

**N.D.A.G. Letter to Eiken (Dec. 26, 1986)**

December 26, 1986

Mr. Doug Eiken, Director  
North Dakota Parks & Recreation Department  
Pinehurst Office Park  
1424 West Century Avenue  
Suite 202  
Bismarck, ND 58501

RE: Advisory Committee on Land Acquisitions by Non-Profit Corporations

Dear Mr. Eiken:

Thank you for your letter of December 3, 1986, concerning the constitutionality of N.D.C.C. § 10-06-04.3(3), and the Advisory Committee's proposed acquisition plan and recommended format procedure for submitting the plan. I will answer your questions in the order addressed.

Generally speaking, prohibitions on corporate farming in North Dakota and elsewhere have been upheld as constitutional. See Coleharbor Stock Farm, Inc. v. Meier, 191 N.W.2d 583 (N.D. 1971); Asbury Hospital v. Cass County, 7 N.W.2d 438 (N.D. 1943); Asbury Hospital v. Cass County, 16 N.W.2d 523 (N.D. 1944). Based on these decisions, it is probably safe to say that North Dakota could prohibit any non-profit organizations from owning and leasing farmland and ranch land in North Dakota. However, only a court can determine the constitutionality of a statute.

North Dakota has chosen to allow limited acquisition of certain farmland and ranch land by certain non-profit corporations. See N.D.C.C. §§ 10-06-04.1, 10-06-04.2, 10-06-04.3, and 10-06-04.4. Unless a non-profit organization is allowed to own or lease land pursuant to N.D.C.C. § 10-06-04.1, it may only acquire farmland or ranch land for the purpose of conserving natural areas and habitats for biota. See N.D.C.C. § 10-06-04.3. (N.D.C.C. § 10-06-04.4 allows a non-profit to acquire land by gift or devise after December 31, 1984, the ownership of which is not permitted, providing it divests itself of the land within ten years after acquisition.)

Assuming that non-profit organizations may be generally limited in their acquisitions of farmland or ranch land in North Dakota, two constitutional questions may arise -- is N.D.C.C. § 10-06-04.3 constitutional on its face, and, if it is constitutional on its face, had it been constitutionally applied?

In regard to the first question, it may be argued that N.D.C.C. § 10-06-04.3 is constitutionally vague in not providing criteria upon which the Governor and the Advisory Committee can base a disapproval of a proposed acquisition plan. However, good

arguments can be made that N.D.C.C. § 10-06-04.3 itself and, perhaps some other sections of the corporate farming law provide the criteria for approval or disapproval.

In other words, the criteria for approval and disapproval are the criteria inherent in the corporate farming law. Therefore, the law is not vague in that respect.

In the application of N.D.C.C. § 10-06-04.3, requirements imposed on non-profit organizations' acquisitions of farmland and ranch land that do not appear in the corporate farming laws and that may have adverse impact on those non-profit organizations' acquisitions could present legal problems. Particularly, legal problems could arise from disapproving acquisitions based on concerns of impact on economic environments and conflicts with various state and local conservation projects. Unless there are other laws that require the acquisitions of non-profit organizations to meet certain requirements in regard to economic impacts and conflicts with state and local projects, disapproval on these bases could be unlawful.

In regard to the proposed format procedure, it looks thorough and appropriate to me. Even though you are asking the non-profit corporation to identify potential conflicts with state and local projects and the potential impacts to the economic environment, that does not mean that a decision to disapprove would have to be based on any identified conflicts or adverse economic impacts. I suggest, again, that disapproval avoid bases other than those found in law. In any case, resolution of potential conflicts and adverse economic impacts often can be achieved after being made aware of them.

Sincerely,

Nicholas J. Spaeth

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