

**LETTER OPINION
2018-L-01**

April 3, 2018

Ms. Mylynn Tufte
State Health Officer
North Dakota Department of Health
600 East Boulevard Avenue, Dept. 301
Bismarck, ND 58505-0200

Dear Ms. Tufte:

Thank you for your letter asking whether corporations or limited liability companies that apply with the Department of Health to obtain a license to produce and process medical marijuana must comply with North Dakota's corporate farming law.

In 2017, the 65th Legislative Assembly enacted Senate Bill 2344, which authorized the establishment and implementation of a medical marijuana program.¹ Pursuant to this legislation, a person may not process or produce or dispense usable marijuana for medical purposes in this state unless the person is registered as a compassion center.² An applicant must submit, among other things, articles of incorporation or articles of organization to be a registered compassion center.³

The North Dakota Department of Health is authorized to register no more than two compassion centers to be "manufacturing facilities" authorized to produce, process, and sell usable medical marijuana to a dispensary.⁴ The two authorized compassion centers will not be allowed to possess more than 1,000 plants, regardless of the stage of growth.⁵ They must have strict security and safety measures to prevent theft of medical marijuana.⁶

¹ N.D.C.C. § 19-24.1-02.

² N.D.C.C. § 19-24.1-12(1).

³ N.D.C.C. § 19-24.1-14(1)(b).

⁴ N.D.C.C. § 19-24.1-01(21).

⁵ N.D.C.C. § 19-24.1-24. An additional fifty plants may be possessed exclusively for department-authorized research and development.

⁶ N.D.C.C. § 19-24.1-25.

The production of medical marijuana is, by definition, the cultivation of a medicinal plant; it is within the plain, ordinary, and commonly understood meaning of what constitutes the practice of horticulture.⁷ Although the production of medical marijuana was not described or defined as “farming” in N.D.C.C. ch. 19-24.1, the business of “[f]arming . . . means . . . producing of . . . horticultural products” under the corporate farming law.⁸

The Legislature, however, specifically exempted marijuana grown under N.D.C.C. ch. 19-24.1 from the definition of “farmer” in N.D.C.C. § 57-02-08, the tax exemption for all farm structures and improvements located on agricultural lands.⁹ The Legislature did not exempt marijuana grown under N.D.C.C. ch. 19-24.1 from the definition of “farming or ranching” in N.D.C.C. § 10-06.1-01(1).

It is the understanding of this office that the Secretary of State’s office is reluctant to register businesses that intend to apply for a compassion center license because the statutory definition of farming in the corporate farming law includes horticulture. Thus, although the Legislature has clearly determined the production of medical marijuana is lawful, the application of the corporate farming law could be construed to prohibit the otherwise lawful creation of a corporate entity as a compassion center to produce medical marijuana.

ANALYSIS

We construe statutes to ascertain the intent of the Legislature.¹⁰ Statutes must be considered as a whole and in relation to other provisions, with each provision harmonized, if possible, to avoid conflicts.¹¹ When read together, the provisions of N.D.C.C. ch. 10-06.1 do not preclude the Secretary of State from registering a corporation or limited liability company as required in N.D.C.C. ch. 19-24.1. The Legislature directed prospective compassion center applicants to provide articles of incorporation or articles of organization to the Department of Health as part of the extensive application process.¹² If the mere possibility of a corporate farming implication causes the applicants to be denied paperwork necessary to submit an application, it would create an irreconcilable conflict because the intent of N.D.C.C. ch. 19-24.1 could not be carried out.

⁷ N.D.C.C. § 19-24.1-01(34).

⁸ N.D.C.C. § 10-06.1-01(1).

⁹ N.D.C.C. § 57-02-08(15)(b)(2).

¹⁰ *Cont’l Cas. Co. v. Kinsey*, 499 N.W.2d 574 (N.D. 1993); *Dundee Mut. Ins. Co. v. Balvitsch*, 540 N.W.2d 609 (N.D. 1995).

¹¹ *Cont’l Cas. Co. v. Kinsey*, 499 N.W.2d 574 (N.D. 1993); *Dundee Mut. Ins. Co. v. Balvitsch*, 540 N.W.2d 609 (N.D. 1995).

¹² N.D.C.C. § 19-24.1-14.

There is nothing in the corporate farming law that prohibits the registration of an entity that lists “compassion center” as its business purpose because there is no presumption that the corporate farming law applies. The determination of whether the corporate farming law applies is a fact determination made by this office.¹³ The only obligation the Secretary of State’s office has is to notify this office and the Governor of any non-compliance with the requirements of the corporate farming law it finds in an annual report of a corporation or limited liability company.¹⁴

This is not to say that corporations or limited liability companies that apply for a compassion center license should not be aware of the corporate farming law. The corporate farming law provides that:

All corporations and limited liability companies, except as otherwise provided in this chapter, are prohibited from owning or leasing land used for farming or ranching *and* from engaging in the business of farming or ranching.¹⁵

The manifest purpose of the corporate farming law is to prevent certain corporations from directly or indirectly engaging in the business of farming or ranching by limiting their ownership of farmland.¹⁶ Thus, any corporation or limited liability company must be cognizant of its land ownership because if it owns or leases farmland or ranchland, corporate farming may apply.

In past opinions this office determined that certain enterprises did not constitute corporate farming. Some examples include a golf course,¹⁷ a feed lot,¹⁸ a beekeeping business,¹⁹ and a greenhouse type operation.²⁰

¹³ N.D.C.C. § 10-06.1-23.

¹⁴ N.D.C.C. § 10-06.1-21. See also N.D.C.C. § 10-06.1-24 (requiring county recorders to notify the Attorney General if farmland or ranchland is conveyed to a corporation or limited liability company); and N.D.C.C. § 10-06.1-22 (requiring Tax Commissioner to select random tax return filed by corporations or limited liability companies).

¹⁵ N.D.C.C. § 10-06.1-02 (emphasis added).

¹⁶ *Asbury Hosp. v. Cass Cnty.*, 326 U.S. 207, 214 (1945) (this legislation demonstrates “a state policy against the concentration of farming lands in corporate ownership.”). See also N.D.A.G. 46-54 (July 15, 1946) (“it was the intent of the legislative assembly . . . to prevent a tendency towards a monopoly by corporations in owning land and conducting farming operations.”); N.D.A.G. 46-50 (“the purpose of the legislature . . . was to encourage individual citizens in acquiring and improving farms.”).

¹⁷ N.D.A.G. 2001-L-38.

¹⁸ N.D.A.G. 60-39.

¹⁹ N.D.A.G. 68-1.

²⁰ N.D.A.G. letter to Van Heuvelen (Aug. 15, 1977).

Although medical marijuana will be grown using horticultural techniques, there is nothing in the medical marijuana law that requires a compassion center to be located on farmland or ranchland.²¹ It is entirely possible that a compassion center will be located in an urban or industrial area. The law requires that medical marijuana be produced in an enclosed, locked facility that does not allow the plants to be visible from the street or other public areas.²² The Department of Health must consider the suitability of the proposed compassion center location, including compliance with any local zoning laws, and the geographic convenience to access compassion centers for registered qualifying patients and registered designated caregivers from throughout the state.²³

The corporate farming law does not regulate land use or limit and control commercial and residential development; those purposes are addressed by laws governing local zoning. Interpretation of sections within N.D.C.C. ch. 10-06.1 should be limited to the purpose of preventing corporate farming, and not expanded to address unrelated issues that are resolved under other statutes.²⁴

It is my opinion that an entity applying to be a compassion center under N.D.C.C. ch. 19-24.1 is not presumed to be subject to the corporate farming law and it is up to each entity to review the legal restrictions within N.D.C.C. ch. 10-06.1.

Sincerely,

Wayne Stenehjem
Attorney General

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.²⁵

²¹ See N.D.C.C. § 19-24.1-14.

²² N.D.C.C. § 19-24.1-14(1)(e).

²³ N.D.C.C. § 19-24.1-14(2)(a).

²⁴ See N.D.A.G. 2001-L-38.

²⁵ See *State ex rel. Johnson v. Baker*, 21 N.W.2d 355 (N.D. 1946).