and Bar Journal References:

"Taxation: Valuation of Farmland for Estate Tax Purposes, Qualifying for I.R.C. § 2032A Special Use Valuation," Rita Noll, 23 W.L.J. 638, 639 (1984).

"The Architecture of Public Policy: The Crisis in Agriculture," Neil E. Harl, 34 K.L.R. 425, 449 (1986).

"No Mere Yeoman: Incorporating the Family Farm-Considerations and Consequences," Eric Melgren, 24 W.L.J. 546, 567 (1985).

Attorney General's Opinions:

Agricultural corporations; ownership of agricultural land; operation of feedlot. 83-160.

Agricultural corporations; limitations on ownership of land; exceptions for security interests. 83-182.

Agricultural corporations; limitations; exceptions. 84-38.

Agricultural corporations; limitations. 84-47.

Agricultural corporations; corporate ownership of agricultural land; prohibited practices. 84-65.

Corporate swine and poultry confinement facilities; not exempt from ad valorem taxation. 87-35.

Agricultural corporations; definitions. 87-59.

Agricultural corporations; agricultural land ownership; prohibitions and exemptions. 88-47.

Corporate farming law; hydroponic vegetable production on corporate land. 88-53.

Corporate farming law; transfer of corporation's domicile from foreign country to Delaware; effect on exemption. 88-54.

Agricultural corporations; land acquisition by deed; in satisfaction of debt or in lieu of foreclosure. 88-69.

CASE ANNOTATIONS

1. Cited in holding commercial feedlots not farming or ranching within exemption from taxation under 79-201j. T-Bone Feeders, Inc. v. Martin, 236 K. 641, 648, 693 P.2d 1187 (1985).

17-5904a.

History: L. 1981, ch. 106, § 2; L. 1986, ch. 56, § 4; Repealed, L. 1987, ch. 368, § 5; July 1.

17-5905. Processor of pork and partnership in which processor holds shares; unlawful acts. (a) In order to preserve free and private enterprise, prevent monopoly and protect consumers, it is unlawful for any processor of pork or limited partnership in which a processor holds partnership shares as a general partner or partnership shares as a limited partner to: (1) Contract for the production of hogs of which the processor is the owner or (2) own hogs, except such processor may own hogs for 30 days before such hogs are manufactured, processed or prepared for sale as pork products.

(b) This section shall be part of and supplemental to the provisions of K.S.A. 17-5902 through 17-5904, and amendments thereto.

History: L. 1988, ch. 99, § 54; April 21.

17-5906. Penalties; enforcement. The violation of the provisions of section 6[*] shall subject the violator to a fine of not more than \$50,000. The district courts of this state may prevent and restrain violations of K.S.A. 17-5905 through the issuance of an injunction or other equitable and legal relief which the court may find appropriate. The attorney general or district or county attorney shall institute suits on behalf of the state to enforce the provisions of K.S.A. 17-5905.

History: L. 1988, ch. 99, § 55; April 21.

* Originally referred to the section which became 17-5905.

Table of Sections

Table of Sections of Articles 24 and 45, inclusive, of Chapter 17 of the Kansas Statutes Annotated, as amended and supplemented, corresponding to Sections in 1972 General Corporation Code and amendments thereto.

Repealed Section (K.S.A. or Supp.)	New Section
17-2401	None
17-2501 to 17-2504	None
17-2601	17-6003, 17-6004, 17-6201 17-6404, 17-6512, 17-6601
17-2701	17-6001
17-2702	17-6008
17-2703	17-6007
17-2704	17-6002
17-2705	17-7402
17-2706 to 17-2719	None
17-2801	17-6001
17-2802, 17-2803	17-6002
17-2804	17-6001, 17-6003
17-2805	17-6001, 17-6006
17-2806	17-6006
17-2807	None
17-2901	17-6001
17-2902, 17-2903	17-6002
17-2904	17-6002, 17-6505
17-3001	17-6009, 17-6102
17-3002	17-6101, 17-6912
17-3003	17-6106
17-3004	17-6410
17-3005	17-6103
17-3006	17-6303
17-3007	17-6003
17-3008	None
17-3009	17-6003
17-3010	17-6305
17-3011	17-6010
17-3101	17-6301
17-3102	17-6501, 17-6513
17-3103	17-6501
17-3104	17-6301
17-3105, 17-3106	17-6302
17-3107	17-6007, 17-6009
17-3108	None
17-3109	17-6408
17-3201 to 17-3205	17-6401
17-3206	17-6402
17-3207, 17-3208	17-6403
17-3209	17-6404
17-3210	17-6406
17-3211	17-6403
17-3212	17-6407
17-3213, 17-3214	17-6408
17-3215	17-6401
17-3216	17-6417, 17-6418
17-3218	17-6419
17-3219	None
17-3220 to 17-3222	17-6603
17-3223 to 17-3225	17-6604
17-3301	17-6502, 17-6503
17-3302	17-6503
17-3303	17-6504
17-3304	17-6505
17-3305	17-6505, 17-6506
17-3306	17-6507
17-3307, 17-3308	17-6508
17-3309	17-6509
17-3310	17-6510
17-3311	17-6511
17-3312	17-6501, 17-6512
17-3313	17-6412
17-3401, 17-3402	17-6413
17-3403	17-6414
17-3404, 17-3405	None
17-3406, 17-3407	17-6420
17-3501 to 17-3503	17-6421
17-3504	17-6406
17-3505	17-6423, 17-6424
17-3506	17-6301, 17-6422
17-3507	17-6803
17-3601	17-6804
17-3602 to 17-3604	17-6805
17-3605	17-6807
17-3606	17-6808, 17-6901
17-3607	17-6810
17-3608	17-6811
17-3609	17-6813
17-3610	17-6516
17-3611	17-6701
17-3701 to 17-3704	17-6702
17-3705	17-6709
17-3706	17-6712
17-3707a	17-6711
17-3708	17-6710
17-3709	17-6801
17-3801	None
17-3802 to 17-3804	17-7103
17-3901	17-6912
17-4001	17-6908
17-4002	17-6812
17-4003, 17-4004	17-6809, 17-6905, 17-6906
17-4005	None
17-4006	17-6005
17-4007	17-7101
17-4008	17-7102
17-4009	17-7101
17-4010, 17-4011	17-6909
17-4101	17-6104
17-4102	17-7104
17-4103	17-7105
17-4201 to 17-4207	17-6602
17-4301 to 17-4308	17-7002
17-4309	None
17-4310	17-7003
17-4401	17-6202
17-4403, 17-4404	17-6201, 17-6202
17-4405	17-6203
17-4406	17-6204
17-4407	17-6205
	17-6206

17-4501
17-4504
17-4505
17-6403
17-6407
17-6408
17-6401
17-6418
17-6419
None
17-6603
17-6604
17-6502, 17-6503
17-6503
17-6504
17-6505
17-6505, 17-6506
17-6507
17-6508
17-6509
17-6510
17-6511
17-6501, 17-6512
17-6412
17-6413
17-6414
None
17-6420
17-6421
17-6406
17-6423, 17-6424
17-6301, 17-6422
17-6803
17-6804
17-6805
17-6807
17-6808, 17-6901
17-6810
17-6811
17-6813
17-6516
17-6701
17-6702
17-6709
17-6712
17-6711
17-6710
17-6801
None
17-7103
17-6912
17-6908
17-6812
None
17-6005
17-7101
17-7102
17-7101
17-6909
17-6104
17-7104
17-7105
17-6602
17-7002
None
17-7003
17-6202
17-6201, 17-6202
17-6203
17-6204
17-6205
17-6206

17-4501
17-4504
17-4505

Revisio
The
dati
submi
contai
laws, a
itorial
statute
the leg
aids in
by Wo

Law F
Prov
enume
"Sta
Legisl
631, 6
Cor
Kansa
27 K.
"Le
Corpo
"Co
Share
ney, i

17
corpo
speci
part
or jo
his c
corpo
pora
secr
whic
and
6003
(b
orga
any
erwi
law
(c
regu
requ
othe
tion
and
tion

9-1-7
1/24/89



Governor Mike Hayden, Co-Chairman
Eric Thor Jager, Co-Chairman

Charles R. Warren, President

CAPITOL TOWER, SUITE 113 • 400 S.W. 8TH • TOPEKA, KANSAS 66603-3957 • TELEPHONE (913) 296-1460

INFORMATION BRIEFING ON THE ISSUE OF
ALLOWING CORPORATE HOG FARMING IN KANSAS

Presentation by

Charles R. Warren
President, Kansas Inc.

before

The House Committee on Economic Development

January 24, 1989

*House Eco Devo Comm.
Attachment 2 1/24/89*

In the Fall of 1987, the Interim Committee on Agriculture and Livestock requested Kansas Inc. to contract for a study to assess the state's hog industry and to determine the economic impact of reducing the state's corporate swine prohibitions. A contract for \$49,357 was negotiated with the firm of Development International of Atlanta, Ga. to conduct the research. The firm made a comprehensive analysis employing an extensive data file obtained from a variety of sources. The scope of research included Kansas, eleven other states, the U.S. swine industry, and relevant sectors of the world market and their impact on Kansas swine farming. The analysis also included the relationship of the feed grain sector to corporate hog farming in Kansas.

The report presented a detailed assessment of the present condition of swine farming in Kansas. It highlighted several major problems including: continued decline in position and number of swine farms, lower hog production compared to nearby states, lower than average prices for Kansas producers compared to U.S. average, and the poor corporate image of Kansas to outside investors.

The Atlanta firm presented four changes to assist the Kansas swine industry in their report:

- 1) Amend the present law to allow corporations to be involved in only particular levels of activity,

2) Allow only corporation-farmer contractual agreements rather than internal vertical integration with a provision of necessary contractor technical assistance,

3) Allow corporate participation and expansion of farm cooperatives, and

4) Establishment of a program for farmer support including an industry committee, outreach programs, a "center for excellence," increase in extension services, and education.

In the past year, there has been much discussion on this topic. When the report was delivered, the Kansas Inc. Board of Directors decided, because of the issue's controversy and to ensure the objectivity of the report, not to take a position on corporate swine prohibitions.

During the Summer of 1988, DeKalb Swine Breeders Inc. announced its decision to purchase three farms in Oklahoma, seven miles across the Kansas state line, in order to expand its breeding operations.

The DeKalb decision prompted an editorial from the Wichita Eagle-Beacon titled, "Hogs Head South: Economic Suicide in Kansas." I would like to quote from that editorial:

"The issue shows the dangers of economic protectionism. Most of the opposition to the DeKalb expansion came from Southeast Kansas, where hog farmers

feared competition. Rather than fight in the marketplace, the smaller operators ran to the politicians to defend them from the rigors of the capitalist system . . .

American agriculture is in transition. Many of the future jobs in rural areas must come from such companies as DeKalb . . .

Kansas has survived because it has adapted to changing economic realities. But as long as the Legislature succumbs to special economic interests trying to protect themselves, the state's future will remain cloudy." (end of quote)

At its November 1988 meeting, several board members expressed disappointment that Kansas Inc. had not taken a position on the study, but had remained neutral on the issue. On January 12, along with several other policy positions, the Board unanimously recommended that "the Legislature seriously consider changes in the prohibition against corporate hog farming." The Board did not make any specific recommendations on actions the Legislature should take, nor did it endorse the recommendations contained within the 1987 report.

I appreciate that this is a controversial and emotional issue and for many allowing corporate hog farming represents a direct attack against the family farm and strongly held traditional and rural values in Kansas.

However, this issue is one which must be dealt with before further economic opportunities are lost to the State. We cannot build a wall around the State of Kansas. It simply does not work. Hog farming and production will continue, if not in Kansas, in other states, or other nations.

This issue represents key elements of our state's economic development strategy: value added agriculture and exports. The swine bred by Dekalb are sold throughout the United States and in other nations -- Mexico, Canada, Venezuela, Dominican Republic, Ecuador, Japan, China, and Thailand.

Kansas has a strong comparative advantage in hog production in that there is a surplus of grain within the state, a proper climate for hog production, and a relatively disease-free environment. The hog industry needs no incentives to attract it to our State. Because of our strong agriculture base, the natural advantages of hog production are already present.

In addition to the DeKalb situation, Arkansas City contains the Rodeo Packing Plant which is a hog slaughtering plant. That

facility employs 600 workers and slaughters 6,000 hogs daily-when it can get them. If there were grain feed operations nearby that could supply slaughter hogs, the Ark City plant has the capacity to kill 12,000 hogs daily which could increase employment there by 300 persons. There exists a serious possibility of that plant being closed by Morrell and Company. Evidently, it is not economically feasible to maintain without fuller production. As Frank Wilson, who is an employee of Rodeo and has been an independent hog producer for most of his life, told me yesterday in Ark City: "We are going to lose a packing house, if we don't get some hogs."

I am not an expert on agricultural issues nor on hogs. It does appear that we have lost a considerable opportunity for jobs and investment within the State because of current laws. Change is traumatic, but unless we deal with it realistically and rationally, the longer term consequences can be even more damaging to the future of our state.

INFORMATION PRESENTED TO THE ECONOMIC DEVELOPMENT COMMITTEE
OF THE KANSAS HOUSE OF REPRESENTATIVES
ON JANUARY 24, 1989

I want to make it perfectly clear to this committee today that I am not here on behalf of DEKALB to try to get the Corporate Farming Law changed in Kansas. We can build swine breeding facilities in most every state. We prefer to locate in this part of the country where the climate is better than the upper midwest and where there is a surplus of grain. We have purchased land in the panhandle of Oklahoma where we will begin shortly to build new facilities. Mr. Warren, of Kansas, Inc., asked that I come here today to give you information about our operation in Kansas and why new facilities are being built in another state. That is my purpose on being here.

I. OUTLINE OF DEKALB'S OPERATIONS IN KANSAS AND THE U.S.

o Let me briefly give you the location of DEKALB's breeding stock locations throughout the U.S.:

1. DEKALB has four research farms near DeKalb, Illinois.
2. We have breeding stock sales facilities located in Nebraska, Minnesota, Iowa, Indiana, Missouri, Illinois, North Carolina and Georgia. We have two farms near Lubbock, Texas for research and production. The law is clear; we can build facilities in most of these states to produce breeding stock. The law is not clear in Kansas that we can farrow and produce pigs for breeding stock and that is the reason we are moving to Oklahoma.
3. All of DEKALB's foundation farms are located near Plains, Kansas. We have eight farms near Plains that are our main production units.
4. Construction will start on the new foundation farms in Oklahoma in the near future.

5. Ninety eight percent of the breeding stock that is produced and sold by DEKALB is sold outside the state of Kansas either internationally or in other parts of the U.S.
6. In addition to our domestic sales, we sell breeding stock in Mexico, Canada, Venezuela, Dominican Republic, Ecuador, Japan, China, and Thailand. About 15 to 20% of the profit of the company comes from our international business.

o DEKALB SWINE BREEDERS OPERATIONS IN KANSAS:

1. Started in 1974 with one farm.
2. Built eight farms in eleven years at a cost of approximately 25 million dollars. Each year we purchase the following within Kansas:

* Grain	\$3.5 to \$5 million
* Other feed ingredients	\$3 to \$4 million
* Labor (about 200 employees)	\$3.4 million
* Kansas natural gas and Kansas electrical power	\$1 million
* Kansas trucking	\$.6 million
* Equipment, supplies, build- ing material and local contractors services	<u>\$1 million</u>
TOTAL:	\$12 to \$14 million spent yearly in Plains, Liberal, Dodge City, Garden City, Wichita, Lyons, Emporia, Gypsum and Kansas City.

3. We have plans to expand our production operations for probably the next ten to fifteen years as the swine industry in the United States continues to restructure.

II. WHY IS DEKALB IN BUSINESS?

DEKALB Swine Breeders is in business to serve the American hog farmer. DEKALB has spent millions of dollars in research and development to produce a better pig genetically, that is more efficient for hog producers. We are in business to service the farmer and ultimately the American consumer. Therefore, we feel it is our responsibility to do the best job we can to help the hog farmer produce the best meat product that can be produced for the American consumer at the least cost. The reason for DEKALB Swine Breeders to be in business is to help the hog farmer produce better meat at a cheaper price for the American consumer.

III. WHY DEKALB SWINE BREEDERS CAME TO KANSAS TO BUILD HOG OPERATIONS:

When compared to other states, Kansas has the best combination of favorable factors for commercial hog production.

1. Kansas has a good climate for hog production, It has a more moderate temperature and is drier than the corn belt states. Both of these factors favor production efficiencies.
2. There is an excess of grain in Kansas and it appears there will be a surplus of grain in Kansas for many years to come. Kansas produces grain, sorghum, wheat, corn and barley. All can be fed to hogs. There is the potential for Kansas grain to used to produce value added products to bolster the state economy.

IV. WHY IS DEKALB SWINE BREEDERS LEAVING KANSAS?

In 1987 we needed to build another operation and we planned to go to Texas, but some of the Kansas Senators and Representatives thought they could get the law clarified so the corporate farming law could be more easily understood, so we decided to wait another year. As all of you are aware, that did not happen. In the meantime, we were invited to come to Oklahoma and we have now

purchased land there and we will expand our facilities in Oklahoma. We will invest about \$4 million in facilities and working capital this year. It will take about 30 to 40 people about 9 to 10 months to build the facility and we will employ about 15 people to manage the operation after it is built.

It is very difficult to understand what the policy really is in Kansas regarding corporations owning farmland to produce livestock. The Corporate Farming Law was passed in 1981 with several exemptions. Other exemptions have been passed since 1981. The present exemptions in the Corporate Farming Law clearly allows corporations to own land to produce and feed livestock in confinement for slaughter. It is not clear whether a corporation can farrow pigs to produce hogs for slaughter or whether a corporation can buy land to farrow pigs to produce breeding stock in Kansas. For example, the present law exempts corporations to buy land to feed cattle in feed lots. Corporations can buy land to produce and feed rabbits and chickens. Corporations can buy land to feed pigs for slaughter, but the law is not clear whether or not corporations can buy land to farrow pigs or produce breeding stock. In most hog production units, the pigs are produced and fed out in the same unit. In fact, this is essential in most operations which makes hogs different than cattle. Kansas has the best potential for hog production in the U.S. Because of the restructuring of agriculture, hog production is going to other states instead of Kansas. Why wouldn't Kansas make best use of its natural resources? This uncertainty has driven DEKALB to another state which is comparable to Kansas to expand our business, but that state has laws which are more certain and encourage development.

RP/tah

January 24, 1989

TESTIMONY BEFORE THE HOUSE ECONOMIC DEVELOPMENT COMMITTEE

My name is Jerry Lindberg and I am the Executive Vice President of the Liberal Area Chamber of Commerce. I have been asked to speak to your committee today concerning the economic impact Dekalb Swine Breeders has on Liberal and Southwest Kansas.

Over the past several years Dekalb expressed their interest in expanding operations in Plains, located 40 miles northeast of Liberal. This expansion is needed to accommodate Dekalb's growing breeding operations. Representative Carl Holmes and former Senator Bob Frey both tried unsuccessfully to add hog farming to go along with corporated farming for cattle and poultry. The president of Dekalb, Roy Poage, testified last year before a select committee on corporate farm law stating they were going to build more hog farms whether Kansas changed the law or not.

The time for that expansion is here and Dekalb is building a new hog farm in Oklahoma, not Kansas. Their future expansion will be in Oklahoma, not Kansas. Dekalb has grown from one hog farm in 1973 to eight farms today. Number 9 will be built and operational in Oklahoma by the end of this year. Farm number 10 won't be far behind.

The \$12,000 Dekalb pays in property taxes per farm will now be paid in a new state. Dekalb did not want to move out of state, but by law we gave them no choice. While building the new farm and once it is operational, Dekalb will be buying supplies and services in Oklahoma, because they are good corporate citizens in the area they are located.

Dekalb likes to do business in the state of Kansas, in the southwest region of the state, and in their community. They do business in Garden City, Dodge City, Liberal, Hugoton, Plains, Kismet, Wichita, Emporia, and Kansas City. In fact, they spend \$12 to \$14 million annually in Kansas. Over 80% of the two million bushels of grain they use is bought within a 20 mile radius of Plains.

Speaking of grain, during harvest Dekalb pays an extra premium of 20 cents a hundred weight for sorghum, an added incentive for Kansas farmers. However, in hauling feed down to the new farm in Oklahoma, they may bring back grain. Instead of returning empty, they may purchase grain in Oklahoma, haul it back by the same truck used to haul feed, and use the grain to feed locally.

Presently, Dekalb employs 175 people with a payroll over \$3 million. Farm number 9 will employ an additional 15 people, with their payroll taxes going to Oklahoma.

On the local level, Dekalb works with both Seward County Community College and the Liberal Area Vocational Technical School to further upgrade the talents and expertise of their employees.

The College teaches a course to Dekalb's employees who train new employees. The vo-tech is working on a specialized course for all the maintenance personnel.

Dekalb buys paper supplies and some equipment from Gibson Discount Center, rents motel rooms from the Liberal Inn for visiting guests and interviewing prospective employees, buys electrical supplies from Triple A Electric and services, and fuel from Rash Oil. They contract with local trucking firms to haul the hogs to market or for export. They buy from Sears, Standard Supply, Diesel Equipment, Bearing Supply and Scantlin Furniture. These are only some on the many businesses Dekalb does work with. They also rent equipment from Call Rental. The employees Dekalb sends to Liberal to pick up these supplies also come back from where they live in Plains or Kismet and purchase products from these merchants.

In 1989 Liberal plans on spending over \$80,000 to try and attract new business to our area. The Kansas Department of Commerce has opened field offices in Japan and Germany to help Kansas companies export their products. Dekalb is already located in our area and presently exports to China, Japan, Thailand and Taiwan. They want to grow, hire more employees, buy more supplies locally, use more services, and export more hogs. They want what the people of Liberal and Southwest Kansas can not deliver. In fact, Kansas has told them to grow elsewhere, and now they are.

Southwest Kansas' main industry is agriculture. We have an opportunity to sell more grain to a growing company called Dekalb Swine Breeders. Kansas has an opportunity to sell Dekalb more energy, more goods and services. But to do this we need to change the corporate farming laws in Kansas. Afterall, where would Southwest Kansas be today if we said that the cattle industry would not use the corporate form of management?

What bothers me the most is the future relationship with Dekalb. All the foreign visitors touring Dekalb are taken through the newest hog farm. At the end of 1989 that hog farm will be located in Oklahoma. All foreign visitors will be shown the latest state of the art equipment and technology in swine breeding. Their impression will be about how far Oklahoma has come in hog farming, not about the eight farms in Kansas. They won't see much of Kansas except Liberal when they land at the airport on Eastern Express.

We have an opportunity here for agriculture and industry in Kansas, especially Southwest Kansas. I am asking you to consider changing the law to allow corporate hog farming in Kansas.