

**OPINION
68-82**

October 28, 1968 (OPINION)

Honorable Guy Larson, Senator

Thirty-second Legislative District

RE: Corporate Farming - Exemptions - Colleges and Charitable Corpora

This is in response to your letter in which you refer to churches, colleges, lodges, fraternal organizations, and charitable corporations such as Boys' Ranch and Home on the Range for Boys. You then ask the following questions as to how Chapter 10-06 of the North Dakota Century Code, the Anti-Farming Corporation's Act, might apply to them:

1. Can the above mentioned organizations own farm land?
2. If any of the above mentioned organizations, including private colleges, have owned farm land for a period longer than ten years would such farm land be subject to the escheat provisions under Chapter 10-06 of the North Dakota Century Code?
3. If farm land is given to any of the organizations mentioned above, either as a gift or through a bequest, would the provisions of Chapter 10-06 be operative?
4. What would be the legal situation if any of the above mentioned organizations or corporations accepted farm land on the condition that such farm land be retained and that the profits from the operation of such farm land be used for a specific purpose, such as scholarship funds or other similar activities?
5. What are the duties of the State's Attorneys in regard to bringing escheat actions against corporations owning farm land in his county?
6. What effect does Chapter 10-06 have as creating any liabilities upon the corporations mentioned above in holding farm lands, either by deed or by will, with restrictions on subsection alienation?

Before attempting to answer any of these questions and to give a better understanding, it is necessary to examine the various statutory provisions as well as Supreme Court and District Court decisions pertinent to the subject matter.

Section 10-06-01 of the North Dakota Century Code provides as follows:

"FARMING BY DOMESTIC AND FOREIGN CORPORATIONS PROHIBITED. All corporations, both domestic and foreign, except as otherwise provided in this chapter, are hereby prohibited from engaging

in the business of farming or agriculture."

Section 10-06-03 of the North Dakota Century Code provides as follows:

"DISPOSAL OF LANDS ACQUIRED SUBSEQUENT TO JULY 29, 1932 - OWNERSHIP LIMITATION A COVENANT. Any corporation, either domestic or foreign, which, on or since July 29, 1932, has acquired or hereafter shall acquire any rural real estate, used or usable for farming or agriculture, by judicial provision or operation of law or pursuant to section 10-06-05, shall dispose of such real estate, except such as it reasonably necessary in the conduct of its business, within ten years from the date that it was so acquired. During said ten year period, the corporation may farm and use such lands for agricultural purposes. The ten year limitation provided by this section shall be deemed a covenant running with the title to the land against any grantee, successor, or assignee of such corporation, which also is a corporation." (Emphasis supplies.)

Section 10-06-06 of the North Dakota Century Code provides as follows:

"10-06-06. LAND OF NONCOMPLYING CORPORATIONS SOLD BY COUNTY - PROCEEDS PAID TO CORPORATION. In case any corporation, either domestic or foreign, violates any provision of this chapter or fails, within the time fixed by this chapter, to dispose of any real estate to which it has acquired title and which is not reasonably necessary for the conduct of business, then title to such real estate shall escheat to the county in which such real estate is situated upon an action instituted by the state's attorney of such county, and such county shall dispose of the land within one year at public auction to the highest bidder, and the proceeds of such sale, after all expenses of such proceedings shall have been paid, shall be paid to the corporation which formerly owned the land." (Emphasis supplied.)

The underscored language in Sections 10-06-03 and 10-06-06 are the exceptions referred to in Section 10-06-01.

The North Dakota Supreme Court had occasion to consider the legality and provisions of Chapter 10-06, and specifically the above cited sections, in *Asbury Hospital v. Cass County*, 7 N.W.2d. 438, 72 N.D. 359; and the same case in 16 N.W.2d. 523, 73 N.D. 469, which was affirmed by the United States Supreme Court in 326 U.S. 207, 90 Led. 6.

In this instance the Asbury Hospital was a nonprofit corporation organized and existing under the laws of the State of Minnesota. It was a corporation of and subject to the discipline of the Methodist Episcopal Church and was created and existed for religious and charitable purposes solely. It was also established that said corporation was not in the business of farming and agriculture. It was further established that the corporation under the laws of Minnesota could become the owner of mortgages of real property and

that such corporation became the owner of real property under the laws of North Dakota through mortgage process. The Court held that Asbury Hospital, the corporation, and the land which it had acquired was subject to the provisions of Chapter 10-06 of the North Dakota Century Code. The Court specifically said as follows:

" '* * * Where a corporation, on the date the statute became effective, owned and held real estate of the character specified in the statute, it is required to dispose of the same within ten years from that date, excepting alone such real estate "as is reasonably necessary in the conduct" of its business. * * *.'"

The Court continued by saying:

" '* * * Corporations are organized for the purpose of carrying on and conducting certain specified business or activity. They are granted certain powers to be used to perform the functions for which they are organized. There is an obvious distinction between the objects or business which a corporation is organized to accomplish or conduct and the powers with which it is vested for the purpose of conducting the business or attaining its objects. When the statute provides that there shall be excepted from its operation such real estate "as is reasonably necessary in the conduct of" the business of a corporation, it means such real estate as is reasonably necessary for carrying on the business or activity which the corporation was created to carry on. * * *.' " (Citations omitted.)

The Court's decision, in effect, held that the Asbury Hospital Corporation was required to dispose the land it had acquired within the time provided for in Chapter 10-06. The Court held the corporation did not establish that the property, the land in question, was "reasonably necessary for the conduct of its business", or that it was exempt from the provisions of Chapter 10-06.

The North Dakota Supreme Court again had occasion to consider the legal effects of Chapter 10-06 in *Loy v. Kessler*, 39 N.W.2d. 260. In discussing the provisions of the Act on Page 272 it said, amongst other things:

" '* * * But a corporation may acquire and hold indefinitely, real estate that is otherwise within the prohibited category if it 'is reasonably necessary in the conduct of its business.' * * *.'"

The Court also said that:

" '* * * If the real estate is acquired through certain named processes it may be retained for ten years and only after that period does it become subject to escheat.' * * *.'"

In discussing some of the legal aspects as pertaining to realty, the Court in this case pointed out the need for legal title to real property and the elimination of uncertainty of legal title to real property. The title passes to the corporation but upon the happening

of certain events the property is subject to the escheat provisions.

District Court Judge, Roy K. Redetzke, in his memorandum opinion dated October 19, 1965, discussed the provisions of Chapter 10-06. In this instance it was established that the corporation was engaged in the business of buying, selling, and leasing farm and residential property, and that the corporation has not nor had any of its employees been engaged, directly or indirectly, in the farming of the land in question but had only leased this land for the past twenty-five years. The Court relied heavily on some of the statements made by the North Dakota Supreme Court in *Loy v. Kessler* and on decisions rendered by other district judges, more specifically a decisions rendered by Judge W. H. Hutchinson, a District Judge in a case in Dickey County, entitled *Baldwin Corporation v. Dickey County*, which was determined on September 16, 1964. In the Dickey County case the corporation in question was organized for the purpose of engaging in real estate business, including the buying and selling of farm lands and the renting and operation of said farm lands while owned by the corporation. The Court in the Dickey County case held that the land in question "* * * was necessary for the conduct of the corporation's business. * * *" and as such did not subject the land owned by the corporation to the escheat provisions of Chapter 10-06, more specifically Section 10 06-06. Said decision was not appealed.

The Court in its memorandum opinion said:

"* * * If the plaintiff (corporation) is to continue in the business of buying and selling farm lands it will be necessary to have said lands farmed while owned by the corporation. It appears to the Court, therefore, that the lands here involved fall within the exception as expressed in the so-called Anti-Corporation Farming Act. To hold otherwise would by implication extend the actual provisions of the Act. It is not the purpose of the courts to legislate. * * *."

The Honorable Judge, Roy K. Redetzke, also took into consideration another District Court decision entitled *Northwestern Improvement Company, a corporation, v. Morton County, North Dakota*, which was decided by the Honorable Judge, H. L. Berry, on February 25, 1942. In this instance the corporation had been actively engaged in the business of buying, selling, leasing, managing, and otherwise dealing in land within the State of North Dakota. The corporation disclaimed that it engaged in the business of farming or that it had any intention of engaging in the business of farming. It had acquired and owned real estate which could be used or was usable for farming or agriculture, of which 1421.65 acres were situated in Morton County. The Court concluded that the property in question was not subject to the escheat provisions of Chapter 10-06 because it was reasonably necessary to the activities of the corporation. This decision was not appealed. In both of these cases the State's Attorney represented the County and the Attorney General appeared with and assisted the State's Attorney.

In the Nelson County case tried before Judge Redetzke, the articles of incorporation of the J. P. Lamb Co. showed that it was formed to purchase and hold real estate and to sell and dispose of same, to buy and sell livestock, grain and other farm products, to loan money upon

mortgage security, and to engage in other business relating thereto. Judge Redetzke ruled that the real estate in question held by the land corporation came within the exception of the provisions of Chapter 10-06 on the basis that such lands were held by the corporation as a necessary part in the conduct of its business as specified in its articles of incorporation. It observed that if the corporation saw fit to lease out these lands it was likewise a part of its business. The Court then quoted Judge Hutchinson by saying as follows:

"* * * If the corporation is to continue in the business of buying and selling farm land it will be necessary to have said lands farmed while owned by the corporation. * * *."

From these decisions it appears that if a corporation is created for and is authorized to engage in the business of buying and selling real estate, including farms, etc., farm land would be considered as reasonably necessary for the conduct of its business and as such the land so held by a corporation would not be subject to the escheat provisions of Chapter 10-06 but would come within the exceptions stated therein. While District Court decisions do not have the status as a Supreme Court decision, nevertheless we must give some considerable weight, particularly in instances where the decisions of the District Court were not appealed.

In answer to Question No. 1, churches, lodges, colleges, fraternal and charitable organizations such as Boys' Ranch and Home on the Range for Boys, and other similar type organizations, may own farm land for a period of ten years. If such organizations are authorized by the articles of incorporation to engage in activities such as buying and selling farm land, which would be rather uncommon for such organizations, and actually engage in such business they could hold it longer.

In answer to Question No. 2, if such organizations have held the land for ten years or more and if the land is not needed for its business, the State's Attorney of the county in which the land is situated can bring an escheat action and through legal process sell the land under the provisions of Chapter 10-06.

In answer to Question No. 3, it makes little difference how the farm land was acquired.

In answer to Question No. 4, unless the will or bequest contained a reversionary clause or revesting provision based upon a contingency which could be recognized by law (which in itself is a complicated legal question) that portion of the bequest or will requiring the farm and to be held by such organizations would be deemed invalid and the farm land would be subject to the escheat provisions of Chapter 10-06.

As to Question No. 5, Section 10-06-06 is very specific and provides that the action be instituted by the State's Attorney of the county in which the land is situated. It must be assumed that the duty imposed upon the State's Attorney to bring the escheat action was imposed because the proximity of the farm land and the office in which the legal information is kept are more accessible and available

to him and as such makes the State's Attorney the logical person to initiate the action. He and the court officials would be the person or person who would have the best opportunity to learn about situations which would require the institution of an escheat action. However, as in all other cases or instances, if the State's Attorney requests assistance the Office of the Attorney General will assist and cooperate. This, however, still imposes the initial duty upon the State's Attorneys of the respective counties.

As to Question No. 6, no individual liability attaches to such organizations. However, it is common knowledge that under a forced sale the purchase price could be considerably lower and in this respect such groups would suffer a financial loss. In all probability the restriction on subsequent alienation of such farm land would not be recognized, unless such restriction also contained a reversioning of the farm land upon the happening of a certain contingency, which could be recognized by law as a legal reversioning condition.

It should be observed that if the corporation is entitled to hold the farm land pursuant to the statements made by the Supreme Court and the District Courts earlier referred to herein, the corporation could have said lands farmed while owned by the corporation if the corporation was authorized to engage, and did engage, in an activity such as buying and selling farm land or related activity.

The authority to engage in such activity can be found in the articles of incorporation and would apply substantially in the same manner to both foreign and domestic corporations.

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