

OPINION
62-69

October 19, 1962 (OPINION)

CORPORATIONS

RE: Operation of Feed Lot as Corporation - Limitations

Your office has advised that you are confronted with a problem in filing articles of incorporation under chapter 10-06 of the North Dakota Century Code. The question which has arisen is whether or not a farmer in general agricultural pursuit may establish a feed lot for cattle as a separate corporate entity apart from his general cattle raising and grain farming activities. The question also has arisen on the operations of a similar nature, such as hog feeding, turkey raising, broiler operations and dairying. Your facts do not disclose how these other operations are to be conducted.

The original act, an initiated measure, was entitled "An act prohibiting corporation farming and related corporations acquiring and holding real estate not necessarily in the operation of their business." In examining the provisions of chapter 10-06, we come to the conclusion that it was primarily designed to prevent corporations from acquiring large tracts of farmland and farming same. It also appears from the title and body of the act that the intent and purpose of the act was to prohibit corporation farming.

The term "agriculture" is a broad comprehensive term which embraces, in its general meaning, many phases and operations of the science of cultivating the ground, planting seeds, raising and harvesting crops, raising feed and managing livestock. It also embraces tillage of the soil, husbandry and farming. The term "agriculture" is used in chapter 10-06 but it is in connection with the term "farming." This is indicative that the term is used as synonymous with the term "farming" and that it is not used in its broad general sense. The term "farming" is not as broad as the term "agriculture." Farming is a phase of agricultural pursuit.

The court in TOWN OF LINCOLN v. MURPHY, 40 N.E.2d., 453, held that premises devoted entirely to raising nearly 2100 hogs for which no food was purchased thereon and not equipped with farming implements or buildings for housing of livestock did not constitute a farm within the town zoning bylaws. The court observed that the premises were devoted entirely to the raising of hogs and that the food furnished to the hogs was not produced on the premises.

On May 17, 1960, this office issued an opinion to the Securities Commissioner on the question whether or not "feed lot" operations by a corporation were prohibited under chapter 10-06 of the North Dakota Century Code. In this opinion, it was held that where the feed lot operators (the corporation) bought the cattle and bought the feed and merely put the two together, it was not in violation of chapter 10-06. The crux of the opinion was that where the corporation did not raise the cattle or the feed, it was not, in the true sense,

engaged in farming. The operation of a feed lot is not farming in the commonly accepted meaning. This operation brings together the two products for further processing. The cattle are to some degree a finished product from the farmer or rancher as far the farmer or rancher is concerned. The same is true of the feed when it is purchased from a farmer. While the operation is somewhat akin to farming, we cannot say that this constitutes farming as contemplated and prohibited by chapter 10-06. There are many operations which engage in activities akin for farming, such as sales rings, meat packing plants or meat processing plants, but that does not in itself establish that such operations are engaged in farming or agriculture. Both of these operations mentioned feed cattle or animals on its premises before they are either sold or slaughtered, whichever the case may be.

As to feed lot operations, the operator of such, in essence, takes the finished products and processes them and thereby improves the product by converting feed into beef or other meat, whichever the case may be. This is more in the nature of a commercial enterprise than an agricultural enterprise.

It is, therefore, our opinion that a farmer with other farmers or other individuals may form a corporation to operate a "feed lot" without violating the provisions of chapter 10-06, provided that the corporation will not raise any of the cattle nor the feed it will use; provided further that the corporation will purchase all of the cattle and feed it will use and process in the operation of the feed lot.

As to the other phases of operation which you mention, such as hog feeding, turkey raising, broiler operations, and dairying, it is our further opinion that if they are conducted in the manner outlined above, they would not be in violation of chapter 10-06. However, if the corporation were to undertake and actually did raise its own feed or cattle in connection with its operation, it would be in violation of chapter 10-06.

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