

Date Issued: April 12, 1982 (AGO 82-25)

Requested by: Public Service Commissioner Richard Elkin

- QUESTION PRESENTED -

Whether a natural person who does not reside upon a farm or ranch, but manages the farming or ranching operation through employees, may incorporate that farm or ranch.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a natural person who does not reside upon a farm or ranch, but manages the farming or ranching operation through employees, may incorporate that farm or ranch.

- ANALYSIS -

Section 10-06-07(5) of the North Dakota Century Code states as follows:

5. The officers and directors of the corporation must be shareholders or members who are actively engaged in operating the farm or ranch and at least one of its shareholders or members shall be an individual residing on or operating the farm or ranch.

This section requires the officers and directors of the corporation to be shareholders who are actively engaged in operating the farm or ranch. In addition, at least one of the corporation's shareholders must be an individual who either resides upon or operates that farm or ranch. The phrases "actively engaged in operating the farm or ranch" and "operating the farm or ranch" refer to those natural persons who are physically involved in the daily work required in farming or ranching as well as those persons who make management decisions or who hire others to perform the physical labor needed in the operation of the farm or ranch.

In those situations where the directors of a corporation are its only shareholders and all shareholders are engaged in the operation of the farm or ranch, in terms of either physical labor or management, both requirements of section 10-06-07(5), N.D.C.C., would be satisfied and that farm or ranch may be incorporated under the provisions of chapter 10-06, N.D.C.C.

- EFFECT -

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

ROBERT O. WEFALD
Attorney General

Prepared by: Terry L. Adkins
Assistant Attorney General