

N.D.A.G. Letter to McLean (Dec. 19, 1989)

December 19, 1989

Stephen M. McLean
City Attorney
City of Oakes
124 South 5th Street
Oakes, ND 58474

Dear Mr. McLean:

Thank you for your December 7, 1989, letter concerning city ownership of land used for farming or ranching. According to your letter, the city owns several lots within an industrial park and wishes to rent those lots to a local farmer. You question whether the city is able to own this land and rent it for farming and ranching pursuant to N.D.C.C. ch. 10-06.

Although your letter does not raise the issue, there is a threshold question whether the provisions of North Dakota's corporate farming laws, N.D.C.C. ch. 10-06, are applicable to a municipal corporation. The corporate farming laws do not discuss explicitly the various forms of corporations which may be subject to its provisions. Before 1981, N.D.C.C. § 10-06-01, which provides the basic prohibition against corporations owning or leasing farmland or engaging in the business of farming or ranching, referred specifically to domestic and foreign corporations. See Coal Harbor Stock Farm, Inc. v. Meier, 191 N.W.2d 583, 587 (N.D. 1971). In 1981, mention of domestic and foreign corporations was removed. Currently, the statute simply prohibits corporations, except as otherwise provided by law, from owning or leasing farm or ranchland or engaging in the business of farming and ranching.

Municipal corporations are not expressly excepted from the provisions of N.D.C.C. ch. 10-06. Thus, arguably, cities are subject to its provisions. However, my review of the legislative history surrounding the various amendments to North Dakota's corporate farming law strongly suggests that the legislature intended only to provide specific forms of business organizations to those persons and entities engaged in farming and ranching. I doubt that the legislature intended to address ownership of farm or ranchland by a municipal corporation where such land was found within an industrial site in the city, however, the resolution of this issue is not needed to respond to your question.

N.D.C.C. § 10-06-01.3 allows a corporation to own land used for farming or ranching when that land is necessary for certain residential or commercial development including industrial parks. This particular statute was first enacted by the 1983 Legislative Assembly. See 1983 N.D. Sess. Laws ch. 131. On April 12, 1983, John Walstad of the Legislative Council appeared before a conference committee which was considering this statute. Walstad stated that this exception allowed corporations not engaged in farming or ranching to own or lease farm or ranchland if that ownership was necessary for residential

or commercial development "on the outskirts of a city." Hearing on S.2244 Before the House and Senate Conference Committee on Agriculture, 48 Leg., (April 12, 1983) (statement of Mr. Walstad).

"These corporations may not farm or ranch the land, but they may own the land and lease it to persons who will farm or ranch the land and hold it for future purposes."

Id.

Thus, in response to your question, the city of Oakes will not be in violation of the North Dakota Corporate Farming Act if they rent the land in question for farming purposes pursuant to the provisions of N.D.C.C. § 10-06-01.3.

I hope this information is helpful to you.

Sincerely,

Nicholas J. Spaeth

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