

**OPINION**  
**46-50**

July 19, 1946           (OPINION)

CORPORATIONS

RE: Farming - Exceptions

I have your letter of July 16, 1946, in which you refer to my letter to you of July 15, 1946, relative to the corporate farming law of this state.

Your specific question is: "When may a corporation (with proper provision in its charter) avail itself of the exception provided in section 10-0603 and legitimately own and operate that amount of rural real estate which is reasonably necessary to the conduct of its business?"

All of the provisions of the statute must be construed together. Section 1 of the Act provides that: "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 2 requires all corporations, both domestic and foreign, which now own or hold rural real estate \* \* \* which is used or usable for farming or agriculture, except such as is reasonably necessary in the conduct of their businesses, shall dispose of the same on or before July 29, 1942, and said corporations may farm and use said real estate for agricultural purposes until such date.

Under the provisions of section 2, corporations may farm and use real estate for agricultural purposes until the dead line for disposing of same. After such dead they may own or hold only so much real estate as is reasonably necessary in the conduct of their businesses. Referring again to a corporation organized for the purpose of purchasing and processing flax seed into oil and by-products in connection therewith, the corporation may own rural real estate, if necessary in its business, for the purpose, for instance, of erecting warehouses thereon and other purposes incident to its main business, but I am still of the opinion that such a corporation would not be authorized to acquire, own and farm real estate for the purpose of producing flax in sufficient quantities to enable it to continue its operations which is authorized under its charter.

I might state that this question has not been passed upon by our courts and it hinges upon the construction of the phrase, "except such as is reasonably necessary in the conduct of their businesses." In other words, how broad is the meaning of the phrase "reasonably necessary." I do not believe that a corporation may, under the law, engage in farming simply because the business in which it is engaged is that of processing or dealing in agricultural products.

The underlying purpose of the statute was to prohibit corporations from acquiring large areas of land and in effect create a monopoly to the detriment of individual farmers. North Dakota is an agricultural state, and the principal occupation of its citizens is farming and

agriculture, and the purpose of the Legislature in enacting this statute was to encourage individual citizens in acquiring and improving farms and establishing farm homes and the building up of prosperous rural communities.

In the opinion in the case of *Asbury Hospital v. Cass County, et al.*, 72 N.D. 359, the court quotes from 6 *Fletcher, Cyc.* pp. 170, 171, section 2475: "There is an obvious distinction between 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."

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