

Date Issued: February 25, 1983 (AGO 83-10)

Requested by: Ben Meier, Secretary of State

- QUESTION PRESENTED -

Whether partnerships or limited partnerships are prohibited by section 10-06-01 of the North Dakota Century Code, from engaging in farming or ranching or owning or leasing farm or ranch land in North Dakota.

- ATTORNEY GENERAL' OPINION -

It is my opinion that partnerships or limited partnerships are not prohibited by section 10-06-01, N.D.C.C., from engaging in farming or ranching or owning or leasing farm or ranch land in North Dakota as long as none of the partners is a corporation or other entity prohibited by section 10-06-01, N.D.C.C., from farming or ranching or owning or leasing farm or ranch land in North Dakota.

- ANALYSIS -

As amended in 1981, section 10-06-01, N.D.C.C., provides as follows:

10-06-01. FARMING OR RANCHING BY CORPORATIONS PROHIBITED. All corporations, except as otherwise provided in this chapter, are prohibited from owning or leasing land used for farming or ranching and from engaging in the business of farm or ranching. As used in this chapter, "corporation" includes any joint stock company or association.

The use of the word "association" in section 10-06-01, N.D.C.C., raises the question of whether it includes partnerships or limited partnerships. There is no definition of the word "association" in chapter 10-06, N.D.C.C. Neither is there any indication in the legislative history as to what meaning was intended by the term "association." However, Section 1 of Article XII of the North Dakota Constitution states that the term corporation "shall be held and construed to include all associations and joint stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships." The definition of corporation in the North Dakota Constitution includes associations in the definition of corporation and distinguishes between corporations, associations, and joint stock companies on the one hand and individuals or partnerships on the other.

At common law an association was defined as a body of individuals acting for the prosecution of a common enterprise without a corporate charter but upon methods and forms used by corporations. 6 Am. Jur. 2d. Associations and Clubs, Section 1 (1963).

Black's Law Dictionary defines an association as an:

. . . unincorporated society; a body of persons united and acting together without a charter, but upon the methods and forms used by incorporated bodies for the prosecution of some common enterprise . . . .

It is fundamentally a large partnership, from which it differs, in that it is not bound by the acts of the individual partners, but only by those of its manager or trustee; and that shares in it are transferable, and that it is not dissolved by the retirement, death, or bankruptcy of its individual members. In re: Lloyds of Texas, D.C. Tex., 43 F.2d. 383, 385.

Black's Law Dictionary, 156 (Rev. Fourth Ed. 1972).

Strictly speaking, an unincorporated association is neither a partnership nor a quasi-partnership. Chastain v. Baxter, 31 P.2d. 21, 24 (Kan. 1934). The Lloyds case further defined an association as an entity that is not bound by the acts of its manager or trustee and that shares in an association are transferable, that it is not dissolved by the retirement, death or bankruptcy of its individual members, and that the term is used to signify a body of persons not united under the charter but by the methods and forms used by incorporated bodies.

Section 1-02-39, N.D.C.C., states as follows:

1-02-39. AIDS IN CONSTRUCTION OF AMBIGUOUS STATUTES.

If a statute is ambiguous, the court, in determining the intention of the legislation, may consider among other matters:

1. The object sought to be attained.
2. The circumstances under which the statute was enacted.
3. The legislative history.
4. The common law or former statutory provisions, including laws upon the same or similar subjects.
5. The consequences of a particular construction.
6. The administrative construction of the statute.
7. The preamble.

In particular in this case, the consequences of construing "associations" in section 10-06-01, N.D.C.C., to include partnerships or limited partnerships would be to prohibit all such entities from farming or ranching or owning or leasing farm or ranch land in North Dakota, whether such entities are formal partnerships or merely de facto partnerships. To so construe this statute would be to virtually eliminate the most common form of farming in North Dakota, other than the sole proprietorship. It is presumed that the Legislative

Assembly in 1981 was aware that partnerships and limited partnerships could be used as business entities to farm or ranch in North Dakota. It is further presumed that had the Legislative Assembly intended to prohibit partnerships or limited partnerships from farming or ranching in North Dakota or owning or leasing farm or ranch land in North Dakota it could have specifically included partnerships or limited partnerships in section 10-06-01, N.D.C.C.

Therefore, it is my opinion that section 10-06-01, N.D.C.C., does not include in its definition of "association" partnerships or limited partnerships. However, it is my further opinion that partnerships or limited partnerships which have as partners corporations or other business entities prohibited from farming or ranching in North Dakota or prohibited from owning or leasing farm or ranch land in North Dakota are included in the definition of corporation contained in section 10-06-01, N.D.C.C., and are prohibited from farming or ranching in North Dakota and are also prohibited from owning or leasing farm or ranch land in North Dakota.

- 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.

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