

N.D.A.G. Letter to Wold (March 16, 1989)

March 16, 1989

Mr. James W. Wold
Griggs County State's Attorney
P.O. Box 541
Cooperstown, ND 58425

Dear Mr. Wold:

Thank you for your December 27, 1988, letter to me. I apologize for the delay in responding to you.

You have asked for clarification of the statutory provisions regarding the acquisition and ownership of farmland by a nonprofit corporation. Corporate ownership of farmland is governed by the provisions of N.D.C.C. ch. 10-06. That chapter generally prohibits the ownership of farm or ranch land by corporations.

N.D.C.C. § 10-06-04.1 contains an exception to that general prohibition. N.D.C.C. § 10-06-04.1 states, in part, as follows:

10-06-04.1. Certain nonprofit organizations or trusts may own or lease land -- Certain nonprofit organizations may continue farming or ranching -- Restriction on acquisition and ownership of land.

1. 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, partnership, or a corporation allowed to engage in farming or ranching under section 10-06-07.
2. To the extent farming or ranching is essential to a nonprofit organization's charitable purposes a nonprofit organization actively engaged in the business of farming or ranching in this state on January 1, 1983, may continue to engage in the business of farming or ranching without interruption after January 1, 1983.
3. A nonprofit organization which owned farmland or ranchland for the preservation of unique historical, archaeological, or environmental land before January 1, 1983, may continue ownership of that land without interruption after January 1, 1983.

The exception contained at N.D.C.C. § 10-06-04.1 was adopted in 1983 and revised in 1985. It permits nonprofit organizations, as defined in N.D.C.C. § 10-06-04.2 to own farmland, despite their corporate status. However, the Legislature added two new sections to chapter 10-06 in 1985. These two new sections, N.D.C.C. § 10-06-04.3 and 10-06-04.4, substantially restrict the ability of a nonprofit corporation to acquire farmland.

N.D.C.C. § 10-06-04.3 states, in part, as follows:

10-06-04.3. Acquisition of certain farmland or ranchland by certain nonprofit organizations. A nonprofit organization may acquire farmland or ranchland only in accordance with the following:

1. Unless it is permitted to own farmland or ranchland under section 10-06-04.1, the nonprofit organization must, before January 1, 1985, have been either incorporated in this state or issued a certificate of authority to do business in this state.
2. The land may be acquired only for the purpose of conserving natural areas and habitats for biota.

(Emphasis supplied.)

N.D.C.C. § 10-06-04.4 states, in part, as follows:

10-06-04.4. Required divestiture of agricultural land. In addition to the divestiture requirements of section 10-06-04.3 and section 10-06-13, a nonprofit corporation that acquires land by gift or devise after December 31, 1984, the ownership of which is not permitted under this chapter, shall divest itself of the land acquired after December 31, 1984 within ten Years after the acquisition.

While confusion concerning the relationship among these statutory provisions is understandable, these provisions can be construed consistently. A qualifying nonprofit corporation is permitted to own or lease farm or ranch land acquired before the effective date of N.D.C.C. § 10-06-04.3, that is, July 1, 1985. Thereafter, a qualifying nonprofit corporation may not acquire farm or ranch land except for the limited purpose of conserving natural areas and habitats for biota and then only if, before January 1, 1985, it was incorporated in North Dakota or had a certificate of authority to transact business as a foreign corporation.

If a nonprofit corporation acquires farm or ranch land in violation of section 10-06-04.3, it must divest itself of ownership. If the acquisition is by gift or devise, the divestiture period is 10 years, as N.D.C.C. § 10-06-04.4 provides. If the acquisition is by any other means, the divestiture period is not more than one year after the date of a court order ordering the divestiture, as set out at N.D.C.C. § 10-06-13.

You will note that N.D.C.C. § 10-06-04.3 requires divestiture of land acquired by gift or devise after December 31, 1984. It is unclear from the legislative history of this section why this date was chosen. This section and N.D.C.C. § 10-06-04.2, which limits further acquisition of land by a nonprofit corporation, did not become law until July 1, 1985. Thus, even though acquisition of additional land was permitted between January 1 and June 30, 1985, land acquired by gift or devise during that period is arguably subject to the 10-year divestiture requirement. By contrast, land acquired by purchase during this period would not be subject to any divestiture requirement.

This anomalous result can be avoided because the phrase "after December 31, 1984," as found within N.D.C.C. § 10-06-04.4, is qualified by the phrase "the ownership of which is not permitted under this chapter." Ownership of farm and ranch land by nonprofit organizations is permitted under the statute, and acquisition is only limited after June 30, 1984. Therefore, because ownership would be permitted under chapter 10-06, the divestiture provisions of N.D.C.C. § 10-06-04.4 would not apply to land acquired after December 31, 1984, and before July 1, 1985. This would be true regardless of the means of acquisition.

In summary, the following rules govern ownership and acquisition of farm and ranch land in North Dakota by a nonprofit corporation:

1. A nonprofit corporation that meets the statutory definition of a nonprofit organization may continue to own farm or ranch land acquired by any means prior to July 1, 1985, as long as it leases the land to a qualified person for use in farming or ranching. If farming or ranching was essential to the corporation's charitable purpose on January 1, 1983, the corporation need not lease the property but may farm the property itself.
2. After July 1, 1985, a nonprofit organization which is otherwise permitted to own or lease farm or ranch land under N.D.C.C. §10-06-04.1 is prohibited, nonetheless, from acquiring such land, except for the limited purpose of conserving natural areas and habitats for biota. Because acquisition is a necessary prerequisite to ownership, this section has the practical effect of prohibiting ownership by a nonprofit organization of land used for farming or ranching, unless the land was acquired before July 1, 1985. Farm or ranch land acquired by a nonprofit organization by gift or devise after June 30, 1985, and not acquired for the limited purpose exception, must be divested within 10 years after acquisition. Land acquired by any other means after June 30, 1985, and not acquired for the limited purpose exception, must be divested no later than one year after a court orders divestiture.

The specific question you raise in your letter is whether N.D.C.C. § 10-06-04.1 may be read as follows: "A nonprofit organization . . . may own or lease farmland or ranchland . . ." Phrased differently, your question is whether the phrase "for the benefit of an individual or a class of individuals related within the degrees of kinship specified in subsection 2 of section 10-06-07" has any application to nonprofit organizations. As phrased above, the

answer to the first question is yes and the answer to the second question is no.

However, these answers do not finally resolve the matter. You indicate in your letter that the facts underlying your question relate to a project that is still in the planning stages and that has not yet been formally organized. If this group should choose to organize as a nonprofit corporation, the rules of ownership and acquisition discussed above would prohibit them from acquiring farm or ranch land for their intended purpose of operating an agricultural training center. This is true even though N.D.C.C. § 10-06-04.1 would otherwise permit them to own farm or ranch land.

I hope this letter has been helpful.

Sincerely,

Nicholas J. Spaeth

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