

Approved: E. Shore 1-27-93
Date

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE.

The meeting was called to order by Chairperson Eugene Shore at 9:00 a.m. on January 14, 1993 in Room 313-S of the Capitol.

All members were present except: Representative Lloyd - Excused

Committee staff present: Raney Gilliland, Legislative Research Department
Jill Wolters, Revisor of Statutes
Kay Johnson, Committee Secretary

Conferees appearing before the committee:

- Raney Gilliland, Legislative Research Dept.
- Mike Jensen, Kansas Pork Producers Council
- Sharon Schwartz, Kansas Pork Producers Council
- Blake Waters, Bank IV, Liberal
- Dee Likes, Kansas Livestock Association
- Jerry Jeschke, Kansas Soybean Association
- Kirk Thompson, CMS Electric Cooperative, Inc.
- Michael Torrey, Kansas Grain And Feed Assoc.

Chairman Shore called the meeting to order and opened informal hearings on corporate farming, specifically to hear from proponents to changes in the current law. The Chairman called upon Raney Gilliland, Legislative Research, to address the committee.

Mr. Gilliland summarized former and current corporate farming statutes in Kansas, attachment #1 and attachment #2. He explained the law restricts what kind of entities can acquire agricultural land in Kansas. It doesn't impact the type of operation. To offer some protection for family farm producers, the anti-vertical integration legislation was passed, as outlined in K.S.A. 17-5905.

Mike Jensen, Executive Vice-President, Kansas Pork Producers Council, testified before the committee. He proposed three specific changes in current statutes, attachment #3 and attachment #4. He proposed adding and deleting words in K.S.A. 17-5903(s) and 17-5904(8) and deleting the entire sections of 17-5905 and 17-5906, the anti-vertical integration prohibitions. Mr. Jensen cited the example of the Seaboard Corporation, which declined to build a plant in Liberal and went to Guymon, OK because current law effectively prohibited them from contracting in Kansas.

Representative Rezac stated his concern that the hog industry would go exactly the same way as poultry - strictly contracts - and asked Mr. Jensen if that was the intent of the proposed changes. Mr. Jensen responded that the intent was to place Kansas on a competitive playing field and not to specifically move the industry toward contracts, however, there are trends inevitable within the industry. Representative Rezac was interested in seeing some contracts and Mr. Jensen explained that most were private business, but he would check and see on this matter.

Representative Neufeld stated his view that the contracting issue is a separate issue from the corporate farm issue.

Sharon Schwartz, President, Kansas Pork Producers Council, testified before the committee stating Kansas' hog market is being lost to surrounding states that allow corporate investment, attachment #5 and attachment #6.

Chairman Shore asked if the KPPC has always been in favor of corporate hog production. Mrs. Schwartz responded that in 1990 the KPPC changed their position because Kansas is losing growth opportunities.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE, Room 313-S Statehouse, at 9:00 a.m. on January 14, 1993.

Representative Freeborn asked if contractors would set specific quality and environmental standards. Mrs. Schwartz responded that packers do want to control quality because of the quality that consumers demand. Environmentally, Kansas already has some of the strictest controls.

Blake Waters, Senior Vice-President, Bank IV, Liberal, addressed the committee, attachment #7. He stated that Bank IV, Kansas has no policy regarding this issue, but the Bank IV system does support the economic growth of the community and believes proposed changes to the corporate farming law are critical for prosperity in Kansas agriculture.

Representative Swall asked about the nature and amount of benefits provided to the Seaboard Corporation by Guymon, OK and how would Liberal have matched those benefits. Mr. Waters explained he didn't have the exact numbers, but could obtain them, and said that Liberal could have done the same thing except it is not allowed under current corporate law.

Representative Rezac asked if farmers came to Bank IV for loans now and why is contracting with a corporation important. Mr. Waters responded yes, Bank IV currently makes loans to customers who produce their own hogs. The contract is an option for more or less guaranteed income. Mr. Waters also stated his concern over the pork industry being discriminated against in Kansas, but not the beef industry.

Mr. Dee Likes, Executive Vice-President, Kansas Livestock Association, addressed the committee in support of broadening the ability of corporations to engage in swine production, attachment #8.

Mr. Jerry Jeschke, Vice-President, Kansas Soybean Association, testified in support of changes to the corporate farming law, attachment #9. Strengthening the swine industry will also help to strengthen the soybean industry.

Kirk Thompson, General Manager, CMS Electric Cooperative, addressed the committee, attachment #10. He explained that CMS supplies mainly rural customers, one being DeKalb Swine Breeders. DeKalb's expansion to Oklahoma was a lost opportunity for CMS and Kansas.

Michael Torrey, Director of Legislative and Regulatory Affairs, Kansas Grain and Feed Association, testified before the committee supporting changes to the current law, attachment #11.

Testimony from Mr. Roy Henry, President-Elect, Kansas Pork Producers Council, was distributed to committee members, attachment #12.

The meeting adjourned at 10:13 a.m. The next meeting is scheduled for January 15, 1993.

MEMORANDUM

KANSAS CORPORATE FARMING LAW

Background

The following summarizes former and current corporate farming statutes in Kansas.

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 the corporate farming law of 1931, 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, major amendments were made to the law. Grain sorghums were added to the list of crops that were restricted. In addition, the 1965 amendments made it possible for certain types of corporations, which met specific specifications, to engage in agricultural production of those restricted crops and also the milking of cows. However, problems with the statute continued to exist. As a result, 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 legislation being adopted. Additionally, discussions of the problems with the corporate farming statute were held throughout this time period.

Among the problems discussed with the law between 1972 and 1981 were the following:

1. The fact that the former corporate farming statute permitted corporations to be engaged in certain types of crop endeavors, while having no restrictions on crops such as alfalfa and soybeans. Also, the former statute was unclear as to whether pasture land was to be included in the acreage restrictions contained in the statute (5,000 acres).
2. The fact that the former corporate farming statute lacked an enforcement provision, which was said to have made it difficult for the Attorney General or other officials to enforce.
3. The fact that 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 generally are much larger.

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ATTACHMENT #1

4. The fact that the restriction of ten stockholders was too limiting; and the fact that the restriction of owning stock in more than one agricultural corporation is encountered often through marriage and inheritance.
5. The fact that nonagricultural corporations often owned agricultural land as a buffer zone or for expansion purposes. Because the former statute placed restrictions on the characteristics of corporations permitted to be engaged in certain farming activities, some of them 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. The fact that some of the universities and colleges in the state acquired agricultural land and were somewhat dependent upon the land's revenue-raising capabilities.
7. The fact that some legislators were concerned that large pension and benefit funds operating as trusts could acquire significant amounts of agricultural land for investment purposes.

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 as to the problems inherent in the current law were held before the decision was made to introduce a bill. Additional hearings were conducted after the bill had been introduced. This bill eventually became the basis for the state's current Corporate Farming Law, being signed by the Governor on April 28, 1981.

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

The law prohibits corporations, trusts, limited liability companies, limited partnerships, or corporate partnerships other than family farm corporations, authorized farm corporations, limited liability agricultural companies, 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. As a result, 13 exemptions from the restrictions outlined above were included in the original legislation. The restrictions on owning, acquiring, obtaining, or leasing do not apply to:

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 or a limited liability company 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 or a limited liability company 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 (except that the provisions of K.S.A. 9-1102 are to apply when a bank 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 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 previously engaged in agricultural activities in the state or which own or lease agricultural land prior to the enactment of the 1981 law);
8. agricultural land held or leased by a corporation or a limited liability company 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 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, authorized farm corporations, limited liability agricultural companies, family trusts, authorized trusts or testamentary trusts, are associated; and
13. any corporation, either domestic or foreign, or limited liability company 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 (S.B. 308). This was that: agricultural land owned or leased by a limited partnership prior to the effective date of the act would be exempted from the general prohibition of acquiring agricultural land.

An amendment in 1987 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 (H.B. 2076). 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. The additional entities covered by the law through subsequent amendments are covered by the penalties.

Other bills that attempted to make amendments to the Kansas Corporate Farming Law before 1987 included 1985 S.B. 288 and 1986 S.B. 543.

Background on the Issue of Permitting Corporate Hog Operations

The issue of permitting corporate hog operations (or sometimes referred to as swine confinement facilities) 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 that would permit 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 by the Senate Agriculture and Small Business Committee and received eventual approval by that Committee. The bill, S.B. 519, added an additional exemption to the provisions of the Corporate Farming Law. The exemption was 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 environmental impact. Eventually, the bill received approval by both the Committee and 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 referred 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.

During this time, the Attorney General was asked by then 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

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a corporation, desiring 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.

1987, 1988, and 1989 Legislative Actions and Amendments

The next time the issue of corporate hog operations came before the Legislature was in 1987, as a result of a recommendation made by the Legislative Commission on Kansas Economic Development and by the Economic Development Task Force on Agriculture. The Task Force heard from a spokesperson from the Dekalb Swine Breeders, Inc. He indicated that the firm had intentions, at that time, of expanding its facilities and would like to do so in Kansas, but said that the Corporate Farming Law prevented its expansion in Kansas. As a result, 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.

In 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 had declined 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 recommendation of the Task Force also was made by the Commission. This 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, rabbit confinement facilities were added 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 the tax exemptions described above.

Other bills were introduced during the 1987 Session designed to address, either directly or indirectly, the swine confinement facility issue. These bills included S.B. 497, H.B. 2845, H.B. 2846, H.B. 2827, and H.B. 2990 in its amended form.

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 this time period, a consultant was hired 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 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, did not receive approval by the Senate Agriculture Committee.

The 1988 Legislature, however, did approve H.B. 3018, which contained amendments to the Kansas Corporate Farming Law. The bill amended the Kansas Corporate Farming Law by defining the terms "processor" and "swine confinement facility"; making it unlawful for 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; making pork processors violating the ownership of hogs restriction subject to a \$50,000 fine; 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 prohibits 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 establishes a swine technology center at Kansas State University, but provides no appropriations for its establishment. No moneys were appropriated for the swine technology center by the 1988 Legislature, or by any subsequent Legislature.

Three bills were introduced during the 1989 Legislative Session that proposed amendments or related to the corporate farming issue. These bills included H.B. 2257, H.B. 2368, and H.B. 2369. None of these bills were enacted.

Limited Liability Companies – 1991 and 1992 Proposals

The 1991 Legislature approved and the Governor signed H.B. 2535, which made amendments to the Kansas Corporate Farming Law. The bill was assigned to the Judiciary committees in both the House and the Senate. Numerous amendments to various sections of the Corporation Code were made by the bill regarding limited liability companies. Among those were the amendments to the Corporate Farming Law.

In regard to the amendments made to the Kansas Corporate Farming Law, "limited liability companies" were added to the list of entities that are generally prohibited from indirectly or directly owning, acquiring, or otherwise obtaining or leasing any agricultural land in this state. To review the earlier explanation of the Kansas Corporate Farming Law, other entities that are generally prohibited from owning or acquiring agricultural land in Kansas are: corporations, trusts, limited partnerships, or corporate partnerships. The term "limited liability company" is defined in K.S.A. 1991 Supp. 17-7602 to mean a company that is organized under the Kansas Limited Liability Company Act.

As was related earlier in this memorandum, the 1981 and subsequent amendments did establish a list of exemptions to the general prohibition established in the law. The 1991 bill amended the exemptions to the general prohibitions in K.S.A.17-5904. As a result of the legislation, limited liability companies are now able to own and acquire agricultural land:

1. in such acreage as is necessary for the operation of a nonfarming business;
2. 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;
3. for use as a feedlot, a poultry confinement facility, or rabbit confinement facility;
4. if the "limited liability companies" are partners in corporate partnerships or limited corporate partnerships; and
5. if they are organized for coal mining purposes and engage in farming on any tract of land owned by them which has been strip mined for coal.

The Kansas Limited Liability Company Act specifically states that a limited liability company formed under the Act is to be considered a separate legal entity and is not to be construed as a corporation.

The Kansas Corporate Farming Law also was amended to permit limited liability agricultural companies to own and acquire agricultural land in Kansas. Again to review, prior law had permitted only family farm corporations, authorized farm corporations, limited agricultural partnerships, family trusts, authorized trusts, and testamentary trusts to own and acquire agricultural land. (Of course, this law never prohibited or attempted to prohibit any individual from owning any amount of agricultural land in Kansas.)

The term "limited liability agricultural company" was defined by the 1991 legislation. By law this term means a limited liability company founded for the purpose of farming and ownership of agricultural land in which:

1. the members do not exceed ten in number;
2. the members 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 members is a person residing on the farm or actively engaged in the labor or management of the farming operation. If only one member is meeting the requirement of this provision and such member dies, the requirement of this provision does not apply for the period of time that the member's estate is being administered in any district court in Kansas.

The legislation also modified the term "processor" to include limited liability companies. This would mean that any limited liability company that 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 would be considered a "processor." This is significant since it is unlawful under K.S.A. 17-5904 for processors of pork to contract for the production of hogs of which the processor is the owner or to own hogs except for 30 days before the hogs are processed. Also included in the term

"processor" would be any person, firm, corporation, member, or limited partner with a 10 percent or greater interest in another person, firm, corporation, limited liability company, 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.

The 1992 Legislature considered H.B. 3082, which would have eliminated the permission for limited liability agricultural companies to own, acquire, obtain, or lease, either directly or indirectly, any agricultural land in this state. The bill died in House Agriculture Committee.

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 Except. 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

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ATTACHMENT #2

Article 59.—AGRICULTURAL CORPORATIONS

Attorney General's Opinions:

Agricultural corporations—contracts for swine production. 88-113.

Agricultural corporations; limitations; holding seed stock. 88-145.

Agricultural corporations; limitations; nonfarming business exception. 91-133.

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 or one or more limited liability companies.
- (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 include 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 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.

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, limited liability company 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, member or limited partner with a 10% or greater interest in another person, firm, corporation, limited liability company 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.

(t) "Limited liability company" has the meaning provided by K.S.A. 1992 Supp. 17-7602, and amendments thereto.

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

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

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

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; L. 1991, ch. 76, § 9; July 1.

Law Review and Bar Journal References:

"Spurring Economic Development in Kansas Through Property Tax Exemptions Are We Getting the Results We Want?", Laura Ellen Johnson, 30 W.L.J. 82, 84 (1990).

Attorney General's Opinions:

Agricultural corporations; limitations; nonfarming business exception. 91-97.

17-5904. Agricultural corporations; limitations; exceptions; penalties. (a) No corporation, trust, limited liability company, limited partnership or corporate partnership, other than a family farm corporation, authorized farm corporation, limited liability agricultural company, 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 or a limited liability company 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 corpora-

tion, 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 or a limited liability company 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 or a limited liability company 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 in which the partners associated therein are either natural persons, family farm corporations, authorized farm corporations, limited liability agricultural companies, family trusts, authorized trusts or testamentary trusts.

(13) Any corporation, either domestic or foreign, or any limited liability company, 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, and amendments thereto, production contracts entered into by a corporation, trust, limited liability company, 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 liability company, 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; L. 1991, ch. 76, § 10; July 1.

Attorney General's Opinions:

Agricultural corporations; limitations; holding seed stock. 88-145.

Agricultural corporations—limitations; nonfarming business exceptions. 88-170.

Agricultural corporations; limitations; nonfarming business exception. 91-97.

Agricultural corporations; limitations; exceptions; penalties. 92-35.

Article 60.—FORMATION OF CORPORATIONS

Law Review and Bar Journal References:

"Cooperation By Contract: Interlocal Agreements", Theresa Marcel Nuckols, 59 J.K.B.A. No. 3, 25, 29 (1990).

Attorney General's Opinions:

Limited liability companies; formation; certified public accountants. 92-23.

17-6001.

Attorney General's Opinions:

Financial interest of officer or director in corporate transaction; application to certain nonprofit corporations. 89-44.

Interlocal agreements and filing of articles of incorporation and other instruments; exceptions. 90-3.

City, county and township libraries; application of K.S.A. 12-1223 and 12-1225. 92-5.

CASE ANNOTATIONS

7. Cited in opinion holding that 17-2708 of professional corporation law does not authorize medical practice by general corporation. *Early Detection Center, Inc. v. Wilson*, 248 K. 869, 873, 81 P.2d 860 (1991).

17-6002. Articles of incorporation; contents. (a) The articles of incorporation shall set forth:

(1) The name of the corporation which, except for banks, shall contain one of the words "association," "church," "college," "company," "corporation," "club," "foundation," "fund," "incorporated," "institute," "society," "union," "syndicate" or "limited," or one of the abbreviations "co.," "corp.," "inc.," "ltd.," or words or abbreviations of like import in other languages if they are written in Roman characters or letters, and which shall be such as to distinguish it upon the records in the office of the secretary of state from the names of other corporations, limited liability companies and

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

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. Ned E. Hall, 34 K.L.B. 425, 449 (1986).

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

References:

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, 83-152.

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.

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KANSAS PORK PRODUCERS COUNCIL

2601 Farm Bureau Road • Manhattan, Kansas 66502 • 913/776-0442

Testimony
presented to the
House Committee on
Agriculture and Small Business

Informational Hearings
on
Corporate Farming/Vertical Integration
January 14, 1993
by
Mike Jensen

HOUSE AGRICULTURE
1-14-93
ATTACHMENT #3

Mr. Chairman, members of the committee, I am Mike Jensen, Executive Vice-President of the Kansas Pork Producers Council. We represent our 800 members statewide on public policy issues and serve all pork producers of the state through our checkoff funded promotion and education functions.

I am here today to present facts to you concerning the Kansas swine industry and to address questions concerning amending Kansas' "corporate farming and vertical integration" statutes. (K.S.A. 17-5903, 4, 5, and 6).

Consistent with our policy, we would like to propose three specific changes in the statutes:

In 17-5903 (s), delete the word "confinement" and replace with "production" and delete the words "an enclosed environment". There are some units which the words "enclosed environment" could preclude and the word "confinement" has a negative connotation to some.

In 17-5904 (8), add the words "a swine production facility".

In 17-5905 and 17-5906, delete the entire sections of both. These statutes are unique to only Iowa and Kansas and have negatively impacted both the construction of a packing plant in Kansas as well limited the ability of Kansas producers to contract with whomever they choose. Specifically, these statutes will prohibit Seaboard Corp., located in Guymon, Oklahoma from contracting in Kansas.

Statutory changes approved in 1988 effectively "leveled the playing field" with regards to enterprise zones, tax abatements etc.

A public policy decision in this area cannot be done without a thorough understanding of today's modern swine business. Our organization has, in my opinion, the most detailed factual information concerning the pork industry, relevant trends, economic impact, structure and it's future. I would like to review just a few of these facts and trends of the Kansas industry as well as it's relationship to the U.S. and world.

Kansas Pork Industry Facts

- * In 1991 Kansas producers marketed 2,305,570 market hogs
256,286 feeder pigs
33,274 seedstock
2,595,130 total
- * 1991 gross market value was \$297,585,453
- * June 1992 sow inventory was 185,000 head or 2.59% of the U.S.
Approximately .35% of the world.
- * Kansas' share of U.S. total liveweight has decreased from a
high of 3.4% in 1982 to 2.9% in 1991. A nearly 15% decline.
- * Kansas swine consume over 25 million bushels of grain, primarily
Kansas-grown dryland milo.
- * Both Kansas and the U.S. swine farms have decreased 60% since
1980.
- * As the industry has consolidated, Kansas has lagged behind the
nation in growth rate.

Number of hogs per farm:	U.S.	Kansas
1980	96.7	135.7
1991	222.2	255.4
% increase	129.8%	88.2%

- * The Kansas swine industry annually spends approximately:
 - \$170 million for feed grains
 - \$6 million for veterinary care
 - \$7.3 million for utilities (gas, propane & electric)
 - \$7.2 million for trucking costs (hog marketing only, no grain)
 - \$6.1 million in interest
 - \$27 million in construction (180,000 sows X \$2250/15 year)
 - \$15 million in supplies
- * In addition to trucking pigs farther (at \$1.30 per mile) Kansas
producers receive between \$.58 to \$3.85 less than Iowa/Nebraska
regional producers.

Approximately 6 Kansas operations:

- market over 60% of our swine
- have the equivalent of a 60-sow operation
- net above \$10,000 annually from swine
- serve as an employer for over 1000 people (FTE's)
(1500 hogs per employee)

*In 1992, Kansas had 5700 producers. A producer is defined as "anyone having at least one porcine animal on their farm at any time during the year". These farms were in the following production sizes and the accompanying inventories:

Hd/per farm	1-99	100-499	500-999	1000+
Farms by %	57%	33%	6.5%	3.5%
Actual #'s	3200	1881	370	200
Inventories	8.5%	28%	18%	45.5%
Annual Marketings	221,000	728,000	468,000	1,183,000
Average sold per farm	69	387	1265	5915

KSU SWINE ENTERPRISE RECORD SUMMARY

	<u>Farrow to Finish Operations</u>		
	Semi-Annual Data		1/92-6/92
	Average	High 1/3	Low 1/3
Profit or return to management	\$4,139	\$11,846	\$(6,977)
Annual rate of return on capital	11.20%	30.48%	(7.18)%
Total feed expense, cwt., pork produced	\$25.58	\$24.08	\$27.73
Other operating expense, cwt., pork produced	\$6.40	\$4.65	\$6.84
Total variable cost/cwt. of pork produced	\$39.86	\$34.44	\$45.89
Total fixed capital investment/cwt. of pork produced	\$21.97	\$17.42	\$29.86
Total cost/cwt. of pork produced	\$45.54	\$38.68	\$53.72
Profit/cwt. pork produced	\$ 1.13	\$8.25	\$(7.02)
Profit/female/six months	\$32.73	\$159.64	\$(101.50)
Profit/crate/six months	\$118.47	\$627.20	\$(491.55)
Average female inventory	110	78	81
Number of pigs weaned/litter farrowed	8.54	8.75	8.10
Number of pigs weaned/female/six months	8.08	8.20	7.14
Return/hour for all hours of labor and management	\$11.56	\$21.93	\$2.67
Whole herd feed efficiency	3.68	3.33	4.07
Average costs of diets/cwt.	\$6.99	\$7.25	\$6.85

Article 59.-AGRICULTURAL CORPORATIONS

Attorney General's Opinions:

Agricultural corporation contracts for swine production.
88-113.

Agricultural corporations; limitations; holding seed stock.
88-145.

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

(a) "Corporation" means a domestic or foreign corporation organized for profit or nonprofit 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 or one or more limited liability companies.

(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 include 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 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.

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.

(1) "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, limited liability company 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, member or limited partner with a 10% or greater interest in another person, firm, corporation, limited liability company 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~~ production 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.

(t) "Limited liability company" has the meaning provided by K.S.A. 1990 Supp. 17-7602, and amendments thereto.

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

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

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

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; L. 1991, ch. 76, § 9; July 1.

Law Review and Bar Journal References:

"Spurring Economic Development in Kansas Through Property Tax Exemptions Are We Getting the Results We Want?", Laura Ellen Johnson, 30 W. L. J. 82, 84 (1990).

17-5904. Agricultural corporations; limitations; exceptions; penalties.

(a) No corporation, trust, limited liability company, limited partnership or corporate partnership, other than a family farm corporation, authorized farm corporation, limited liability agricultural company, 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 or a limited liability company 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 or a limited liability company 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. 175901 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 or a limited liability company for use as a feedlot, a swine production facility, 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 in which the partners associated therein are either natural persons, family farm corporations, authorized farm corporations, limited liability agricultural companies, family trusts, authorized trusts or testamentary trusts.

(13) Any corporation, either domestic or foreign, or any limited liability company, 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, and amendments thereto, production contracts entered into by a corporation, trust, limited liability company, 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 liability company, 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; L. 1991, ch. 76, § 10; July 1.

Attorney General's Opinions:

Agricultural corporations; limitations; holding seed stock. 88-145.

Agricultural corporations-limitations; nonfarming business exceptions. 88-170.

~~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.

Sharon Schwartz
President of the Kansas Pork Producers Council

I am a partner in our family business - Pork Chop Acres - with my husband, Leo, and son, Douglas.

We own and operate a farrow-to-finish hog enterprise as well as a diversified cropping operation. We have been in the pork business for over 30 years.

The Kansas Pork Producers Council represents pork producers with various types of businesses that vary from the very small to the very large producers. For years, this group of producers believed that by simply not allowing any outside investors we were limiting the size and scope of the hog industry and thereby limiting competition.

As time has passed, we have realized that the pork industry was changing rapidly and growth was happening all around us -- in Colorado, Oklahoma and Missouri. We are losing our market and technological support to the states that allow corporate investment. Areas that have not been traditional hog country are now seeing major growth. With these changes in structure, as well as markets, it is critical that we look at the big picture.

The "way of life" concept that we've used to describe a "family farm" will not serve us in this global picture. Hogs we produce in Kansas may well be marketed in Japan. As a business, we need to have all the available opportunities in order to compete. The states experiencing growth in their industry today are going to be seeing even more changes in their future.

New packing plants will give producers in those areas economic advantages over Kansas producers. Contracting opportunities will be available to producers in their area. Technological support will grow as their hog basis grows. Their producers will enjoy an improved lending climate. The list goes on and on.

Many would like to believe that this trend will take several years to develop, but this is not true. I'd like to give you a quick example of the disadvantages Kansas producers are already being placed under. We market 7,000 hogs annually. These receive about a \$2.00 a hundred disadvantage or \$4.60 a hog. This equals about \$32,000 a year. Extra transportation due to the distance to a packer costs us an extra \$.50 to \$.90 a hundred. This is another \$8,000 to \$10,000 disadvantage. This totals close to \$40,000 a year.

Given that we have a plentiful supply of grain, vast unpopulated areas, as well as a favorable climate for hog production, the state of Kansas is being bypassed when it comes to expansion and packers.

The major impediment facing this growth of the hog industry in Kansas is the current corporate farming restrictions.

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In 1990, the KPPC Delegate Body voted to support changes in the current Kansas Corporate Farming Law to place Kansas on a level playing field with swine-producing states that allow corporate farms. The KPPC Delegate Body is made up of representatives elected by county-based area groups. These delegates meet annually to formulate, debate and vote on policies pertaining to industry issues.

They have decided the time is "now" to do what's best for existing producers so that we have all the opportunities allowed our competition in other states. Size of operations will undoubtedly grow, but there will still be a place for the efficient quality-oriented small and medium-sized producer in Kansas. We look forward to change and hope to benefit from it.

OTN LIVESTOCK 02 10/06/92 USDA CASH HOG PRICES P = PRIVATE SOURCES
 TERMINAL BARROWS & GILTS/TREND LIGHT/HEAVY SOWS BOARS

ATKINSON, IL	42-42.75/.50-1.00 LR	37-38.5/STDY		32-33
OMAHA	42-42.5 FEW 42.75/1-1.5 LR	35.5-36.5/39-39.5/0-1LR		33-33.5
PEORIA	p 42-42.5/.50-.75 LR	36.5/38-36.5/0-.5 LR		32.5-34.5
SIOUX CITY	42.5-42.75/1 LR	36-37.5/39-39.75/MIXED		32.5
SIOUX FALLS	42-42.5/1-1.25 LR	36-37/38-39.25/0-.5 LR		33-34
ST. JOSEPH	41-41.5/1 LR	35-37/37.5-38/0-1.5 LR		32.5-34.5
ST. LOUIS	42-42.5/WEAK	35.5-36/36.5-39/MIXED		33.5-35
ST. PAUL	42.5/1 LR	36.5-37/37.5-2 HR		33
WEST FARGO	40 FEW 40.25/.75-1 LR	NOT ESTABLISHED		
IA/S.MN DIR	41-42.5 F 40.5&43/.5-1LR/PLANTS	42-43.5 F 41.5&44	SOWS	28.5-37
CARCASS: STDY-1.51 LR. SUPERIOR #1 60.03-63.22. #1 57.50-61.51.				
BASIS: #2 57.50-58.78. #3 56.13-57.53. #4 52.68-55.63.				
CLOSE: UNCHANGED				
IL DIRECT	1-2 41.5-42.5 F 43&41/0-.5LR/PLANTS	42.5-44 F 45	SOWS	33-37.5
IN DIRECT	41.5-43 F 43.5/.50 LR/PLANTS	41.5-43	SOWS	29-34.5/STDY .
KB DIRECT	39.5-42/.50-1 LR	SOWS 32-33.75/34-37/0-1 HR		
MI DIRECT	41-42/.75 LR	SOWS 26-31/0-.25 LR		
MO DIRECT	40.5-41.5 FEW 42/.50 LR	SOWS 32-35/STDY .		
OH DIRECT	40.25-41.25 FEW 41.75/.50 LR/PLANTS	41.25-42.25		
WI DIRECT	41.5-43/0-.5 LR	SOWS 30-35/STDY .		
VOL. IA-100000 IL-40000 IN-21500 MI-5500 MO-14000 OH-7500 WI-4900 KB-6100				
900 HD OR LESS SINGLE SOURCE SUPERB QUALITY, HI-HEALTH, DEKALB FEEDER PIGS				
AVAILABLE FOR IMMEDIATE SHIPPING IN EXCLUSIVE COMPANY TRAILER. 706-274-3392				

Future Competitiveness of Kansas' Pork Producers

Position Paper Prepared by the Kansas Pork Producers Council

HOUSE AGRICULTURE
1-14-93
ATTACHMENT #6

Background:

Members of the Kansas Pork Producers Council have been involved in analyzing the survival of the existing Kansas Swine Industry. It is the firm belief of the KPPC membership that several changes need to occur for the state's swine producers to remain a competitive force into the next century. These would include:

1. A packing facility in our geographic area is absolutely critical to increase marketing opportunities.
2. Technological assistance to our members' industry through more support from Extension and private consultants.
3. An improved climate of our agricultural lending practices involving swine facilities.
4. Timely and consistent regulatory practices from state regulatory agencies.

The majority of these changes will occur if our industry is allowed to grow. An analysis of the growth occurring in the industry today indicates the major impediment to the prosperity of Kansas' pork producers is Kansas' current corporate statutory restrictions.

Current Status:

Current law in this area (primarily 1981 vintage) allows corporations to own land for the purpose of a feedlot. Several Attorney General opinions state that while a farrow-to-finish swine operation is considered a feedlot, a breeding operation is not. However, the commonly held perception is that Kansas does not allow any corporation to own land on which swine facilities are built. Current statute does allow land for cattle, poultry and rabbit facilities. Since this law was passed (and amended to allow poultry and rabbits) all of these industries have grown. The swine production in our state has decreased.

There are several factors involved in the decline of our industry. Since 1980, the number of owners involved in swine production in Kansas has decreased from 14,000 to 5,600, a 60 percent decline. More importantly, the number of people employed in raising swine has decreased as our share of the nation's production has dropped 12 percent. While all states have seen a substantial drop in the number of owners due to increasing sizes of our production units, Kansas is one of the few major states that has lost market share and employment. These employment opportunities are critical not only for those currently in agriculture but new graduates as well.

If we had retained our share of the nation's production our producers could be grossing revenue from 800,000 additional market hogs. In addition, Kansas producers receive up to \$3.85 per hog less than producers located in areas with increased market availability. Adding just these two factors could represent up to \$100,000,000 more per year for Kansas producers. This represents not only a loss in employment opportunities directly in swine production but countless numbers of jobs in allied areas as well. If considerations were made for lost expansion opportunities, the possibilities are even greater.

The primary goal of a change in current statutes is the internal growth potential of Kansas producers. Several factors will contribute to this:

1. Agricultural lenders will be more willing to invest in Kansas swine operations because the equity value of units will increase with the enlarged pool of potential buyers of units whose owners are retiring or choose to leave the industry. Some of these mid to larger units are multi-million dollar investments and are effectively limited in growth by the unavailability of investment funds. Even smaller units could be restricted due to these limits of capital.
2. The "cap" that the law imposes on producers creates a negative perception on our swine industry. This perception thus inhibits entry into our industry because producers effectively have a "cap" placed on the size that their operation might someday become. Producers in a number of other states, most notably our Missouri, Oklahoma and Colorado neighbors are not hindered by this "anti-growth" perception.
3. Natural economic trends within our industry cannot be stopped by placing artificial barriers in a state that produces less than 3 percent of the nation's production. States without these types of restrictions on swine production have witnessed an increase in the opportunities for their producers.
4. Most importantly, as swine numbers increase, the marketing potential and the possibility of attracting a major packer to this state increases. The cattle feedlot industry in this state has benefited cattle producers by attracting a packing industry to Kansas. Swine producers would benefit in the same manner if the industry were to expand.

Action:

The primary goal is to amend current statutes to enable producers to remain competitive with neighboring states who have taken the initiative of treating agriculture as a business. The cattle and poultry producers in the state have benefited. The swine producers in this state would like the same opportunity.

Specifically, we would expand the current cattle, poultry and rabbit exemptions to include swine. The swine exemption could include a county option of rescission by ballot.

Along with changes in corporate and packer ownership statutes, producers, represented through the KPPC, will aggressively work in the following areas:

1. Increasing the awareness of agricultural lenders to the new possibility of investments in the swine industry.
2. Work with Kansas State University and the Cooperative Extension Service to ensure that we have the training and technology transfer capabilities to serve the increasingly scientific and technological business of swine production.
3. Work in cooperation with K.S.U. and the State Board of Agriculture to sponsor educational seminars to encourage entry into swine production in the state.
4. Continue work with state regulatory agencies to ensure that producers are allowed to operate in a fashion that is both synergistic with the environment and profitable for the producer.

Summary:

We can effectively address the future prosperity of the Kansas Swine Industry through a partnership. Governmental action, KPPC service to producer members and the continued adoption of new technologies by professional swine producers will position the industry for competitiveness into the next century. However, it will take the action and cooperation of all parties to achieve these results.

KPPC History and Directive

The Kansas Pork Producers Council began in 1956 as the Kansas Swine Improvement Association. The KPPC's 800 members direct the organization through county-based representatives to the KPPC's Delegate Body and the KPPC's Executive Board.

The organization's mission is to enhance producers' opportunity for profit through checkoff-funded promotional programs. The KPPC also serves its membership as a unified voice on public policy issues.

KPPC Executive Board

Officers

PRESIDENT
Sharon Schwartz
Washington

PRESIDENT ELECT
Roy Henry
Longford

FINANCIAL OFFICER
James Feldkamp
Centralia

Directors

Ken Goodyear
Dwight

Merlin Dennis
Kensington
KPPC National
Director

Myron Holder
Highland

Vinton Visser
Riley

Ralph Suther
Westmoreland

Tim Porter
Glen Elder

Greg Roberts
Leoti

Leo Rutten
Beloit

Steve Greene
Jewell

Doug Jewell
Liberal

Representatives

**NPPC
PRESIDENT**
Tim Rose
Lyons

**NLSMB
REPRESENTATIVE**
Sharon Schwartz
Washington

**KSU EXTENSION
REPRESENTATIVE**
Dr. Jim Nelssen
Manhattan

For detailed information about the Kansas swine industry, contact the Kansas Pork Producers Council office at 2601 Farm Bureau Road, Manhattan, KS, 66502, (913) 776-0442, FAX (913) 776-9897.

January 14, 1993

BANK IV

House of Representatives
Agricultural Committee

Mr. Chairman, members of the committee, my name is Blake Waters, Senior Vice President, Agricultural Loans, Bank IV, Liberal. I want to make it clear that Bank IV, Kansas has no policy regarding this issue. However in the Bank IV system all banks are encouraged to be active supporters of their community and to support the economic growth of the community. Our parent company, Fourth Financial Corporation has been a consistent advocate for economic growth and opportunities and support the local Bank IV efforts to build a stronger economy for their communities and all of Kansas, and therefore approves and supports my testimony on behalf of my community of Liberal.

I wish to submit to you our endorsement of changes in our current corporate ownership and vertical integration restrictions pertaining to swine. Over the past several years, the restrictions have negatively impacted the southwest area of our great state in many respects.

After the failure to enact changes in the law, Dekalb Swine Breeders, Inc. have moved a significant part of their operation to Oklahoma. Not only have we lost property valuation, retail business and jobs, but also citizens of our own state have relocated to Oklahoma so that they might be involved in the pork industry.

Most recently, Seaboard Corporation announced plans for a new pork processing facility in Guymon, Oklahoma. The vertical integration prohibition, which is specifically discriminatory to swine, effectively stopped the construction of that plant in Liberal. Lost are the jobs and prosperity so critical for the southwest area of the state. We depend heavily on agriculture and the value added manufacturing that accompanies it.

Not only have we lost Dekalb's expansion and the Seaboard plant, but our swine producers of the area - and those that want to enter the swine industry - are precluded from contracting with Seaboard to produce hogs for this plant.

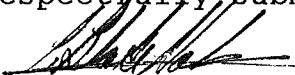
HOUSE AGRICULTURE
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Using a conservative estimate, if just one-half of the plant's slaughter were to originate from Kansas, this could represent over \$125,000,000 in new swine production facilities being built in our state.

We believe that the proposed changes are critical for the prosperity of Kansas agriculture and would urge your adoption.

Please refer to the attached additional comments for more details regarding our history with the swine industry.

Respectfully submitted,



L. Blake Waters
Senior Vice President
Agricultural Loans

January 14, 1993

House of Representatives
Agricultural Committee

Supporting Comments

Our branch of Bank IV Kansas, N.A. is located in Liberal which borders the Oklahoma panhandle. In February of 1992 our officers and directors were approached by several local farmers about the possibility of financing the purchase and construction of facilities which would house swine on a contract production basis with Dekalb Swine Breeders, Inc. of Plains, Kansas. This was a new concept to us and I was instructed to complete a research project to find out more about it.

I called several bankers in North Carolina and found that this type of financing has become very competitive and none of them had ever experienced any loan losses on farm contracts with the integrators. Two of my contacts included Bryan Bird of First Union Bank in Clinton which is a super regional holding company and Royce Edwards of the Farm Credit System, also in Clinton.

Both of these individuals reported that the farm contracts led to the location of a pork processing plant in their community. This plant employs over 1000 people and has had a major economic impact on their housing and small businesses.

We then took a tour of the Dekalb Swine Breeders, Inc. production farms located south of Plains. These folks appear to us to be of high integrity and professionalism. They exhibit extreme care in all of their research and production efforts. During this tour we were shown how their waste is used as fertilizer contracted with local farmers for application through their sprinkler irrigation systems. Our bank is involved in the financing of some of these family farms and our customers having nothing but positive comments regarding the business ethics of the Dekalb management team. The fertilizer application process has lowered their production costs and increased their crop yields.

In March of 1992 our Bank began the process of analyzing several requests to contract with Dekalb and to date have committed to fund nearly \$800,000 of facility loans. We have been very disappointed since issuing our commitment to find that our farmers have been waiting nearly a year to obtain approval from the Environmental Protection Agency and the Kansas Water Resources Board to begin construction of their facilities. This is even more depressing when we see our farmers across the Oklahoma border approximately 30 miles already have their facility constructed and under full production. We have to ask ourselves what is happening in Topeka to put our state at such an economic disadvantage to our neighbors in Oklahoma.

Later in 1992 we were very excited to hear that the Seaboard

Corporation was considering Liberal as a potential site to build their pork processing plant. We were in competition with our neighbors in Guymon, Oklahoma approximately 60 miles southwest of us for this business. Once again our state lost this industry due to existing corporate laws and we are looking to Topeka to find out what is causing this additional dilemma.

In 1992 our farmers struggled with poor weather conditions during their wheat and milo harvest in addition to above average insecticide costs on their corn crop. These factors compounded with low prices for their crops and reduced subsidies from the government have seen several more family farms have to liquidate or file for Chapter 12 and Chapter 7 Bankruptcy.

It is my opinion that the farm contracts with Dekalb will net those producers an additional \$10,000 to \$16,000 per year until their facilities are paid for in 10 years. After their debt is paid off they will net another \$40,000 to \$60,000 of income per year. In visiting with the creditors in North Carolina, we can expect the facilities to have an economic life of approximately 25 or 30 years.

Mr. Chairman and committee members, this income could save many of our family farms. The pork processing plants will also increase our hog and grain prices in addition to creating new jobs if we allow them to build in Kansas. Otherwise we will see these benefits go to Oklahoma.

Please support the changes required to provide our state with a more competitive and healthy agricultural environment.

Thank you for your time and consideration!

Respectfully submitted,



L. Blake Waters
Senior Vice President
Agricultural Loans



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FAX: (913) 273-3399

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STATEMENT
OF THE
KANSAS LIVESTOCK ASSOCIATION
TO THE
HOUSE COMMITTEE ON AGRICULTURE
REPRESENTATIVE GENE SHORE CHAIRMAN
WITH RESPECT TO
CORPORATE FARMING LAW
RE: SWINE PRODUCTION
Presented by
DEE LIKES
EXECUTIVE VICE PRESIDENT
Thursday, January 14, 1993

Mr. Chairman and members of the committee, I am Dee Likes representing the Kansas Livestock Association. As most of you already know, KLA represents a broad range of farmers and ranchers across Kansas who are involved in literally every phase of red meat production . . . beef, pork and lamb. In addition, most KLA members produce grain, hay and other feedstuffs.

Our association has taken a very active part in the legislative deliberations concerning corporate farming for many years. We appear today in support of broadening the ability of corporations to engage in swine production in Kansas.

Over the past two decades the entire corporate farm issue has been reviewed by our association numerous times. Each time our association has overwhelmingly approved a position endorsing liberalization of the laws which restrict corporate farming. Philosophically, our members have confidence in the ability of the marketplace and free enterprise system to act as the best regulator of participants in our industry. We realize that corporate farming frequently becomes very emotional for some individuals. However, we believe this issue should be considered strictly from a business point of view. Realistically, there is no special magic about corporations or reason to fear their involvement in agriculture. Corporations shouldn't be restricted any differently than individuals. If individuals have rights to engage in certain business ventures and assume any form of business structure they choose, why should corporations, which are only a group of individual owners, be restricted? They are only a collection of individuals who shouldn't lose those rights because of a particular business structure.

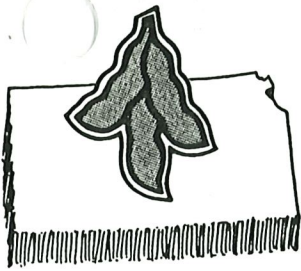
We believe the swine industry in Kansas would benefit from allowing corporations to engage in swine production. Kansas is obviously lagging behind other areas of the country; at least partially due to our restrictions on corporations. As a result, other states have benefited from investments in swine production facilities that could have located in

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Kansas. Furthermore, if there is any hope of attracting pork packing and processing facilities to locate in Kansas, swine production must increase dramatically. It is simply a business reality that packing and processing facilities are compelled by strong economic forces to locate in the proximity of large supplies of hogs.

We realize there are groups and individuals who fear the entry of corporations into agriculture. There are those who, in their passion to preserve the "family farm" would like to "freeze" agriculture and isolate it from the natural evolutionary and economic forces which change all industries in our business system. We believe that would be a mistake. We realize change is uncomfortable for some, but to resist it instead of dealing with it in a realistic and rational way is tantamount to economic suicide, which is just about what's been happening to the swine production industry in Kansas.

KLA supports the efforts of the Kansas Pork Producers Council to modify the Kansas Corporate Farming Law as it relates to swine production in our state.



KANSAS SOYBEAN ASSOCIATION

P.O. BOX 750285
TOPEKA, KS 66675
PHONE (913) 271-1030

DATE: January 14, 1993

PRESENTATION: House Committee on Agriculture

ISSUE: Kansas Corporate Farming Law

BY: Mr. Jerry Jeschke, Vice President
Kansas Soybean Association
R.R. 1, Box 130
Robinson, Kansas 66532
913-442-5520

I speak to you today on behalf of the Kansas Soybean Association. The Kansas Soybean Association is a grass roots, not-for-profit, volunteer, commodity organization of soybean farmers working to assure the opportunity for profit for Kansas soybean farmers.

The Kansas Soybean Association's policy development process is generated from grass-roots input and is passed by our members at our annual meeting. At our recently completed meeting, our members adopted a policy which supports the Kansas Pork Producers Council's recommended changes to the Kansas Corporate Farming Law.

A strong swine industry in Kansas is very important to the Kansas soybean industry. The swine industry consumes 28% of all the soybean meal produced in the United States. There are three soybean processing facilities in Kansas. These three locations help to set the local market price for soybeans. If the swine industry in Kansas grows, the demand for soybean meal increases which helps to increase the price for soybeans. The net result of this is a better local price for soybeans and increased soybean profitability for Kansas soybean farmers.

We appreciate your support in changing the Corporate Farming Law to allow Kansas to be on a level playing field with other swine-producing states. This will help to strengthen the Kansas swine industry which will also help to strengthen the Kansas soybean industry. Thank you for your consideration of this issue.



CMS Electric Cooperative, Inc.

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Meads, KS 67864
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1-(800) 784-2353

January 13, 1992

State House Agriculture Committee

Mr. Chairman and Members of the Committee:

I wish to submit to you our endorsement of changes delineated below in our current corporate ownership and vertical integration restrictions pertaining to swine. Over the past several years, the restrictions have negatively impacted our area of the state in many respects.

After the failure to enact changes in the law, DeKalb Swine Breeders have moved a significant part of their operation to Oklahoma. Not only have we lost property valuation, retail business and jobs, but also citizens of our state have relocated to Oklahoma so that they might be involved in the pork industry.

Most recently, Seaboard Corp. announced plans for a new pork processing facility in Guymon, Oklahoma. The vertical integration prohibition, which is specifically discriminatory to swine, effectively stopped the construction of that plant in Liberal. Lost are the jobs and prosperity so critical for our area of the state. We depend heavily on agriculture and the value-added manufacturing that accompanies it.

Not only have we lost DeKalb's expansion and the Seaboard plant, but our swine producers of the area and those that want to enter the swine industry are precluded from contracting with Seaboard to produce hogs for this plant.

Using a conservative estimate, if just one-half of the plant's slaughter were originate from Kansas, this could represent 125 million dollars in new swine production facilities being built in our state.

We believe that the proposed changes are critical for the prosperity of Kansas agriculture and would urge your adoption.

The applicable statutes concerning the "corporate swine" issue with the proposed changes included, specifically:

In 17-5903 (s) (page 3 of this document), delete the word "confinement" and replace with "production" and delete the words "an enclosed environment". There are some units which the words "enclosed environment" could preclude and the word "confinement" has a negative connotation to some.

In 17-5904 (8) (page 5 of this document), add the words "a swine production facility".

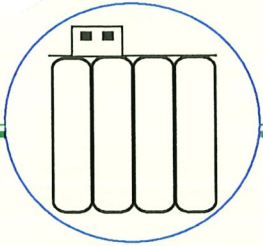
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In 17-5905 and 17-5906, (pages 6 and 7) delete both entire sections. These statutes are unique to only Kansas and Iowa and will negatively impact Kansas producers ability to contract with whomever they choose. Specifically these would preclude Seaboard Corp. from contracting in Kansas.

CMS Electric Cooperative, Inc. appreciates the opportunity to present constructive change. CMS is an electric supplier in Southwest Kansas reliably supplying all the electrical requirements of its rural customers for over 40 years. CMS serves as area from west of Liberal to east of Coldwater and we are dedicated to providing a superior quality of life to rural, agriculture based, Kansas.

Submitted by:

Kirk A. Thompson
CMS General Manager



KANSAS GRAIN AND FEED ASSOCIATION

STATEMENT OF KANSAS GRAIN AND FEED ASSOCIATION
TO THE HOUSE AGRICULTURE COMMITTEE

EUGENE SHORE, CHAIR

JANUARY 14, 1993

Mr. Chairman and Members of the Committee, I am Michael Torrey, Director of Legislative and Regulatory Affairs for the Kansas Grain and Feed Association (KGFA). Our association's approximately 1500 member firms are involved in the handling, storage and processing of grain. We appreciate the opportunity today to express our support for changes in the Corporate Farm Law.

KGFA supports legislation to allow corporations the same rights in Kansas relative to swine production as they currently have with beef, poultry and rabbit production. Kansas agriculture is in a global marketplace. Therefore, preventing corporate swine production in Kansas does not prevent it elsewhere and simply makes Kansas hogs less competitive by encouraging the establishment of swine processing and related industries in other states where there are more hogs produced.

Kansas needs the jobs and the revenue which will accompany increased hog numbers. More hogs will increase the feed grain demand, a plus for Kansas farmers and grain elevators.

Whether we like it or not, agriculture has seen many changes in the last 10 years. Fewer farms are producing more and it seems that this trend will continue. I represent a pro-business

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organization that has seen first hand the effects of changes in the Corporate Farming Law. For example in Southwest Kansas, in our opinion, the feed grain production would be less than it is today if the beef feedlot industry did not exist.

We also believe a change in the law would benefit our farmer customers. We believe changes in the Corporate Farm Law will open up new opportunities for farmers by allowing them to spread their risk through contract farming.

KGFA believes that this democracy was built on a foundation of free enterprise and it is not the role of government to keep people out of business through antiquated policy. Government should not decide who can and who can not operate a business in the state of Kansas.

I appreciate the opportunity to appear before you today and stand ready to answer questions you may have.

Corporate Hog Production in Kansas

Testimony by Roy Henry
President-Elect
Kansas Pork Producers Council

Corporate hog production in Kansas becomes either an emotional issue or a dollars and cents issue. Emotionally, I would have to oppose it because, superficially, the word corporation appears to endanger a concept more American than the bald eagle--namely, the family farm. For years, we have tried to define the family farm, but we only seem to come up with "any that is the size of mine or smaller."

Since I am here as a proponent of corporate hog production, I will not attempt to address the emotional issue. Instead, I wish to present some of the financial considerations. I speak as a "family farmer" (living, working on a farm producing crops and livestock) and as a "corporate farmer". Our family business, Henrys Limited, is incorporated, and while nobody calls me CEO, I guess that defines my job.

Hog production in the United States is one of the few agricultural commodities which have not been subsidized by the government. In the swine industry, the basic laws of supply and demand have been allowed to work--a factor which has made that industry one of the more profitable agricultural pursuits.

Henrys Limited was established in 1974. To show the steady growth it has experienced, a history of stock valuation follows:

1975 . . .	\$100.00	1981 . . .	464.61	1987 . . .	923.00
1976 . . .	226.30	1982 . . .	558.09	1988 . . .	1,354.30
1977 . . .	264.84	1983 . . .	714.51	1989 . . .	1,547.67
1978 . . .	335.13	1984 . . .	833.50	1990 . . .	1,676.87
1979 . . .	510.35	1985 . . .	903.44	1991 . . .	1,940.26
1980 . . .	434.93	1986 . . .	730.00	1992 . . .	1,204.00

Stock evaluations are made on the first of January each year. Hog prices and labor costs have varied throughout the period: labor costs have always increased, and hog prices have fluctuated. In 1975, labor costs were \$14.50/hog and hog prices averaged \$49.71/cwt. In 1992, labor was \$20.00/hog and prices averaged \$49.35/cwt. Similar prices and costs can be available to the self-employed, individual farmer dedicated to serious hog production. The same technological advances, including those in genetics and nutrition, are there for all to use.

In the past year, we have sold approximately 5,000 gilts to be used for reproduction. These gilts will generate about 100,000 animals for slaughter per year. Of these 5,000 gilts, only 500 stayed in Kansas, and these will generate about 10,000 pigs per year. Of all the gilts sold, only 750 were going into pre-existing facilities; the other 4,250 went to new farms.

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In other words, a high percentage of our gilts went to start new farms, none of which were in Kansas. Wherever they are raised, these pigs will affect the total meat supply. I realize that everyone doesn't sell breeding stock, and point out that we have been in this area of production for only one year (1992). However, all of our 1993 production is already sold, so, if you want to buy a gilt from us, your animal is not even conceived. This gilt demand is greater than normal throughout the seedstock industry, but we contemplate a continuation of the demand from our farm. Reasons get lengthy, but I'll explain further or answer questions, if you wish.

Another major trend in the hog industry is the packer/producer response to the very valid consumer demand for lean meat. Fat is no longer desirable in the diet, and the consumer is paying more for higher quality. For example, there is as much as \$25.00 difference in retail value between two pigs, each weighing 230 pounds at slaughter (the normal live weight). The packer, understandably, wants to buy only the high-quality pig.

Two principal factors determine pig quality: genetics and nutrition. We are particularly fortunate in Kansas in the nutrition expertise furnished by Kansas State University. However, without growth in the swine industry, we will suffer from KSU's inability to maintain this unbiased source of information which serves us so well. Data would be available, of course, from the feed companies and the seedstock companies, but we have experienced unreliability in these sources.

I sell slaughter hogs for 15 other producers in our area, basically controlling the marketing of 40,000 pigs/year. Packers have called to tell me of their specific desires in the areas of genetics and nutrition. This is an area where both large and small producers will have to adapt to technology to receive a higher value per carcass. We will see a time when the packers will discount the poor-quality pig enough to say, "If you don't adapt to modern technology, you will make no money."

As said before, advantages in genetics and nutrition are now generally available to all -- whatever the size of production. By group marketing, as we do, some producers claim as much as \$5.00/head more than by individual marketing. However, there are those who refuse to take even such a step, wanting to control all decisions at whatever expense. This is what I call the "family farm" syndrome.

Protectionism by legislation would probably hurt the very farmers it set out to help. In such an event, packers will distance themselves from Kansas, technology won't be as available as now, expert help will be further away, and yes, jobs and markets (grain, building materials, equipment, etc.) will diminish.

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I fail to see that this situation is much different from ones faced in the past: school unification led to the closing of one-room and other small schools, the demise of Mom and Pop groceries followed large food chains (with local ownership or franchise) and Wal-Mart's -- the list goes on and on.

Our times are changing, as they always do. This doesn't mean we have to like the change, but we should at least understand the facts backing up our choice of paths. To an extent, we can control our future. Only history will tell accurately the wisdom of your decision in the matter of corporate farming. Good luck!