

OPINION
45-72

February 5, 1945 (OPINION)

CORPORATION FARMING

I acknowledge your letter of January 27, in which you ask whether the so-called "Corporation Farming Law" permits you corporation to rent the surface of coal land owned by your corporation for farming purposes.

I take it that the land you refer to is held and owned by your company primarily for the purpose of mining the coal imbedded therein. I also take it that that is the primary object you have in mind with reference to this land. I also assume that you mine the coal by stripping the surface of the land. If that is the case, then the surface of the land that you refer to, and which can now be farmed, will be destroyed. In other words, the farming of the surface of your coal land is merely an incident to the main purpose you have in mind of mining the coal therein and that as soon as you get to the land for the purpose of mining the coal, its usefulness as far as farming is concerned is at an end.

Section 10-0601 of the Corporate Farming Law states: "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."

I assume that your corporation is not engaged in the business of farming or agriculture, except insofar as you farm the surface of coal land owned by your corporation or lease it to others before you mine the coal therein imbedded. You do not state how long your corporation has held title to the lands you refer to, but I assume that you have held title to them for over a ten-year period from the date of acquisition, and that, therefore, if the land was being used for farming or agriculture by your corporation, it would come within the terms of the corporation farming law.

On the assumption that your main business is that of mining coal, and not farming or agriculture, and that the farming of the surface of any land that you hold in the name of your corporation is merely an incident to your main business, it is the opinion of this office that such land would not come within the terms of the corporate farming law and that there is nothing in the statutes of this state that will prevent you, either from farming the land as a corporation until it is used for the mining of coal, or from leasing the surface to others, if you desire to lease it for farming purposes until it is mined.

NELS G. JOHNSON

Attorney General