

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 91-10

Date issued: July 11, 1991

Requested by: Senator William G. Goetz

- QUESTION PRESENTED -

Whether a cooperative may operate a swine production facility.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that under some circumstances a cooperative may operate a swine production facility.

- ANALYSIS -

A cooperative tentatively plans to own and operate a swine production facility in which approximately 25,000 hogs per year would be raised. The facility would raise the hogs to approximately 45 pounds before finishing them at either an off-site location, or on-site in a complete farrow-to-finish operation. If off-site finishing locations are used, the cooperative would contract with local farmers to perform the finishing.

N. D. C. C. ' 10-06-01 prohibits all corporations, whether organized as a business corporation or a cooperative, from owning or leasing farm or ranch land and from engaging in the business of farming or ranching. Coal Harbor Stock Farm, Inc. v. Meier, 191 N.W.2d 583 (1971). N. D. C. C. ' 10-06-04 creates an exception to this general rule for corporations which are organized as cooperatives and are engaged in "cooperative farming or ranching."

The question presented raises two subissues.

The first subissue is whether, under N. D. C. C. ch. 10-06, farrowing and finishing constitute the "raising or producing of livestock." If so, the cooperative may not operate the facility unless it falls under an exception to the general rule of N. D. C. C. ch. 10-06 prohibiting corporations, including cooperatives, from engaging in the business of farming or ranching.

The definition of "farming or ranching" includes the "raising or producing of livestock or livestock products." N. D. C. C. ' 10-06-01.1. Although livestock is not defined in N. D. C. C. ch. 10-06, it is defined elsewhere in the code to include swine. See e.g. N. D. C. C. ch. 36-05.

"Raising" and "producing" are not defined in N. D. C. C. ch. 10-06, nor are they defined elsewhere in the code. Words in a statute are to be understood in

their ordinary sense unless a contrary intention plainly appears. N.D.C.C. ' 1-02-02. The North Dakota Supreme Court has shown no reluctance to resort to dictionary definitions as an aid to statutory construction. E.g., Plante v. Worker's Compensation Bureau, 455 N.W.2d 195 (N.D. 1990). Because no contrary intention appears, "raising" and "producing" are to be understood in their ordinary sense.

"Raising" is defined, in part, as "to cause to grow or to breed (to raise corn or cattle)." (Emphasis in original.) Webster's New World Dictionary, 1174 (2d ed. 1982). Both farrowing and finishing are processes which cause swine to grow. Thus, as understood in the ordinary sense, farrowing and finishing constitute "raising" livestock. Therefore, farrowing and finishing swine falls within the definition of farming as articulated in N.D.C.C. ' 10-06-01.1. Because the proposed activity constitutes "raising" swine, it is unnecessary to discuss the application of the term "producing."

An interpretation that farrowing and finishing swine constitutes farming is further supported when one examines the purpose of the corporate farming law.

In enacting N.D.C.C. ch. 10-06, the object was to limit the role of corporations in agriculture. Broadly defining which practices constitute "farming and ranching" effectuates this intent. Thus, it is my opinion that, to operate a farrowing and finishing operation, a cooperative must fall under an exception to the general rule prohibiting corporate farming and ranching.

The second subissue is whether the proposed operation falls within an exception to the prohibition on corporate farming. The only exception which might possibly apply to the situation described is the exception created by N.D.C.C. ' 10-06-04. That section allows cooperative corporations to engage in the business of "cooperative farming or ranching" if 75% of the members are actual farmers or ranchers residing on farms or ranches or depending principally on farming or ranching for their livelihood. It is therefore my opinion that if 75% of a cooperative's members are farmers who reside on their farms or who depend primarily on farming for their livelihood, a cooperative may engage in "cooperative farming or ranching" under the cooperative exception to N.D.C.C. ch. 10-06.

The exception created in N.D.C.C. ' 10-06-04 does not authorize all manner of "farming and ranching." Only "cooperative farming and ranching" are permitted. The purpose in using the word "cooperative" is not easily ascertained; however, the goal of statutory construction is to ascertain and effect the statute's purpose. N.D.C.C. ' 1-02-01. The North Dakota Supreme Court has spoken on the purpose of the corporate farming statute.

It is . . . common knowledge that prior to the enactment of the Corporate Farming Law there were corporations in existence which were organized and operated for the purpose of engaging in the business of farming and agriculture. These corporations farmed huge tracts of land in this State in competition with individual farmers. It must be presumed that the people of the State, before enacting the Corporate Farming Law by initiated measure in 1932, and the legislators, when they amended the law in 1933, informed

themselves and determined [that] to prohibit corporate farming as a business, except for qualified co-operatives, was necessary to protect the economy of the State and the welfare of its citizens.

Coal Harbor at 591 (emphasis supplied.) Thus, the purpose of the corporate farming law was to preserve individually owned farms by limiting the role of corporations in agriculture. The phrase "cooperative farming and ranching" must be given an interpretation which furthers that purpose. N. D. C. C. ' 1-02-01.

If the law is interpreted to allow a cooperative which fulfills the membership requirement to conduct farming operations primarily with hired, nonmember help, the purpose of benefiting individual farmers is not achieved. It is therefore my further opinion that the use of the word "cooperative" to modify "farming and ranching" limits the type of activity corporations can conduct to those situations where the farming or ranching is actively engaged in, and primarily conducted, by individual farmers who are members of the cooperative.

This conclusion does not preclude a cooperative or its members from employing nonmembers to assist in the farming or ranching operation; however, such assistance may not be the primary source of work performed. Whether a cooperative's work is performed primarily by its members and whether a particular individual is a farmer, are questions of fact to be determined on a case-by-case basis. Those questions cannot be resolved in this opinion.

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- EFFECT -

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.

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