Approved February 14, 1991
Date

MINUTES OF THE Senate COMMITTEE ON Agriculture.

The meeting was called to order by Senator Jim Allen at
Chairperson

10:10 a.m./~~p.m.~~ on February 7, 1991 in room 423-S of the Capitol.

All members were present except: Senator Harder (excused)

Committee staff present: Raney Gilliland, Legislative Research Department
Lynne Holt, Legislative Research Department
Jill Wolters, Revisor of Statutes Department

Conferees appearing before the committee: Howard Tice, Kansas Association of Wheat Growers
Bill Fuller, Kansas Farm Bureau
Nancy Kantola, Committee of Kansas Farm Organizations
Ivan Wyatt, Kansas Farmers Union

Senator Allen called the Committee to order and called on Senator Lee.

Senator Lee explained that she was providing the Committee with copies of a letter (attachment 1) she had received concerning the Weights and Measures Scale Testing Law in regards to the reduction of employees. Senator Lee requested Committee members study the letter so as to be able to discuss the issue at a later time. Senator Lee provided the Committee with copies of KSA 2-1319 (attachment 2) and explained that the Jewell County Commissioners had requested a change in that statute. The request requested involved changing the wording so that when a county has some carryover, after they have levied the full mill levy, that they would be allowed to charge 75% to 100% of the cost of some of the more expensive chemicals. As the law now stands in such circumstances the charge could be only 50% to 75% of the total cost of the chemicals.

The Chairman stated that discussion of the issue would be at a later Committee meeting and that introduction was the request at this time.

Senator Brady made a motion that the Committee request the introduction of a bill that would change the wording so that 75% to 100% of the cost of chemicals could be charged at a time when a full mill levy had been charged and when at the same time there had been a carryover. Senator Lee seconded the motion. Motion carried.

Senator Allen turned Committee attention to SB 73 for continued testimony and called on the following.

Howard Tice, a proponent, could not be present; copies of his testimony were given to the Committee (attachment 3).

Bill Fuller provided copies of his testimony (attachment 4). Mr. Fuller expressed support for SB 73 and called attention to the resolution of support printed in his testimony that was adopted at the Kansas Farm Bureau annual meeting.

Nancy Kantola gave the Committee copies of her testimony which included the names of the organizations that make up the Committee of Kansas Farm Organizations (attachment 5) Ms. Kantola expressed support for SB 73.

Ivan Wyatt gave the Committee copies of his testimony which also included an analysis of the proposed bill that had been prepared by a lawyer at the request of Mr. Wyatt (attachment 6). Mr. Wyatt spoke as an opponent to SB 73.

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Agriculture,

room 423-S, Statehouse, at 10:10 a.m./~~p.m.~~ on February 7, 1991.

During Committee comments Mr. Wyatt answered that his organization had not met with Joe Lieber to try and work out differences of opinion. Mr. Wyatt answered that he had requested the help of David Velde because he works for the National Farmers Union.

Senator Allen requested staff to study the different views expressed to the Committee and to prepare information to help the Committee in deliberations when Committee action is undertaken.

The Chairman adjourned the Committee at 10:59 a.m.

GUEST LIST

COMMITTEE: Senate Agriculture **DATE:** February 7, 1991

NAME	ADDRESS	ORGANIZATION
Kimberly Ramsey	Lawrence	intern w/ Sen. Doyen.
[illegible]	Topeka	Ks Co-op Council
Bill [illegible]	Manhattan	Kansas Farm Bureau
Nancy F. Kantola	Topeka	CKFO
Diane Gruver	Topeka	Ks Co-op Council
David Heinz	Abilene	KFU
Becky Watts	Emporia	Ks. Farmers Union
Gary Watts	Emporia	Ks Farmers Union
Larry [illegible]	Abilene	Ks Farmer
Ralph [illegible]	Kalvesta, Ks.	KFU
Gina Bowman-Morrill	Kansas City, MO	FARMLAND
Chris Wilson	Topeka	KS Grain & Feed Ass'n
Tom Tunnell	Topeka	KS GRAIN & Feed Assn
Ivan W. Wyatt	McPherson	Ks Farmers Union
John [illegible]	KCK	Catholic Rural Life

STATE OF KANSAS

STATE BOARD OF AGRICULTURE

SAM BROWNBACK, Secretary

DONALD L. JACKA, JR., Assistant Secretary

January 25, 1991

Senator Janis K. Lee
Room 402 South
State Capitol
Topeka, Kansas 66612

Dear Senator Lee:

Relative to our conversation of January 24, 1991. The Weights and Measures Scale Testing Law 83-301 to 311, or more specifically 83-304, provides that the owner/operator of a scale which is used for commercial purposes shall have the device tested and inspected by a licensed service company at least annually. The test shall be conducted by a registered technical representative employed by a licensed scale testing and service company in accordance with rules and regulations adopted by the State Sealer pursuant to K.S.A. 1987 Supp. 83-214. If the device has been tested within the last twelve months, the device may be tested by the inspector to assure the device is accurate and the service company provided the services for which the device owner paid. A similar requirement is provided for refined fuel meters (gas pumps).

Prior to the refined fuel testing program transferred to the Kansas State Board of Agriculture's Division of Inspections, 11 full-time field employees (FTE's) tested pumps statewide. Through utilization of privatized testing, currently the Division of Inspections has 4 FTE field inspectors and one FTE who acts as a technical specialist for fuel quality and quantity analysis.

The Weights and Measures Inspection Program formerly had five FTE's dedicated to package checking and scale testing statewide. This program was combined with the Agricultural Supplies Program in 1987 and the Egg Inspection Program that same year. The total allocation of FTE's for the three programs was 12 FTE's.

The current program utilizes 11 FTE's to perform a combination of inspections when they call upon a facility. Prior to restructuring, a Weights and Measures inspector would call upon a facility to check packages and scales. Often within a few days an Egg inspector would call upon the facility to check the quality of eggs at the facility. In addition, an inspector from Agricultural Supplies would follow the other two inspectors to check pet food registrations or seed.

Senate agriculture Committee
February 7, 1991
attachment 1

Cross-utilization and cross-training of staff substantially reduced the numbers of different inspectors calling upon facilities and permitted the inspectors to travel small geographic territories, thus making them more efficient. This also reduced travel costs.

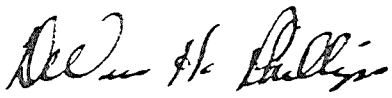
An independent study conducted in July 1990 by Secretary Sam Brownback showed the function costs for the services provided through the cross-utilization program: 1987 -$166,199, 1990 - $126,258, yielding a net annual savings in this program of $39,941. The annualized savings of the refined fuel program is $135,000.

Currently 495 service technicians are registered testing and servicing commercial devices. These individuals work for the 178 service companies licensed by the Kansas State Board of Agriculture. Without oversight by our agency of the registered technicians to assure the accuracy and correctness of the work they perform, it would grant these service companies a license to steal.

It is important that when the opportunity presents itself, immediate follow-up of the work performed by registered technicians be made by our staff for that prevents other factors affecting accuracy of devices. These random tests provide the purchaser of services (the device owner) the assurance that they: 1) have an accurate device; and 2) the service company provides the service for which they paid.

I hope I have addressed your concerns. I will make myself available to answer further questions from you or your constituents.

Very respectfully,



DeVern H. Phillips, State Sealer
Division of Inspections - ACAP
2016 S.W. 37th Street
Topeka, Kansas 66611-2570
Telephone No. 913-267-4641

DHP:mc

cc: Larry D. Woodson, Director of Inspections

bonds issued under the authority of K.S.A. 12-1774, and amendments thereto, by cities located in the county. Each county, city, and township, separately, shall make a levy each year in addition to all other levies now authorized by law, in such amount as is deemed to be necessary but not to exceed the limitation prescribed by K.S.A. 1982 Supp. 79-1947 and K.S.A. 79-1948, 79-1949, 79-1950, 79-1951, 79-1952, 79-1953 and 79-1962 in any one year. Any city may budget expenditures for weed control within its general operating fund in lieu of levying a special tax therefor or maintaining a separate noxious weed eradication fund. Moneys collected from such levy, except for an amount to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774, and amendments thereto, by cities located in the county, shall be set apart as a noxious weed eradication fund and warrants duly verified by the county or city supervisor if such be employed or if no supervisor be employed, then by county, township or city clerk, as the case may be, may be drawn against this fund for all items of expense incident to control of noxious weeds in such district respectively. Any moneys remaining in the noxious weed eradication fund at the end of any year for which a levy is made under this section may be transferred to the noxious weed capital outlay fund for making of capital expenditures incident to the control of noxious weeds. If moneys collected from such levy in the preceding year were insufficient to purchase chemicals or chemical materials needed for the purposes authorized in K.S.A. 2-1314a, 2-1319 or 2-1322, the tax levying body may levy an additional tax of not to exceed the limitation prescribed by K.S.A. 1982 Supp. 79-1947 and K.S.A. 79-1948, 79-1949, 79-1950, 79-1951, 79-1952, 79-1953 and 79-1962, but the moneys collected from such levy shall not be used for any purpose other than the purchase of such chemicals or chemical materials.

Any tax levy authorized under the provisions of this section shall be in addition to all other tax levies authorized or limited by law and shall not be subject to or within the limitations upon the levy of taxes imposed by K.S.A. 79-5001 to 79-5016, inclusive, and amendments thereto.

History: L. 1937, ch. 1, § 5; L. 1957, ch. 7, § 4; L. 1969, ch. 7, § 1; L. 1970, ch. 69, § 1; L. 1973, ch. 3, § 1; L. 1975, ch. 3, § 1; L. 1979, ch. 52, § 22; L. 1982, ch. 5, § 1; July 1.

Research and Practice Aids:
Counties⇐192.
C.J.S. Counties § 281.

2-1319. Control and eradication of noxious weeds; payment of costs; sale of chemicals for use on private property, price. The cost of controlling and eradicating noxious weeds on all lands or highways owned or supervised by a state agency, department or commission shall be paid by the state agency, department or commission supervising such lands or highways out of funds appropriated to its use; on county lands and county roads, on township lands and township roads, on city lands, streets and alleys by the county, township or city in which such lands, roads, streets and alleys are located, and out of funds made available for that purpose; on drainage districts, irrigation districts, cemetery associations and other political subdivisions of the state, the costs shall be paid out of their respective funds made available for the purpose. If the governing body of any political subdivision owning or supervising lands infested with noxious weeds within their jurisdiction shall fail to endeavor to control such noxious weeds after fifteen (15) days notice directing any such body to do so, the board of county commissioners shall proceed to have proper control and eradication methods used upon such lands, and shall notify the governing body of the political subdivision by certified mail of the costs of such operations, with a demand for payment. The governing body of the political subdivision shall pay such costs from its noxious weed fund, or if no such fund is available, from its general fund or from any other funds available for such purpose. Copy of the statement, together with proof of notification, shall at the same time be filed with the county clerk, and if the amount is not paid within thirty (30) days, the same clerk shall spread the amount upon the tax roll of the subdivision, and said amount shall become a lien against the entire territory located within the particular political subdivision, and shall be collected as other taxes are collected.

All moneys collected pursuant to this section shall be paid into the county noxious weed eradication fund. Tax levies made pursuant to this section shall be in addition to all other levies authorized by law, and shall be in addition to any aggregate tax levy limits prescribed by law. The words "governing body" as used herein shall mean the board, body, or persons in which the powers of a political subdivision as a body corporate are vested; and the words "political subdivision" shall mean any agency or unit of the state which now is, or shall hereafter be, authorized to levy taxes or empowered to cause taxes to be levied. On all other lands the owner thereof shall pay the cost of control and eradication of noxious weeds except that chemical materials for use on privately owned lands may be purchased from the board of county commissioners at a price fixed by the board of county commissioners which shall be in an amount equal to not less than fifty percent (50%) nor more than seventy-five percent (75%) of the total cost incurred by the county in purchasing, storing and handling such chemical materials. However, once the tax levying body of a county, city or township has authorized the maximum tax levy prescribed by K.S.A. 2-1318, the board of county commissioners may collect from the owner of privately owned lands an amount equal to seventy-five percent (75%) but not more than one hundred percent (100%) of the total cost incurred by the county in purchasing, storing and handling of chemical materials used in the control and eradication of noxious weeds on such privately owned lands. Whenever official methods of eradication, adopted by the state board of agriculture, are not followed in applying the chemical materials so purchased, the board of county commissioners may collect the remaining portion of the total cost thereof.

History: L. 1937, ch. 1, § 6; L. 1957, ch. 7, § 5; L. 1976, ch. 6, § 1; L. 1979, ch. 5, § 1; July 1.

Research and Practice Aids:
Agriculture⇐8.
C.J.S. Agriculture §§ 24 et seq.

2-1320. Unpaid costs of labor or material; itemized statement and notice to owner; penalties; liens; copy of notice to county or city clerk. In case the county weed supervisor or city weed supervisor enters upon land or furnishes weed control materials pursuant to a contract or an agreement with an owner, operator or supervising agent of noxious weed infested land for the control of such noxious weeds and, as a result of such weed control methods, there are any unpaid accounts outstanding by December 31 of each year, the county commissioners or governing body of the city shall immediately notify or cause to be notified, such owner with an itemized statement as to the cost of material, labor and use of equipment and further stating that if the amount of such statement is not paid to the county or city treasurer wherein such real estate is located within 30 days from the date of such notice, a penalty charge of 10% of the amount remaining unpaid shall be added to the account and the total amount thereof shall become a lien upon such real estate. The unpaid balance of such account and such penalty charge shall draw interest from the date of entering into such contract at the rate prescribed for delinquent taxes pursuant to K.S.A. 1982 Supp. 79-2968. A copy of the statement, together with proof of notification, shall at the same time be filed with the county or city clerk, as the case may be, and if such amount is not paid within the next 30 days the county or city clerk, as the case may be, shall spread the amount of such statement upon the tax roll prepared by the clerk and such amount shall become a lien against the entire contiguous tract of land owned by such person or persons of which the portion so treated is all or a part, and shall be collected as other taxes are collected, and all moneys so collected shall be paid into the noxious weed eradication fund, except that not more than 5% of the assessed valuation of the entire contiguous tract of land of which the portion so treated is all or a part shall be spread on the tax rolls against such land in any one year.

History: L. 1937, ch. 1, § 7; L. 1945, ch. 3, § 4; L. 1957, ch. 7, § 6; L. 1967, ch. 4, § 2; L. 1973, ch. 4, § 3; L. 1982, ch. 5, § 2; July 1.

2-1321. Filing of protests; hearings; appeals. If any person shall be dissatisfied with the charge made for material or rent of equipment used in the control and eradication of noxious weeds, said person shall, within ten days from the mailing of the account showing such charge, file a protest with the board of county commissioners, who shall hold a hearing thereon and shall have the power to either adjust or affirm such charge. If any person shall be dissatisfied with the decision rendered by the board of

Senate Agriculture Committee
2-7-91
attachment 2

Kansas Association Of Wheat Growers

"ONE STRONG VOICE FOR WHEAT"

TESTIMONY

SENATE COMMITTEE ON AGRICULTURE
Senator Jim Allen, Chairman

Senate Bill 73

Mr. Chairman and members of the committee, I am **Howard Tice, Executive Director** of the **Kansas Association of Wheat Growers.** On behalf of our members, I appreciate this opportunity to testify today in support of the proposals addressed by **Senate Bill 73.**

When the **Kansas Cooperative Council** notified us they would be seeking this legislation, they also offered to explain their position to our leaders and local members. **Joe Lieber** attended an **Executive Board** meeting and outlined the proposal and responded to questions. The **Board** also appointed a committee to meet with **Joe** and explore the issue more thoroughly. Following that committee's report, the **Board** agreed to distribute **Co-op Council** brochures concerning the proposed changes at local meetings, and to allow **Co-op Council** representatives time at those meetings to explain the issue.

The issue was discussed at every county and regional meeting we held last fall. When a **Co-op Council** representative could not be present, I explained the proposal as best I could, without making a recommendation.

A resolution was introduced at the county level, to support the **Co-op Council** proposal. At the state convention in **December**, this issue was quite thoroughly discussed. Delegates expressed reservations about allowing non-members to serve on co-op boards and on allowing voting based on patronage. There was enough debate on those suggestions, that they were set aside to give delegates more time to think about them, and the motion was passed, to support the rest of the proposal. When those two sections of the proposal were brought up again later, they were approved as well. Both votes were unanimous.

It is important to note that **KAWG** support for changes in the **Cooperative Marketing Act** extends only to the **Cooperative Council** proposals. The fact that this bill allows the proposed changes, if a local co-op votes for them, but does not mandate them, greatly influenced the vote. Discussion made it clear that any amendment that changes the voluntary aspect of the proposals should be vigorously opposed.

Senate agriculture committee
2-7-91
attachment 3

PUBLIC POLICY STATEMENT

SENATE AGRICULTURE COMMITTEE

Re: SB 73 - Updating the Kansas Cooperative Marketing Act

February 6, 1991

Topeka, Kansas

Presented by:
Bill R. Fuller, Assistant Director
Public Affairs Division
Kansas Farm Bureau

Chairman Allen and members of the Committee:

My name is Bill Fuller. I am the Assistant Director of the Public Affairs Division for Kansas Farm Bureau. We appreciate this opportunity to testify about S.B. 73 on behalf of the farmers and ranchers who are members of the 105 County Farm Bureaus in Kansas.

Many of our members do business with and are stockholders in cooperatives in Kansas. For these reasons, our farm and ranch members have studied the recommended changes, debated the issues and adopted policy. Early last summer the Kansas Cooperative Council pointed out to Kansas Farm Bureau the need for an update and outlined their recommended changes to the law. We appreciate the efforts of the Cooperative Council in seeking input from our members. We informed our members by distributing 5000 of the Cooperative Council brochures, "For the 90's and Beyond." Also, we included a section in the "1990 Policy Development Questionnaire" for Farm Bureau members. Our members overwhelmingly support an update in the Cooperative Marketing Act. They believe the changes are needed to allow diversification, flexibility and the ability to compete in today's business world.

While strong support was given for the recommendations proposed by the Cooperative Council, some concern was expressed on two provisions. The strongest objection came for recommendation #5...allowing the election of some directors who are not members. In addition some were concerned about recommendation #8...permitting voting based upon patronage.

Senate agriculture Committee
2-7-91
attachment 4

The Voting Delegates at the 1990 KFB Annual Meeting adopted this resolution:

Kansas Cooperative Marketing Act

We believe the Kansas Cooperative Marketing Act should be updated. The Cooperative Marketing Act was enacted in 1921 and has been amended or changed only slightly since that time.

We support changes in the Kansas Cooperative Marketing Act which will permit local cooperatives to be more competitive in today's business and economic environment. Statutes governing cooperatives should provide management and membership with flexibility and the opportunity for diversification.

We strongly believe the control, operation and management of a Cooperative must remain with the members and their elected directors.

The key point in KFB Policy is found in the last paragraph. Our members insist that members and their elected directors must control, operate and manage <u>their</u> Cooperative. Therefore, our members believe all changes to the Act must be "permissive" and require action by the members before changes in structure or operation is allowed.

Thank you for this opportunity to express the opinions of our members on this important issue. We will attempt to respond to any questions.

COMMITTEE OF ...
KANSAS FARM ORGANIZATIONS

Nancy E. Kantola
Legislative Agent
3604 Skyline Parkway
Topeka, KS 66614
(913) 273-5340

STATEMENT OF POSITION OF THE

COMMITTEE OF KANSAS FARM ORGANIZATIONS

RE: S.B. 73

Senate Agriculture Committee

February 6, 1991

Mister Chairman, Members of the Committee: As Legislative Agent for the Committee of Kansas Farm Organizations, I thank you for the opportunity to offer our members support for the Kansas Cooperative Council.

The Committee of Kansas Farm Organizations is made up of twenty-one members; farm organizations, commodity groups and agribusiness associations. We require unanimous agreement before we take a position on any legislation.

The following statement was adopted at the meeting yesterday:

> "We support changes in the Kansas Cooperative Marketing Act which will permit local cooperatives to be more competitive in today's business and economic environment. Statutes governing cooperatives should provide management and membership with flexibility and the opportunity for diversification.
>
> We strongly believe the control, operation and management of a Cooperative must remain with the members and their selected directors."

Again, thank you for your consideration of this bill.

Respectfully submitted,

Nancy E. Kantola

Nancy E. Kantola

Senate Agriculture Committee
2-7-91
attachment 5

COMMITTEE OF KANSAS FARM ORGANIZATION MEMBERS

ASSOCIATED MILK PRODUCERS, INC.

KANSAS AGRI-WOMEN ASSOCIATION

KANSAS ASSOCIATION OF SOIL CONSERVATION DISTRICTS

KANSAS ASSOCIATION OF WHEAT GROWERS

KANSAS COOPERATIVE COUNCIL

KANSAS CORN GROWERS ASSOCIATION

KANSAS ELECTRIC COOPERATIVES

KANSAS ETHANOL ASSOCIATION

KANSAS FARM BUREAU

KANSAS FERTILIZER AND CHEMICAL ASSOCIATION

KANSAS GRAIN AND FEED DEALERS ASSOCIATION

KANSAS LIVESTOCK ASSOCIATION

KANSAS MEAT PROCESSORS ASSOCIATION

KANSAS PORK PRODUCERS COUNCIL

KANSAS RURAL WATER DISTRICTS ASSOCIATION

KANSAS SEED DEALERS ASSOCIATION

KANSAS SOYBEAN ASSOCIATION

KANSAS STATE GRANGE

KANSAS VETERINARY MEDICAL ASSOCIATION

KANSAS WATER WELL ASSOCIATION

MID AMERICA DAIRYMEN, INC.

GAFFANEY & VELDE LAW FIRM. LTD.
ATTORNEYS AT LAW

GEORGE GAFFANEY
DAVID G. VELDE
BRENDA VELDE
VIRGINIA K. BOEVER
PETER MELLOM

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1118 BROADWAY
ALEXANDRIA, MINNESOTA 56308
TELEPHONE (612) 763-6561
FAX (612) 763-6564

ST. CLOUD OFFICE
MARKET PLACE OFFICE TOWER
110 SECOND STREET SOUTH, SUITE 209
WAITE PARK, MINNESOTA 56387
TELEPHONE (612) 259-7009
FAX (612) 259-7059

REPLY TO:
☐ ST. CLOUD OFFICE
☒ ALEXANDRIA OFFICE

February 4, 1991

Mr. Ivan Wyatt, President
Kansas Farmers Union
P.O. Box 1064
McPherson, KS 67460

Dear Ivan:

Enclosed you will find several items relative to the legislation that we recently spoke of. I have attempted to provide you with a variety of tools that you can use in your upcoming testimony on the legislation.

I have never had the opportunity to work for you in developing this kind of material so I encourage you to modify the contents in such a way as to make it comfortable for your style of presentation.

Among the items enclosed you will find:

1. A report laid out in a side by side column format with the left column being a simple statement of what the section of the act seeks to accomplish, with the corresponding column containing some points to discuss on the section.

2. There is a copy of Section 1 of the Capper-Volstead Act which I thought might be useful.

3. There is a paper on the topic of what is a cooperative, with some points germane to the legislation.

4. There is a paper on the topic of Antitrust and the contents of the Capper-Volstead Act.

5. There is a paper dealing with some general observations on the business trends that may be useful.

Senate agriculture committee
2-7-91
attachment 6

6. There is a copy of a memo done by the Congressional Research Service in May of 1990 regarding Farmland Industries vertical integration.

7. Finally, there is a narrative paper on the main points of the legislation.

My understanding is that your upcoming testimony is just the first stage of consideration for this legislation, if you feel that additional assistance can be provided I would welcome the opportunity to work with you on this project.

I would appreciate hearing from you if you find this material helpful for your testimony.

Sincerely,

GAFFANEY & VELDE LAW FIRM, LTD.

David G. Velde

DV/PL

SIDE BY SIDE COMPARISON

OF THE SECTIONS AND THE COMMENTS

1. Section 1603 is changed to allow a cooperative to have the power to form a subsidiary, without the current requirement that the creation include members of the existing cooperative.	1. While the comments to the act refers to subsidiary cooperatives in fact the act does not specify that the subsidiary must be a cooperative. It would appear from the language of the act that a corporate subsidiary could already come into existence. Further the change makes it easier for the parent cooperative to form the subsidiary by removing the requirement for the joining in the subsidiary of at least four other members of the original cooperative.

2. Sections 1064 and 1605 provide for increased latitude as to the type of business activity of the cooperative, as well as interests in other entities including those not related to the activity of the cooperative In particular the changes to section 1605 greatly expands the statement of purposes for the cooperative.

2. These changes would greatly extend the investment and thus risk position of the equity of the cooperative by allowing investments in other corporations and any lawful business activity. Existing language limits investments in activities that are related to the business of the cooperative. The question would of course arise as to why the cooperative would wish to take an equity position in an unrelated business. Unless perhaps there is a belief that this would allow access to the capital base of the cooperative for some other purpose.

Advocates of this change also cite that the existing language brings into question what in fact would be considered activities incidental to the cooperative function. However the only persons with standing to raise this issue would be the members themselves which would seems to be satisfactory.

3.	Section 1606 is changed to allow for a stockholder of a nonstock association to be represented by an officer or some other agent.	3. This is apparently changed to allow for a trustee to act for a trust which would now be eligible for membership as a result of earlier changes. Of greater interest is the apparent problem with speaking of a stockholder having certain power within a nonstock cooperative.
4.	Section 1607 changes would allow a cooperative to be incorporated in Kansas however it would not have to do the bulk of its business there.	4. This change could be used to allow cooperative to use Kansas law if it felt that Kansas law was more favorable to its goals that the state where it intends to operate. This would be similar to the use of Delaware for many general business corporations. It would further extend the difficulty of local farmer control over statutory provisions because we would now have to look to another state for necessary changes.

5.	Section 1608 would change the requirements for changes in the organic documents of the cooperative. Specifically, it would allow for a new class of voters called voting stockholders in addition to members.	5.	The change here is significant because it allows a group called voting stockholders to be able to change the by-laws and/or articles of incorporation. The result of this action allows a significant shift in the power away from the cooperatives members. Virtually every authority on the issue of by-laws and articles of incorporation strongly supports the need for strong member control over this issue, to change and dilute this power is very serious for the organization. This is the ultimate power of the member over the cooperative.

6.	Section 1609 would be changed to reduce the quorum requirements and to allow for a greater rate of return on stock.	6. The first issue here is similar to number 5 above because of the reduction in quorum required. The change in interest rate has two problems. First it seems to be inconsistent with Section 1 of the Capper-Volstead Act (7 USCS Sec. 291) which limits return to 8%, unless there is one member one vote limitations on member voting power. Second, it is argued that this change is needed in order to pay a competitive rate on invested capital. However, a cooperative does not function on the basis of investor returns(See What is a Cooperative?) If capital is needed by a business, whether a cooperative or a general corporation it can be raised by investment in stock(equity) or by association borrowing(debt). In either case there is to be a cost of funds to be paid, either a dividend or interest on debt. However, debt does not change the control of the cooperative, stock does.
7.	Section 1610 changes does not seem to be significant.	7. N/A

8. Section 1611 will change the definition of who can vote for directors and who is eligible to be a director.

8. The significance of this change is that in addition to members of the cooperative voting for the directors now a cooperative could have stockholders also voting for the directors.

Further, it would no longer be necessary to only elect directors from the membership base of the cooperative, directors could be non-members.

The argument in support of this change is that a cooperative could then attract "outside talent" to become part of the board of directors. While the process of attracting "talent" for the management of the affairs of the cooperative is vital, there is a much more prudent means to use. If the cooperative hires the expertise that it needs, either as staff or better yet as a professional consultant you can hold that person accountable professionally for errors in judgement. If a director makes a mistake in his recommendation of policy development, he would not be accountable under the "best judgement rule" which is the standard of accountability for directors. However a professional consultant has far greater accountability, and there would be no change in the reliance upon the farmers members for the board.

9. Section 1612 changes would allow for persons not elected by the membership to assume officer status in the cooperative.

9. This is of similar concern to item 8 above. It further expands beyond the control of the members who shall have leadership/officer status in the cooperative.

10. Section 1613 changes would effect both the percentage of stock ownership within one person and would also significantly change the distribution of cooperative equity.

10. The change here is consistent with the earlier change being offered whereby the number of person needed to form a cooperative is reduced. Therefore the same issues are present here as before on this point.

The second change in this section however is perhaps the most important of all.

It would allow for the transfer of stock to a much broader spectrum of persons, in essence to anyone who is eligible to be a member of the cooperative. This would allow the accumulation of stock in non-farmer hands. This concentration is contrary to basic coop concepts.

Further, voting rights will not allow the voting of equity value versus the traditional one member on vote concept. One must ask why anyone would want such a situation to exist? What value is there to have such power? The answer may well appear in the rest of the changes to this section.

This section further allows for a greater payout of the reserve capital of the cooperative. Could it be that with the removal of the statutory limit on equity distribution, that a corporate raider could find the assets of a cooperative a worthy target of a take over attempt. For the purpose to tapping into the capital reserves and investing them in unrelated corporate investments. Note that this bill would also allow for non-related investments if adopted as presented.
The 50% statutory rule would be eliminated under the proposed change--why?

11. Section 1614 would change the procedure for the removal of a director, shifting power away from farmer members to stockholder.

11. The change here would allow the a majority of the voting stock to remove a director rather that a majority of the members(under 1 member, 1 vote rule). If a cooperative were an equity voting cooperative, then a relatively small group of high equity stockholders could remove "uncooperative" directors. Perhaps those directors who would oppose outside investment of cooperative assets.

12. Section 1615 changes do not seem important.

12. N/A

13. Section 1616 changes reflect the opportunity to change the rate of return on stock.	13. Same issue as in item #9.
14. Section 1617a changes the provisions with respect to interests owned by the cooperative in other activities.	14. Just as described earlier these changes would allow for outside investments. Further the stricken language from the old law provided an even greater safeguard as to the scope of the allowable investments and should be kept.
15. Sections 1618-1621 continue the same theme of changes described else where herein.	15. N/A
16. Section 1622 would be a repealer of the penalty provision for spreading false reports about the condition of the cooperative.	16. It would seem odd that we would not want to keep this provision. Only those persons who are convicted of violating this section face any problem.
17. Sections 1623-1628 contain no real changes.	17. N/A
18. Section 1629 if adopted would make it harder for the board to increase the capital reserves of the cooperative by requiring a 2/3 vote of the board versus the current majority.	18. The only reasonable purpose for this provision is to make it easier for a minority of the board to limit the capital reserves of the cooperative thereby leaving more money available for distribution and/or outside investment.

19.	Sections 1630-1635 do not appear to have any important provisions.	19. N/A

20. The balance of the legislation consists of new language which thus deals with a number of items not dealt with in the existing statutes. The following will simply be a section by section discussion of what the new statutory language would provide.

SECTION 17-1637

Subdivision (a) of this section allows for the merger or consolidation of two or more domestic(meaning in the state of Kansas) cooperatives and/or corporations. The result of which can be a new cooperative or general business corporation or one of the merging or consolidating cooperatives or corporations could survive. The important feature is that the cooperative could wind up being fully absorbed into a general business corporation with no remaining cooperative features.

Subdivision (b) of this section provides what the merger/consolidation agreement must contain at a minimum. However nothing is contained in the proposed statute which would require disclosure of any executive compensation agreements(i.e. golden parachutes, special stock options, etc).

Subdivision (c) establishes the member/stockholder approval process and contains several important features:

1. The member/stockholder meeting can be called with as 20 days notice. This does not seems to allow very much time for consideration and debate among the voters.
2. The vote necessary for adoption is 2/3, however it must be remembered that equity voting will again have a very significant effect here.

Subdivision (d) further provides that if the members/stockholders agree to the merger or consolidation the boards of directors of the entities may still approve a change in the agreement, this agreement will still be operative even though it was not part of the original agreement as approved by the voters of the entities. There are certain limitations as to the subsequent agreement, however there is still a tremendous number of issues that could be changed after approval. Subdivision (e) is of no great significance.

Subdivision (f) is another very powerful tool to deny cooperative members a voice in the affairs of their cooperative. It provides that if a cooperative is going to merge with another entity(cooperative or corporation) if the result is the survival of the cooperative there is no need for

a vote of the membership on the proposed merger. While there are minimal exceptions the basic rule will be that the board can, without seeking approval of the members, use the reserve capital of the cooperative to fund a merger with another entity!

SECTION 17-1638

The provisions of this section are in essence the same as the previous section, except that it allows for mergers and consolidations to occur between domestic(Kansas) and foreign(another state) cooperatives and corporations.

SECTION 17-1639

This section requires that certain fees etc. be paid before finalization of the merger or consolidation.

SECTIONS 17-1640 & 17-1641

These two sections are procedural issues which are required by the adoption of the previous sections for mergers and consolidations.

SECTION 17-1642

This section provides for a very cumbersome process for a member to seek the refund of his/her interests in the cooperative in the event that he/she does not want to be a part of the new entity. Clearly the procedural requirements here are designed to make it very difficult for a person to get his/her money out of the cooperative. A brief review of the provisions reveals how hard this would be, clearly the intention is to retain as much of the equity as possible rather than allow a person to withdraw.

Finally, attention is drawn to the last few lines of the bill as proposed which seems to indicate that several sections of the underlying statute are to be repealed, it would seem that this must be some error in drafting, if not it does not make any sense.

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CAPPER-VOLSTAD ACT

SECTION 1.

Persons engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, nut or fruit growers may act together in associations, corporate or otherwise, with or without capital stock, in collectively processing, preparing for market, handling, and marketing in interstate and foreign commerce, such products of persons so engaged. Such associations may have marketing agencies in common; and such associations and their members may make the necessary contracts and agreements to effect such purposes: Provided, however, That such associations are operated for the mutual benefit of the members thereof, as such producers, and conform to one or both of the following requirements:

First. That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein, or,

Second. That the association does not pay dividends on stock or membership capital in excess of 8 per centum per annum.

An in any case to the following:

Third. That the association shall not deal in the products of nonmembers to an amount greater in value than such as are handled by it for members.

WHAT IS A COOPERATIVE?

For those of us in agriculture the question of what is a cooperative is like asking to define farming itself. We all know what is meant but it takes some reflection to really state and define a cooperative. Most of us use them and appreciate the fact that they are there as a resource in our communities, but we don't very often stop to think about their truly unique characteristics.

The United States Department of Agriculture in its publication entitled, *Cooperative Principles and Statutes*, identifies three concepts regarding cooperative operations that I think are useful to our base of understanding.

First it states that, the basic purpose of a cooperative is to render economic benefits to its members. I think that we would all agree that this is fundamental to cooperative purposes. (Note however that it does not say a return on investment, but rather it speaks of economic benefit to its members.)

Second it provides that, cooperatives are organized around the mutual interests of members. This concept is of vital importance

to understanding cooperatives. It does not envision that any segment of the cooperatives membership is of greater importance or significance than the overall good of all patron members.

Finally the publication reveals that, cooperatives are essentially nonprofit enterprises in the sense that they are not organized to make monetary gains for cooperatives as legal entities or for their members as investors, but primarily for all patrons as users of their services. It seems to me that this concept in particular speaks to the very substance of the issues being presented in this proposed legislation. (Even our own Kansas statute in section 17-1603 refers to cooperatives as non-profit.)

While it is true that cooperatives use the concept of dividends to its members and patrons, it is important to understand that when used in the context of cooperative business activity the word dividend has a unique and special meaning. The profit incentive is the driving force of commerce and I agree it must be. However the real question here is for whom does the profit incentive apply.

In a cooperative association the concept of profit, as used in the normal terms of commerce is inappropriate, because profit is the wage of the entrepreneur or businessman, and in a cooperative there is no entrepreneur. A cooperative is run for the

benefit of those who do business with it and not for the purpose of making a profit for the organization.

This does not mean that I view a cooperative as being somehow a second class participant in commerce. In fact as a patron member I expect and demand that my cooperative constantly insure that it:

-takes those steps necessary to incorporate all applicable technological developments in the furtherance of the cooperative's activities

- takes those steps necessary to develop and maintain a strong fiscal base to support current and future business activity for the cooperative

-prices its products and services to insure the adequate return to the cooperative to maintain the cooperatives fiscal integrity

It is also of vital importance to understand that a cooperatives purpose is, as stated earlier, the economic betterment of its members, as opposed to simply a return on invested capital. The significance of this concept focuses on the cooperatives role as an extension of the members own farm business. Frequently the cooperative is

faced with the question of whether to continue a particular service or product which in and of itself is not a financially successful venture. The need to continue the service however relates to the needs of the members of the cooperative and the management plan most often adopted is to in essence subsidize this service component from other business activities of the cooperative.

While a cooperative cannot continue to carry unproductive product and service lines to such an extent as to bring financial ruin to the whole operation, the cooperative is far more willing to "go the extra mile" than investor/profit driven businesses are prepared to assume. Considering this reality in the context of the dwindling business presence in many rural areas this commitment to member service is of increasing importance.

It is important to understand as well that a member's interest in the cooperative does reflect his or her economic participation and "investment" in the cooperative. While a member is limited to one vote, the member's economic return, as measured in the traditional sense, does reflect the level of use of the cooperatives products and services-the more you buy the more you earn. So there already exists a means of reward for the member/producer who has heavily used the cooperative.

SO WHAT IS THE ANSWER TO THE QUESTION OF

WHAT IS A COOPERATIVE? COOPERATIVES EXIST TO PROVIDE MUTUAL ECONOMIC BENEFIT FOR THE MEMBER OWNERS-AS AN EXTENSION OF THEIR OWN BUSINESS ACTIVITY-AND NOT AS A TRADITIONAL-FOR PROFIT, INVESTMENT ORIENTED BUSINESS CONCERN.

WHAT ABOUT ANTI-TRUST AND CAPPER-VOLSTEAD

It is interesting to note the history of the cooperative movement, because the ability of farmers to form a business relationship called a cooperative is really an exception to the anti-trust laws. Specifically, the Capper-Volstead act provides that farmers may form cooperatives and work together and that such arrangements will not be a violation of the anti-trust laws.

This act was enacted to clarify and extend the exception from the operation of the antitrust laws which is granted to agricultural cooperatives in the Clayton Act (15 USCS Section 17), and the principal questions involving the construction and application of this statute have related to the extent of the exemption granted under the statute, and the type of agricultural cooperatives which will qualify under the requirements found in the statute.

While most of us in agriculture find it difficult to imagine our farm business life without our cooperatives, we must understand and remember that there does exist significant and perhaps growing number of

federal legislators who would severely limit if not remove our ability to function cooperatively.

Some would suggest that this concern is ill founded and the day will never come when such a challenge would mature into a real threat. However, it might do us well to consider what is the reason for the criticism that they are surfacing against us.

In its most simplistic form the argument they forward is that too many cooperatives are moving far beyond what activities were envisioned when the authorization was passed. If we look to some of the examples of business concerns that have commenced operations under the benefits of a cooperative it is clear that the scope of activities clearly goes beyond an association of traditional farmers trying to meet certain economies of scale. Particularly in certain limited specialty crop areas the cooperatives have acquired major market power and concentration. While I as a producer welcome the power acquired by these producers for there benefit, I am concerned that if in fact we are talking about business entities using our cooperative vehicle to accomplish this result I resent the risk is posses to the cooperative way of doing business.

The challenge is not to the power acquired by traditional family farmers as we commonly think of and deal with in Kansas, but rather the unwelcome presence of

corporate farmers leveraging the benefits of cooperative structures.

This act would now add yet a new dimension to the scope of activity by a cooperative, in a manner never before envisioned for cooperatives.

No one would have contemplated using the economic resources of a cooperative to become investor owning stockholders in other corporate structures; no one would have thought of the out right consolidation and or merger of our entities into the private corporate world.

It can be said that the world is changing and that we need to have the tools to operate in this new world. I question the basis for this attitude because it thrusts cooperatives into a new arena for which we have no real purpose.

I must also call into serious question how the provisions of this proposal can be sustained in light of the provisions of the federal law. Capper-Volstead in section 1 requires that a cooperative must either limit the return to 8% on dividends on stock or membership capital or it must only allow 1 vote per member of the cooperative. This legislation would change both of these features

THE TIMES WE LIVE IN

It has been amazing to observe the speed with which the 1980's have changed the landscape of economic structure within the United States. We have seen the rapid deterioration of our financial institutions, the horrendous costs imposed upon all of us in the bail out of the failed savings and loan industry and we are beginning to see greater concerns on the solvency and reliability of the Federal Deposit Insurance Corporation. Over this same period of time we have seen a rapid growth in the frequency of mergers and consolidations. We have seen the issuance of billions of dollars of junk bonds to fund these acquisitions and now realize that the term used "junk bonds" is in fact accurate. People will be loosing their savings and have jeopardized their futures on these investments.

One of the initiatives in support of this proposed legislation is to allow cooperatives to remain "modern" and to be able to function in today's economy. It seems to me we need to question whether or not that its an economy for which we really want to expose the resources and capital reserves of our cooperatives. The mergers and acquisitions

that we have observed and for the most part, in my opinion, not resulted in true economic gain increased employment opportunities and an enhancement of our economic climate and to allow our cooperatives to be exposed to this kind of a marketplace seems to me illfated and of no real value to our farmer members.

References have been made to the fact that these statutes have been in place for many, many years and it is time to change them, they are out of date and no longer in touch with the reality of today. Well, we have a lot of laws that have been around many years and are functioning very well, whether it be the Constitution of the United States or it be the Ten Commandments, these things have been with us for many years and continue to serve us well. Change for change sake has no relevancy in legitimate governmental decision making process.

I think we also sometimes suffer in agriculture from a sense that we are not trendy enough and that we are not keeping pace with the events of the world and changes that are occurring around us. We are sometimes anxious to prove to ourselves and others that we are a contemporary. To be a contemporary in our world of the economic reality of the 80's to change our organizational structures to allow us that risk of exposure for which there is no real gain makes no sense whatsoever.

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May 4, 1990

TO : Honorable Jim Slattery
Attention: Roger Claasen

FROM : American Law Division

SUBJECT : The Capper-Volstead Act: Contracting Practices of An Agricultural Cooperative

This memorandum is furnished in response to your request concerning the Capper-Volstead Act which provides an anti-trust exemption for agricultural associations that conform to the requirements of the Act. Specifically, the memorandum sets forth relevant provisions of the Capper-Volstead Act (the Act), summarizes apparent hog contracting practices of Farmland Industries, an agricultural cooperative[1], and discusses whether Farmland's contracting activities appear to be in violation of the Act.[2]

The Capper-Volstead Act

The Capper-Volstead Act[3] provides an anti-trust exemption for agricultural cooperative associations formed by persons "engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, nut or fruit growers". The Act permits these named persons to act together collectively. Associations may be formed, as corporations, or otherwise, may be with or without capital stock, and may collectively process, prepare for market, handle, and market in interstate or foreign commerce, the agricultural

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[1] A "cooperative association of producers" is defined in 7 U.S.C. §2.

[2] Although the issue is beyond the scope of this memorandum, it is noted that state law concerning agricultural corporations and associations may be relevant to Farmland's practices as well.

[3] 7 U.S.C. §§291, 292.

6-26

products of the persons so engaged. 7 U.S.C. §291. This statutory exemption may protect associations from liability under antitrust laws.[4]

Agricultural associations may have marketing agencies in common and their members may make necessary contracts and agreements to effect the purposes of the association. The Act exempts agricultural marketing cooperatives from the antitrust laws if it is operated for the mutual benefit of the members, if no member is entitled to more than one vote on account of the amount of capital contributed or the amount of stock owned, or if the association does not pay dividends on stock or membership capital in excess of 8% per year. As an additional requirement, the association is not permitted to deal in the products of nonmembers to an amount greater than the amount that is handled by it for members. 7 U.S.C. §291.

Monopolization or restraint of trade and acts which unduly enhance prices of any agricultural product are expressly prohibited under the Capper-Volstead Act. 7 U.S.C. §292 provides that if the Secretary of Agriculture believes that any association monopolizes or restrains trade in interstate or foreign commerce to an extent that the price of any agricultural product is unduly enhanced, the Secretary is authorized to serve a complaint on the association and proceed under the statute's enforcement provisions. The Secretary may order the association to cease and desist in this regard.[5] Moreover, noncompliance may lead to liability under antitrust laws.

Farmland Industries, Inc.

Farmland Industries is a large agricultural cooperative involved in pork production, is based in Kansas City and serves the Midwest. The question in this memorandum is whether some of Farmland's activities are prohibited under the Capper-Volstead Act to the extent that its activities would threaten its antitrust exemption under the Act. Issues which might be raised concern Farmland's "vertical integration" organization for pork production, its hog contracting practices, and whether the association is dealing in nonmember products in an amount not permitted under the Act.

Vertical integration describes an association's involvement in a number of distinct stages of production, that is, production control at various levels: supplying inputs, monitoring and controlling production, marketing finished products and, in some cases, brand-labeling the final product. This type of large scale organization could involve the association in pork production from start to finish. This organization style may raise concerns if the association

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[4] See 15 U.S.C. §§1 *et seq.*

[5] Specific statutory provisions and regulations for enforcement and for administrative proceedings are set forth at 7 U.S.C. §292 and 7 C.F.R. §§1.160 *et seq.*, respectively.

6-27

enters into production contracts with nonqualified members in a manner which would threaten its exempt status under the Act.

Two types of contracts or agreements may raise concerns: (1) Farmland's contracts to place feeder pigs with local cooperatives in Iowa and Kansas for feeding to market weight and (2) contracts with producers to produce quality feeder pigs for use in "its finishing program". Under this second type of contract, Farmland might purchase feeder pigs from member producers, retain ownership throughout the feeding period, contract with a local co-op who then contracts with a local member who agrees to manage the pigs for a fee.

A threshold issue is that in order for this type of association to be entitled to the protection of the Act and as a consequence, avoid liability under the antitrust laws, it must be shown that all of its members are qualified to act collectively as "farmers" under the statute. It is not enough that some of the members qualify. This determination is made based on the definition of "farmer" in 7 U.S.C. §291 as well as the purpose of the statute. If it is concluded that a member/s is not a "farmer" as that term is used in the Act, then the association may lose its exempt status and may face liability under relevant antitrust laws.

The Supreme Court addressed this qualified member issue under the Capper-Volstead Act in *National Broiler Marketing Ass'n v. United States.*[6] In this case, the U.S. brought an action against an agricultural cooperative association, the members of which were integrated producers of broiler chickens. The association [NBMA] had organized to perform various marketing and purchasing functions on behalf of its members. The government asserted that the co-op violated the federal antitrust laws and that it was not sheltered from liability under the Capper-Volstead Act. The Supreme Court held that because not all members of the co-op were "farmers" within the meaning of the Act, the association was not entitled to protection from the antitrust laws afforded by Capper-Volstead.

The Court noted that the cooperative was involved in various "integrated" stages of production: the placement, raising, and breeding of breeder flocks to produce eggs to be hatched as broiler chickens; the hatching and placement of the chicks; the raising of the chicks for a period; the catching, cooping, and hauling of the "grown-out" broiler chickens to processing facilities; and the operation of facilities to process and prepare the broilers for market.[7] The Court further stated that:

> The broiler industry has become highly efficient and departmentalized ... and stages of production that in the past might all have been performed by one enterprise may now be split and divided among several, each with

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[6] 436 U.S. 816 (1978).

[7] 436 U.S., at 820-21.

> a highly specialized function. No longer are eggs necessarily hatched where they are laid, and chicks are not necessarily raised where they are hatched ... Often the chicks placed with an independent grower have been hatched in the member's hatchery from eggs produced by the member's breeder flock .... The member then places its chicks with the independent grower for the grow-out period.[8]

Notwithstanding these realities of modern agriculture production[9], the Court held that all members of the association must be qualified in order for the association to enjoy the exemption from antitrust laws under the Capper-Volstead Act and held that some NBMA members did not own or control a hatchery or breeder flock, or did not own a grow out facility. These members were not considered to be "farmers" as that term is used in the Act. Therefore, the association with these nonqualified members was not entitled to the protection of the Capper-Volstead Act.

For the purposes of this memorandum, Farmland's integrated production style appears to be similar to that which is prevalent in the modern chicken business.[10] Farmland's contracts which might provide for the feeding and management of hogs by cooperatives which may or may not be members of Farmland's association raises concerns under the statute and applicable case law. Even if the persons with whom Farmland is contracting are members, it is not clear whether they are qualified members or "farmers" within the

[8] 436 U.S., at 821-22.

[9] Justice Brennan's concurring opinion in *NBMA* reflected concerns raised by Farmland in attached materials. See "Farmland Industries, Inc. White Paper Position on Contract Feeding By Cooperatives, April 1, 1989." Justice Brennan agreed with the Court's opinion but added that at the time the Capper-Volstead Act was enacted, farming was not a vertically integrated industry. The model at that time was a relatively large number of small, economic farming units. Nonetheless, Congress intended to exclude from the Act's protection, persons who were not farmers within the meaning of the Act, including some who bore risks in the business of agriculture. Justice Brennan cited the American Farm Bureau Federation's position when it stated that extending the exemption to vertical integrators would "stand the Act on its head".

> However desirable the integrated broiler production system may be, and however needful of the exemption, judges should not readjust the conflicting interests of growers and integrators; it is for Congress to address the problem of readjusting the power balance between them.

436 U.S., at 738-745.

[10] Reference is made to the attached materials which offered limited descriptions of Farmland Industries, Inc.

6-29

meaning of the Act. This determination is critical since the association could face losing its exempt status under the Act and thus be subject to liability under antitrust laws.

Based on the limited amount of information provided, it cannot be concluded in this memorandum whether or not all members of Farmland's association are qualified to act collectively under the Act and whether the association is complying with relevant provisions of the statute. Nonetheless, it can be stated that in order for an integrated association like Farmland to continue its exempt status under the Act, its members involved in its integrated production must be "farmers" within the meaning of the Act.

Diane T. Duffy

Diane T. Duffy
Legislative Attorney
American Law Division

6-30

WHAT IS THIS ALL ABOUT REALLY?

It appears to me that when you complete a review of all of the various provisions of the proposed changes to Kansas Cooperative law the thrust of these changes relate almost exclusively to questions of control and money.

It is argued that these changes are required in order to allow our cooperatives to function in the new reality of the American economy. It is my contention, however, that the real purpose here is to radically change both the base of power and control within the cooperatives as well as a desire to access the capital position of the cooperatives that have been formed by the farmers of the state.

A cooperative does not and should not represent a prospective blue chip stock investment opportunity. The purpose and function of the cooperative is fundamentally different than the traditional stock investment opportunities available in this country.

The shifting of control opportunities from the member patrons of a cooperative to an

equity based voting system vests significant control in a relatively small number of people, some of whom may not be of a type and character similar to the balance of the membership of the cooperative. What possible value could there be to farmers to allow such a circumstance to exist. The reality is that it represents a degradation in farmers control of their cooperative and control is fundamental to the ongoing integrity of an organization to fulfill its purpose.

I must acknowledge that I am skeptical that in fact there exists an interest to access capital reserves existing within many of our cooperatives. The changes proposed in this legislation would alter the formulas, for example, of when monies may be made available from the capital reserves of the organization. The changes being proposed in Section 17-1613 directly relate to the questions of asset preservation and the fiscal integrity of cooperatives.

Perhaps the question that is most troublesome to me is when we look at the pressures that have occurred in this country and the changes that have occurred in the business structures with the mergers and acquisitions that have been undertaken, are we really allowing now for the opportunity for outside interests to access the capital reserves of our cooperatives to merge them and acquire them to non-cooperative business entities drain off the capital reserves that are available, leverage those reserves to other asset

acquisitions and deplete that capital reserve.

And even if its stated that such a proposition is absurd or of no real creditability I still ask what value is there in these changes even if the risk of my concern is small.