

LETTER OPINION
99-L-128

December 21, 1999

Wayne P. Jones
Ransom County State's Attorney
P.O. Box 391
Lisbon, ND 58054-0391

Dear Mr. Jones:

Thank you for your letter requesting my opinion on two issues relating to the proposed acquisition of certain property in Ransom County by The Nature Conservancy (TNC). Your first question asks whether TNC, which must obtain the approval of the Governor prior to purchasing property in North Dakota pursuant to N.D.C.C. § 10-06.1-10(3), must also comply with local zoning ordinances.

N.D.C.C. chapter 10-06.1 is devoted to outlining the provisions for and limitations of corporate or limited liability company farming in North Dakota. N.D.C.C. § 10-06.1-10 specifically deals with the acquisition of farmland or ranchland by nonprofit corporations. Subsection 3 requires nonprofits such as TNC to acquire the approval of the Governor prior to purchasing farmland or ranchland. N.D.C.C. 10-06.1-10(3).

Thus, N.D.C.C. § 10-06.1-10(3) is concerned with the acquisition of farmland or ranchland by nonprofit corporations. Zoning ordinances generally regulate the use of land, rather than the ownership of land. 8 Eugene McQuillin, The Law of Municipal Corporations, § 25.17 (3d ed. 1991). Nothing in N.D.C.C. chapter 10-06.1 exempts a nonprofit corporation from complying with local zoning ordinances. Accordingly, it is my opinion that a nonprofit corporation such as TNC must comply with local zoning ordinances in its use of land it purchased following the requirements of N.D.C.C. § 10-06.1-10(3).

However, the Ransom County zoning ordinance you specifically wish to enforce presents an interesting problem. That ordinance states, "[b]efore the county board may issue a conditional use permit to allow the transfer of land to public agencies or non profit [sic] organizations, [the county board] shall negotiate with the owner/lessee" the resolution of several local issues arising from the

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transfer. Ransom County Zoning Ordinance L (emphasis added). That ordinance attempts to regulate the transfer and ownership of land, rather than the use of the land. Id.

<PAGE NAME="p.L-129">As stated above, zoning ordinances generally regulate the use of land, rather than the ownership of land. 8 Eugene McQuillin, The Law of Municipal Corporations, § 25.17 (3d ed. 1991); Bridge Park v. Borough of Highland Park, 273 A2d 397 (N.J. Super. Ct. App. Div. 1971). Further, N.D.C.C. § 11-33-01 specifically limits a county's zoning to the following: "the location and the use of buildings and structures and the use, condition of use, or occupancy of lands for residence, recreation, and other purposes." Nothing in N.D.C.C. § 11-33-01 gives a county the authority to regulate the purchase or ownership of property through the enactment of zoning regulations.

Furthermore, N.D.C.C. chapter 10-06.1 appears to be a comprehensive scheme for regulating the ownership of farmland and ranchland by corporations and limited liability companies: "All corporations and limited liability companies, except as otherwise provided in [N.D.C.C. chapter 10-06.1], are prohibited from owning or leasing land used for farming or ranching . . ." N.D.C.C. § 10-06.1-02. The only influence a local governmental entity has over a nonprofit corporation's purchase of farmland or ranchland is through a meeting by the board of county commissioners with the statutorily-created advisory committee. N.D.C.C. § 10-06.1-10(3). The advisory committee, not the board of county commissioners, then recommends a course of action to the Governor, who has the sole statutory authority to approve or disapprove the transfer. Id. The Legislature's enactment of a comprehensive scheme for regulating the ownership of farmland and ranchland by corporations and limited liability companies "implies . . . that there is no room for additional regulation by local governmental entities." 1991 N.D. Op. Att'y Gen. 72, 73.

Thus, not only does the county lack the statutory authority to regulate through its zoning ordinances the purchase of farmland or ranchland by a nonprofit corporation such as TNC, the comprehensive scheme set forth in N.D.C.C. ch. 10-06.1 preempts any local control over such a purchase. Accordingly, it is my opinion that, although TNC must comply with local zoning ordinances once it has acquired subject farmland or ranchland, local zoning ordinances may not attempt to control TNC's purchase of farmland or ranchland. To the extent the Ransom County zoning ordinance seeks to regulate that purchase, it is invalid. Since the township zoning ordinance you

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submitted does not attempt to regulate the purchase of the property by a nonprofit corporation, it does not conflict with N.D.C.C. ch. 10-06.1.

You next ask whether the grazing and haying portion of TNC's intended practices with the Brown Ranch would be prohibited under the North Dakota corporate farming laws, specifically N.D.C.C. § 10-06.1-12. Except as provided elsewhere in the chapter, chapter 10-06.1 prohibits <PAGE NAME="p.L-130">all corporations or limited liability companies from "owning or leasing land used for farming or ranching and from engaging in the business of farming or ranching." N.D.C.C. § 10-06.1-02. TNC is a nonprofit corporation organized in 1951 under the laws of the District of Columbia. Thus, TNC is governed by ch. 10-06.1.

North Dakota law does allow limited acquisition of certain farmland and ranch land by certain nonprofit corporations. See Letter from Attorney General Nicholas Spaeth to Doug Eiken (Dec. 26, 1986); N.D.C.C. §§ 10-06.1-09, 10-06.1-10. A nonprofit organization is allowed to own or lease land pursuant to N.D.C.C. § 10-06.1-09(1), which states in part:

A nonprofit organization . . . may own or lease farmland or ranchland if that land is leased to a person who farms or ranches the land as a sole proprietorship or partnership, or a corporation or limited liability company allowed to engage in farming or ranching under section 10-06.1-12.

Thus, TNC may acquire land so long as any agricultural lands continue to be leased to a farmer or rancher.

In addition to the provisions of N.D.C.C. § 10-06.1-09, section 10-06.1-10 imposes additional restrictions on TNC's acquisition and continued ownership of agricultural land. You question whether TNC's proposed management practices of haying and grazing any agricultural lands would violate North Dakota corporate farming laws. Such practices would not violate state law so long as the lessee, and not TNC, carried out these practices. In fact, § 10-06.1-10 mandates that any agricultural use be continued by someone authorized to engage in farming or ranching.

A nonprofit organization may acquire farmland or ranchland only in accordance with the following:

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. . .

2. The land may be acquired only for the purpose of conserving natural areas and habitats for biota, and, after acquisition:

. . .

- b. Any agricultural use of the land is in accordance with the management of the land for conservation and agricultural use, and is by a sole proprietorship or partnership, <PAGE NAME="p.L-131">or a corporation or limited liability company allowed to engage in farming or ranching under section 10-06.1-12.

N.D.C.C. § 10-06.1-10. If TNC failed to fulfill any of the provisions of N.D.C.C. § 10-06.1-10(2), it would no longer qualify to own the land and would be required to dispose of it within five years of that failure to qualify. See N.D.C.C. § 10-06.1-10(5). Thus, it is my opinion that TNC's intended haying and grazing practices for a proposed land acquisition in Ransom County would be allowed under N.D.C.C. ch. 10-06.1 so long as those practices are carried out by a sole proprietorship or partnership, or a corporation or limited liability company allowed to engage in farming or ranching under section 10-06.1-12.

Your letter also refers to N.D.C.C. § 10-06.1-12. This section is commonly referred to as the "family farming" exception to the State's corporate farming law. TNC, for obvious reasons, does not meet the qualifications of this section. Section 10-06.1-12 is relevant, however, since any lessee using TNC's agricultural land must be a sole proprietorship or partnership, or a corporation or limited liability company allowed to engage in farming or ranching under section 10-06.1-12. But this section does not, by itself, prohibit the proposed acquisition by TNC.

Sincerely,

Heidi Heitkamp
Attorney General

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